Valic v. W.C.B. 2008 NWTSC 44 Date: 2008 06 20
Docket: S-1-CV2007000233

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Arbitration Act*,
R.S.N.W.T. 1988, c.A-5, as amended

BETWEEN:

IVAN VALIC

Applicant

-and-

THE WORKERS' COMPENSATION BOARD OF THE
NORTHWEST TERRITORIES AND NUNAVUT

Respondent

Application to set aside decision of an Arbitrator.

Heard at Yellowknife, NT on May 26, 2008

Reasons filed: June 20th, 2008

The Applicant, Ivan Valic, appeared in person.
Counsel for the Respondent: Gordon A. McKinnon

REASONS FOR JUDGMENT
THE HONOURABLE JUSTICE V.A. SCHULER

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REASONS FOR JUDGMENT

[1] Ivan Valic, the Applicant, asks that the decision of an Arbitrator rendered August 20, 2007 be set aside because, he says, the Arbitrator misconducted himself or the decision was improperly procured.

[2] The Respondent (the "WCB") argues that on the appropriate standard of review, the Arbitrator's decision was reasonable and should not be set aside.

Background

[3] Mr. Valic has been involved in a dispute with the WCB since 1987 over his entitlement to benefits for injuries received from work accidents. The main issue in the dispute became his entitlement to permanent partial disability benefits ("PPD") for chronic pain syndrome. Mr. Valic pursued that issue through the Review Committee and Appeals Tribunal levels of the WCB scheme, challenging the WCB policy that did not recognize chronic pain syndrome as compensable for

purposes of PPD benefits. His challenge was rejected by the Committee and the Tribunal but succeeded in this Court: *Valic v. Workers' Compensation Board et al*, 2005 NWTSC 105, in which I ruled that the WCB policy was contrary to the *Canadian Charter of Rights and Freedoms* and remitted the matter back to the Appeals Tribunal to determine Mr. Valic's entitlement to benefits in accordance with that ruling.

[4] After engaging in mediation, the parties reached a settlement that resolved Mr. Valic's claims with the exception of his claim for past out-of-pocket expenses. The settlement provided that if the parties could not agree on reimbursement of Mr. Valic's claimed expenses, the determination would be made by a single arbitrator. The provisions of the Northwest Territories' *Arbitration Act*, R.S.N.W.T. 1988, c. A - 5 would apply and the arbitrator would be asked to rule on the following question: "Having regard to the circumstances of Ivan's case and the circumstances surrounding the incurring of the expense, is the expense properly payable under the terms of the Workers' Compensation Act and applicable Policies?".

[5] The parties did not resolve the expense issue and so appointed an arbitrator before whom a hearing was conducted on July 12, 2007. Mr. Valic gave evidence under oath and submissions were made orally and in writing. Mr. Valic and the WCB were each represented by counsel.

[6] Under the settlement agreement, bookkeeping assistance had been provided to Mr. Valic to list some 1577 receipts he had collected. The expenses claimed amounted to $154,416.41, on which interest was also claimed. On August 20, 2007, the Arbitrator issued his decision in which he awarded Mr. Valic the sum of $36,871.59 plus interest (the interest amounts to $10,164.52).

[7] On November 16, 2007, Mr. Valic filed this application for judicial review of the Arbitrator's decision. He was not represented by counsel on this application, although he did have counsel (not the one who appeared with him at the arbitration) prepare a brief on his behalf, which has been very helpful.

Issues

[8] The issues arising on this application are:
1. Extension of the applicable time limit for filing the application;

2. The standard of review for the Arbitrator's decision;

3. The meaning of the terms "improperly procured" and "misconduct";

4. Application of the standard of review to the Arbitrator's decision;

5. Additional expenses claimed by Mr. Valic.

Extension of the applicable time limit for filing the application

[9] Rule 596(1) of the *Rules of Court* provides that an originating notice seeking judicial review in the form of an order setting aside a decision must be filed and served within 30 days after the decision unless otherwise provided by statute. In this case, section 29 of the *Arbitration Act* provides for the application to be filed six weeks from the delivery of the award to the applicant unless by leave of a judge.

[10] Although the material filed does not indicate exactly when Mr. Valic received the Arbitrator's award, he acknowledges that he filed his application for judicial review outside the six week period prescribed by s. 29 of the *Arbitration Act.* The WCB accepts Mr. Valic's stated position that he was unable to retain counsel and had difficulty filing documents on his own, thus the delay in filing.

[11] The test for an extension of time under s. 29 was set out by Vertes J. in *Union of Northern Workers v. Northwest Territories Power Corp.*, [1994] N.W.T.J. No. 59 (S.C.). The test involves consideration and balancing of a number of factors: intent in time to appeal; a reasonable excuse for not appealing in time, notice to the respondent in time, no undue prejudice, an arguable case and the interests of justice. I am satisfied that on balance these factors justify the extension of time under s. 29. The WCB does not oppose the extension. Accordingly, I grant leave for the filing of the application on November 16, 2007.

The meaning of the terms "improperly procured"and "misconduct"

[12] As indicated above, the settlement agreement between Mr. Valic and the WCB provides that the *Arbitration Act* applies to the arbitration over Mr. Valic's out-of-pocket expenses. Section 28 of the *Act* states:

> 28. (1) Whether or not a submission provides for an appeal from an award, a party to a submission or a person claiming under that party may apply to a judge to set aside an award on the grounds that
>
> (a) an arbitrator or umpire has misconducted himself or herself, or
>
> (b) an arbitration or an award has been improperly procured,
>
> and the judge may, in the discretion of the judge, dismiss the application or set aside the award.

[13] One thing to be noted about s. 28 is that it provides two options to a judge hearing an application: she can dismiss the application or set aside the award. If the award is set aside, the matter would have to be remitted to another arbitrator to decide. There is no provision for the judge on the judicial review application to make an award different from the award set aside. Therefore, even if I were to set aside the award made by the Arbitrator in this case, I would not be able to order compensation to Mr. Valic as claimed in his brief. The only option would be a new hearing before another arbitrator.

[14] The term "misconduct" in s. 28(1)(a) includes such concepts as bias, corruption and arbitrariness as well as actions in excess of jurisdiction and errors of law on the face of the record: *Union of Northern Workers*, *supra.*

[15] The term "improperly procured" applies where there is an allegation that one of the parties did something "improper", such as the perpetration of a fraud, to obtain the award: *Union of Northern Workers, supra*.

[16] Although Mr. Valic in his oral submissions made some broad allegations of wrong-doing by various parties involved in the arbitration and events leading up to

it, there is no evidence at all of improper conduct in the sense required by s. 28(1)(a).

[17] The essence of Mr. Valic's argument is that the Arbitrator failed to consider Mr. Valic's individual circumstances and his particular dispute with the WCB and that his decision to disallow many of the expenses claimed was wrong. These grounds are relevant to whether the Arbitrator exceeded his jurisdiction or erred in law. To decide that question, I must first determine what the standard of review is.

The standard of review

[18] No submission was made by Mr. Valic about what standard the Court should use in reviewing the Arbitrator's decision. The WCB submits that the standard should be reasonableness, in other words, that the Court should show considerable deference to the Arbitrator's decision.

[19] The Supreme Court of Canada's recent decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9 has changed and refined the law on the standard of review to apply to decisions of administrative tribunals. There are now two standards of review, correctness and reasonableness. Which standard is to be applied is to be decided first by looking to existing authorities which have determined the standard of review for a particular tribunal on a particular question. If there are no satisfactory authorities, the reviewing Court must examine the four contextual factors in the "pragmatic and functional test" under *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, which, since *Dunsmuir*, is to be referred to as the "standard of review analysis".

[20] I was not referred to any authorities on the appropriate standard of review for a consensual arbitrator and there would appear to be no reason in principle why the standard of review analysis should not apply. It is thus necessary to consider the four contextual factors, which are (I) the presence or absence of a privative clause; (ii) the purpose of the tribunal as determined by interpretation of enabling legislation; (iii) the nature of the question at issue; and (iv) the expertise of the tribunal. In *Dunsmuir*, the Supreme Court indicated that it will not always be necessary to consider all the factors as some of them may be determinative in a specific case.

(i) the presence or absence of a privative clause

[21] In *Dunsmuir*, at paragraph 52, the majority of the Court said that the existence of a privative clause, or a clause precluding or limiting review by a court, is a strong indicator of review on a standard of reasonableness. Since the settlement agreement between Mr. Valic and the WCB provided that the arbitration be governed by the *Arbitration Act*, one must look to s. 28(1) of the statute, which limits the grounds on which a party may ask a judge to set aside an award to misconduct of the arbitrator and improper procurement of the arbitration or award. As I have already indicated above, the issue of improper procurement does not arise in this case.

[22] The settlement agreement itself indicates that the parties did not intend that there be a right of appeal. Paragraph 3(e) of the agreement states, "The arbitrator's decision will be final and binding, with no appeals or judicial review".

[23] All of this indicates the deferential standard of reasonableness.

(ii) the purpose of the tribunal

[24] The purpose of the jointly appointed Arbitrator was to resolve the issue of the expenses claimed by Mr. Valic. In itself, this does not indicate one rather than the other of the two standards of review.

(iii) the nature of the question at issue

[25] The question for the Arbitrator was whether the expenses claimed by Mr. Valic were properly payable under the *Workers' Compensation Act* and the Board's policies. This is essentially a factual determination. Even if it were to involve some interpretation of the *Workers' Compensation Act*, that interpretation would be as to facts rather than law. This also calls for a deferential standard of review. As stated in *Dunsmuir*, at paragraph 53: "Where the question is one of fact, discretion or policy, deference will usually apply automatically ... the same standard must apply to the review of questions where the legal and factual issues are intertwined and cannot be readily separated". Deference indicates review on a standard of reasonableness.

(iv) expertise of the tribunal

[26] This is a neutral factor in the present circumstances. The Arbitrator, a lawyer, has no greater expertise than the Court on the question referred to him.

[27] Balancing the above factors, the Arbitrator's decision is to be reviewed on a standard of reasonableness. This means that I should not interfere with the Arbitrator's decision if his decision is a possible, reasonable conclusion. (*Dunsmuir*, paragraph 47). The question is not whether this Court would have made the same decision, but rather whether the Arbitrator's decision is one that is possible on the evidence presented to him and is defensible in respect of the facts and the law. Put another way, Mr. Valic and the WCB in their settlement agreement gave the Arbitrator the task of determining whether the expenses claimed by Mr. Valic are proper under the *Workers' Compensation Act* and the WCB policies; if the Arbitrator's decision is one that could reasonably be arrived at under all the circumstances, even if it is not the only one, then this Court should not interfere.

Is the Arbitrator's decision reasonable?

[28] It is the position of Mr. Valic that the Arbitrator acted arbitrarily in assessing his claimed expenses, often providing no reason for the denial of payment (page 4, Applicant's brief). A decision that is arbitrary cannot be reasonable.

[29] The specific areas in which Mr. Valic claims the Arbitrator acted arbitrarily are set out below. They have to be considered in context, which includes the Arbitrator's assessment of Mr. Valic as a witness. He found Mr. Valic to be a poor historian with a poor memory, unreliable as a witness and "of little assistance in determining the circumstances surrounding the payment of any expense". The Arbitrator found that he had to rely, "almost entirely" on the documentary evidence before him together with the submissions of counsel.

[30] The Arbitrator also directed himself to consider the following factors in deciding the question referred to him: (a) the circumstances of Mr. Valic's case, (b)

the circumstances surrounding his incurring of the expenses and (c) whether the expenses were properly payable under the *Workers' Compensation Act* and policies. The Arbitrator also reminded himself that he must not fetter his discretion and must always consider whether a WCB policy ought to apply at all in the circumstances of Mr. Valic's case.

[31] For ease of reference, I will categorize the expenses claimed as they are set out in Mr. Valic's brief.

1. Legal Expenses

[32] The legal expenses claimed by Mr. Valic totaled $55,483.17. The Arbitrator divided them into expenses incurred before and after the end of the year 1998. The year 1998 is significant because that is when the issue of Mr. Valic's chronic pain was placed squarely before the WCB, culminating in Mr. Valic's successful challenge under the *Charter*.

[33] The Arbitrator made two main findings about the legal expenses incurred before the end of 1998. The first was that some of the expenses claimed were for services which were not well described in the evidence before him, or not described at all - for example, a bill for $10,000.00 for retaining a lawyer, Mr. Soltysiak. The bookkeeping documentation provided to the Arbitrator characterized the services provided by Mr. Soltysiak as "not known". Mr. Valic did not recall whether he ever received a bill from Mr. Soltysiak and did not recall what services Mr. Soltysiak performed. With that lack of detail, the Arbitrator could not determine whether the $10,000.00 was an expense that was "properly payable". The same problem arose with payments on account to unknown service providers totaling $4,180.00.

[34] Secondly, the Arbitrator found by comparing the legal expenses to what was occurring in Mr. Valic's WCB claim at the time, that the expenses were not particularly out of the ordinary. He found there was nothing in the circumstances surrounding the incurring of the expenses that would justify a departure from the WCB's usual policy of not paying legal expenses, found in the Appeals Tribunal's Rules of Procedure, s. 16(6) and 3(3) and WCB Policy 08.01, paragraph 4(A). He went further and considered whether those policies are consistent with the general principles of workers' compensation as described in the decision of the Supreme

Court of Canada in *Pasiechnyk v. Saskatchewan (Workers' Compensation Board)*, [1997] 2 S.C.R. 890, [1997] S.C.J. No. 74. He found that they are consistent.

[35] On the post-1998 legal expenses, the Arbitrator differentiated between expenses claimed for appeals within the WCB system (that is, to the WCB's Review Committee and to the Appeals Tribunal) on the one hand and amounts claimed relating to the *Charter* litigation in this Court on the other hand. He noted that the parties had agreed on the taxable costs payable to Mr. Valic in the litigation. There was still a problem with documentation, however, as he noted that it could not be determined whether the fees paid to one of Mr. Valic's lawyers were for steps taken within the WCB system or for the litigation.

[36] The Arbitrator decided that legal expenses relating directly to the *Charter* litigation should be dealt with by way of the taxable costs in that litigation and so he declined to order any further reimbursement of those expenses. Mr. Valic's brief cites the case *Tedford et al. v. Nitch* (1977), 13 O.R. (2d) 471 (Ont. Co. Ct.) for the proposition that the Arbitrator had jurisdiction to order reimbursement of the legal expenses attributable to the litigation. The Arbitrator's reasons indicate that he felt that those expenses were "more properly dealt with" by the determination of taxable costs in that action, but that even if he assumed he had jurisdiction to award an amount in excess of the agreed upon taxable costs, he would not do so because the issue of chronic pain and entitlement to permanent partial disability benefits was one with which various compensation boards across Canada had struggled and he did not find the WCB's defence of its policy to be an abuse of process. Therefore, the Arbitrator did not rule that he did not have jurisdiction to award the expenses, he simply declined to exercise that jurisdiction for the reasons given.

[37] While I need not decide the question whether the Arbitrator did actually have jurisdiction to award costs of the litigation beyond the taxable costs agreed to, I observe that Mr. Valic's claim for reimbursement of all his costs associated with the litigation amounts to a claim for solicitor client costs, which are rarely granted.

[38] Notwithstanding WCB policy that workers pay their own legal expenses for reviews and appeals within the WCB system, the Arbitrator decided that policy should not apply to Mr. Valic with regard to legal fees for matters not related to the litigation after 1998. He found that for various reasons, including the WCB position on chronic pain and Mr. Valic's difficulties with the English language and

his lack of education, Mr. Valic had been put in a position where he had no choice but to retain counsel. The Arbitrator awarded $5000.00 for those legal expenses.

[39] Mr. Valic submitted that the civil litigation and all the other WCB proceedings were inextricably linked and so he should receive full compensation for all legal expenses he incurred. That position overlooks the fact that the Arbitrator had to deal with two different systems: the WCB system, wherein the policy is that workers bear their own legal expenses and the legal system, wherein taxable costs may be awarded by the Court or agreed upon by the parties. That being the case, it was not unreasonable for the Arbitrator to deal with the two separately in determining whether the expenses claimed were properly payable.

[40] With regard to the inadequacy of the documentation of some of the legal services, Mr. Valic says he cannot be expected to remember or precisely describe what all the services were for. While there is no doubt that Mr. Valic suffered some unusual circumstances, for example, the death of one of his lawyers and the inability to get a full accounting from that lawyer's office for funds paid, the Arbitrator still had to be satisfied as to what the expenses claimed were for in order to determine whether they were "properly payable".

[41] Although the decision made by the Arbitrator is perhaps not the only one that could be made, I find that it was not unreasonable in the circumstances.

2. Medical Reports and Services

[42] Mr. Valic claimed $30,380.00 as expenses for medical reports and services, of which the Arbitrator awarded $19,429.89.

[43] Mr. Valic argues that the Arbitrator's decision was arbitrary in that he compensated him for some expenses but not others and failed to assess Mr. Valic's numerous injuries and their global contribution to the diagnosis of chronic pain.

[44] The three areas of dispute in this category of expenses were dental expenses, eye examination expenses and expenses for services at a spa in Europe called "Toplice Topusko". The Arbitrator ruled in Mr. Valic's favour with respect to the eye examination expenses so only the other two are at issue on this application.

[45] In the case of the dental expenses, the Arbitrator disallowed those expenses that had already been paid by the WCB or could not be identified with any of the compensable injuries suffered by Mr. Valic. There is no basis upon which I can find that assessment to be unreasonable.

[46] In the case of the spa expenses, they related to several 8 to 14 day stays at a European spa, Toplice Topusko, where Mr. Valic received various forms of therapy that he said helped his condition. The Arbitrator was not provided with any reports from the spa. He considered a WCB policy that imposed conditions on this type of treatment, for example, that there be prior WCB approval, which was not received in this case. The WCB conceded that the attendances at the spa took place at a time when the relationship between it and Mr. Valic had broken down. The Arbitrator found reasonable the WCB's position that in those circumstances it was prepared to pay fifty percent of the expenses incurred at the spa and he awarded that amount. Mr. Valic's own written submission to the Arbitrator acknowledged that the spa expenses should be subject to a "reasonable discount".

[47] In these circumstances, I cannot say that the Arbitrator's award of fifty percent of the spa expenses was unreasonable.

3. Accommodations and Meals

[48] Mr. Valic claimed expenses of $9209.76 for accommodations and meals at Edmonton, Yellowknife and Radium. The Arbitrator awarded $2151.20 of that. Mr. Valic submits that all of the expenses should have been paid as he was required to make the trips in question. Mr. Valic says the Arbitrator denied these expenses because of his inability to recall the circumstances of each one and that this is unreasonable considering the number of years over which his battle with the WCB took place.

[49] A close review of the Arbitrator's decision indicates that these expenses were not denied solely on the basis of Mr. Valic's inability to recall the circumstances of the trips during which these expenses were incurred.

[50] The factors considered by the Arbitrator were whether the trips in question had been approved by the WCB as per policy; even if they were not approved, whether the expenses should be paid in the circumstances of Mr. Valic's case; whether the dates of some of the travel expenses claimed coincided with the dates of hearings attended by Mr. Valic; whether expenses for travel to Yellowknife related to the period of time before the chronic pain and *Charter* issues were raised; and whether there was evidence that the WCB had already paid an expense claimed. In some instances, there was no evidence before the Arbitrator about a claimed trip ("trips apparently taken on unknown dates by unknown carriers", page 22 of the Arbitrator's decision) or it was conceded by Mr. Valic that a trip did not directly relate to WCB matters (page 23).

[51] The Arbitrator was consistent in his approach as to what was properly payable and what was not. Since he found that Mr. Valic was not a good historian, it was not unreasonable for him to look to the documentation to sort out the connection between the claimed expenses and Mr. Valic's dealings with the WCB. His decision has not been shown to be unreasonable in that regard.

4. Copy, Fax, Courier, Mail and Video Services

[52] Mr. Valic claimed $5280.90 for these items. The evidence was that these expenses were incurred primarily, but not exclusively, for purposes of communicating with legal counsel and the amounts were paid to various providers of communications services. The Arbitrator awarded half of these expenses, $2640.40.

[53] Mr. Valic submits that he could not be expected to remember the details of every receipt in the context of his ongoing dispute with the WCB. He says that the Arbitrator's decision to award only half of these expenses was arbitrary and that there was no direct evidence that these expenses were not related to his WCB claim.

[54] Although the Arbitrator did refer to Mr. Valic being unable to recall the costs per page for these services, that was not the basis upon which he made his decision. He noted that there was no WCB policy on this specific type of expense and that WCB policy is that expenses for legal counsel are to be borne, in the ordinary course, by the worker; he concluded that expenses for communicating with legal

counsel should be treated the same way. He also noted that items amounting to $600.00, mainly for international mail, were not likely related to WCB matters.

[55] I infer from the decision that the Arbitrator might have rejected these expenses in their entirety for the reasons noted above but for the WCB's agreement to pay fifty percent of them. In the circumstances, the award of fifty percent was reasonable.

5. Travel, Taxis and other Transportation

[56] The expenses claimed in this category came to over $30,000.00. The Arbitrator awarded $7362.88. Mr. Valic's position is that given his condition and his fear of re-injuring himself, as well as the distances or inadequately serviced routes to some of his doctors, he had to rely on taxis rather than walking or public transit. He also points out that he was required to travel from Calgary to Yellowknife for various proceedings relating to his claim. He submits that all his expenses in this category were related to his condition and should have been accepted by the Arbitrator.

[57] The Arbitrator carefully analyzed the expenses claimed in the context of the evidence before him. He found, for example, that it was not reasonable to order the WCB to cover the expenses for Mr. Valic to travel from Calgary to Radium Hot Springs so as to take mineral hot baths. He considered the medical evidence about the therapeutic value of such baths and the WCB policy that authorizes travel where a worker is undergoing a "medical examination or treatment". He also considered the fact that the Board had authorized one trip to Radium in late 1998 or early 1999 but had not done so again. He considered whether, notwithstanding the policy, the expenses should be paid in the circumstances of Mr. Valic's case. He concluded that the WCB should not have to pay for Mr. Valic's attendance at Radium to obtain relief that was temporary and could likely be obtained in more economical ways. This finding was consistent with how he dealt with the accommodation expenses claimed for Mr. Valic's attendances at Radium.

[58] In dealing with Mr. Valic's many taxi receipts, amounting to almost $20,000.00, the Arbitrator looked at WCB policy and at Mr. Valic's circumstances. He did not dismiss the taxi expenses on the basis that Mr. Valic could not remember which of the receipts were for medical appointments and which for other things; he

found that it was understandably impossible for Mr. Valic to remember what each trip was for.

[59] The Arbitrator relied on the documentation and found that numerous of the claimed expenses had already been paid by the WCB. He used the medical reports as support for some of the claimed taxi trips to a total of $1615.10. Although WCB policy would limit reimbursement to only those documented trips, the Arbitrator drew the inference that Mr. Valic did reasonably take a taxi to additional medical appointments. Based on that inference, the Arbitrator multiplied the documented expense by 3 for a total reimbursement of $4953.30 for taxis.

[60] The Arbitrator engaged in similar reasoning for all the expenses claimed in this category. He drew inferences in favour of Mr. Valic where he could. Considering the difficulties in the evidence he was working with, I find his decision reasonable.

6. Indecipherable receipts

[61] This category relates to what are variously described in the materials as illegible, unreadable or undecipherable receipts, amounting to $20,438.44. The Arbitrator noted in his award that Mr. Valic was unable to identify what kind of expenses they represent. Mr. Valic's position is that they must be related to his living expenses when he was receiving no benefits from the WCB and therefore they should be paid. However, without evidence identifying what kind of expenses they represent the Arbitrator was unable to determine whether they were "properly payable", which was the task assigned to him by the parties. No statutory basis for requiring the WCB to pay living expenses has been identified. Accordingly, it was not unreasonable for the Arbitrator to decline to order payment of those expenses.

Additional expenses claimed by Mr. Valic

[62] By letter dated May 23, 2008 to the Court from counsel who prepared his brief, Mr. Valic also claimed the following expenses:

(a) $48,000.00 for 20 years of prescription medication (without supporting documentation);

(b) $60,000.00 for legal fees (without supporting documentation);

(c) $5000.00 for legal fees paid to the Alberta law firm that prepared his brief;

(d) an additional estimated $10,000.00 for what are described as health care providers apparently seen by Mr. Valic in Europe in the first half of 2008 (receipts provided are not in English and not in Canadian currency).

[63] The difficulty with (a), the prescription medication, is that those expenses should have been presented to the Arbitrator. My jurisdiction on this application is to review his decision, not to consider additional expenses that could have been, but were not, submitted to him.

[64] The same problem arises with (b), the additional legal fees.

[65] The legal expenses incurred by Mr. Valic for his brief, or a portion of same, could only be dealt with by way of taxable costs on this application. In light of the decision I have reached, however, they will have to be borne by Mr. Valic.

[66] As to (d), I have no jurisdiction on this application to consider or award health care expenses that have arisen since the Arbitrator's decision was rendered. The terms of the settlement agreement also preclude recovery of these expenses.

Conclusion

[67] It is clear from Mr. Valic's submissions that he has decided that he is not happy with the settlement agreement he entered into with the WCB. Many of the issues he raised in argument relate to that but are outside the grounds and relief set out in his originating notice and the brief filed on his behalf. However, the issues raised in the originating notice and the brief are the only issues properly before me.

[68] As indicated earlier in these reasons, there is no evidence that the Arbitrator's award was improperly procured. I also find that the Arbitrator did not misconduct himself and that his decision was reasonable. He gave proper consideration to Mr. Valic's circumstances and drew inferences in favour of Mr. Valic where it was reasonable to do so. He also gave proper consideration to the applicable law and policies. Under the terms of his appointment as set out in the settlement agreement,

the Arbitrator was not given *carte blanche* to award Mr. Valic the expenses claimed. He had to make the determination according to the question put to him: "having regard to the circumstances of [Mr. Valic's] case and the circumstances surrounding the incurring of the expense, is the expense properly payable under the terms of the Workers' Compensation Act and applicable Policies?".

[69] I find that the Arbitrator did properly consider everything he was obliged to and that his decision is reasonable. The application to set aside his award is therefore dismissed.

[70] As Mr. Valic has not been successful on this application, no costs are payable to him. I assume that the WCB is not seeking costs against Mr. Valic since there was no reference to this on the application; if necessary, however, counsel may seek an appearance before me on notice to Mr. Valic to address that issue.

V.A. Schuler,
J.S.C.

Dated at Yellowknife, NT
this 20th day of June, 2008.

The Applicant, Ivan Valic, appeared in person.
Counsel for the Respondent: Gordon A. McKinnon

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