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Indexed as:  
J.S.H. (Re)

IN THE MATTER OF an appeal by James Scott Harrison  
AICAC File No.: AC-97-79

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[1997] M.A.I.C.A.C.D. No. 34

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Manitoba Automobile Injury Compensation Appeal Commission  
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C.,  
and L. Goodspeed  
Heard: October 2, 1997.  
Decision: October 3, 1997.  
(4 pp.)

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Issue(s):

Claim for compensation for vacation time taken off work,  
but unused due to motor vehicle accident.

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Relevant Sections:

Manitoba Public Insurance Corporation Act, S.M. 1993, c.  
36, ss. 81(1)(a) and 110.

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Appearances:

Manitoba Public Insurance Corporation ('MPIC') represented by  
Tom Strutt.

J.S.H., the appellant, appeared in person.

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#### REASONS FOR DECISION

[para1] The facts forming the basis of this appeal are quite simple.

[para2] On March 11th, 1997 the Appellant, Mr. James Harrison, a unit assistant at the [text deleted], was driving his sister to hospital for the delivery of her baby when his vehicle was rear-ended. He sustained soft tissue injuries to his neck and upper back. Since his work as a unit assistant entailed constant lifting, bending and the moving of patients at the [text deleted], J.S.H. was obliged to miss work for a total of 83 compensable hours, over and above the first seven days of his disability for which compensation is excluded by

Section 152(2) of the Act. That, and certain other aspects of his original claim, are no longer under appeal.

[para3] Prior to his accident, J.S.H. had arranged to be on vacation from about April 4th until April 13th, both inclusive. He had originally been scheduled to work a full 11.25 hour shift on each of three days, namely April 8th, 10th and 11th, but had arranged with his unit manager to convert those three days into vacation days. Other personnel had been scheduled to take his place so that J.S.H. could plan his skiing holiday with friends or family near Calgary. However, as the time drew nearer for J.S.H. to travel to Calgary, he realized that his residual problems from his motor vehicle accident would not allow him to ski and, instead, he stayed home and continued to attend physiotherapy sessions.

[para4] Unfortunately, by the time J.S.H. realized the need to abandon his plans for a skiing holiday, it was too late to change his arrangements at the [text deleted]. The collective agreement between J.S.H.'s union and the [text deleted] makes it clear that the vacation schedule, once in place, cannot be changed unless mutually agreed upon between the employee and management, and in J.S.H.'s case management decided that there was not enough time within which to make the change that he sought.

[para5] In consequence, J.S.H. was obliged to adhere to the vacation dates agreed upon between him and his unit manager, although, as he rightly says, those dates were no longer of much use to him in the context of a vacation. He did, however, receive his full salary from the [text deleted] to cover what had now become his enforced vacation. He seeks compensation for those three days which, he submits, were 'lost' as a result of his accident. MPIC's Internal Review Officer decided that, since they were paid vacation days, that claim must fail.

[para6] We conclude that, although J.S.H. has undoubtedly lost a benefit as a direct result of his motor vehicle accident, that lost benefit does not amount to a form of economic loss for which compensation is provided under the Manitoba Public Insurance Corporation Act. Section 81(1) of the Act, from which a full-time earner derives his basic right to compensation reads, in part, as follows:

"A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

- (a) he or she is unable to continue the full-time employment;
- (b) the full-time earner is unable to continue any

other employment that he or she held, in addition to the full-time regular employment, at the time of the accident;...."

Although J.S.H. does, apparently, find occasional employment as a musician, it was not suggested that he was precluded from that employment as a result of his accident, and subsection (b) is, therefore, not relevant.

[para7] Was J.S.H. "unable to continue the full-time employment" during April 8th, 10th and 11th of 1997 because of the motor vehicle accident? Regretfully, we have to answer that question in the negative. J.S.H. had already returned to part-time and, for at least one shift, full-time employment after his accident, but in any event his inability to work on the three days in question was not as a result of his motor vehicle accident but, rather, was due to the fact that he could not change his vacation schedule. It is for this latter reason that we are obliged to dismiss his appeal.

[para8] We note, however, that had J.S.H. been precluded from working by reason of his accident, and had he been on paid sick leave, the fact that he was receiving money from any source - whether from his employer, some other insurer or even a union fund - during the period of his disability would not, of course, preclude his entitlement to income replacement indemnity under the Act.

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