

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-95-7**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('M.P.I.C.')
represented by Ms. Joan McKelvey, [text deleted], the
Appellant, appeared in person.

HEARING DATE: July 25th, 1995

ISSUE: Entitlement to income replacement;

RELEVANT SECTIONS: 81(1)(a), and 81(2)(a)(i) of the M.P.I.C. Act and Section
110(1)(a)

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY
AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S
PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION
HAVE BEEN REMOVED.**

Reasons for Decision

THE FACTS

[the Appellant] was injured on December 4th, 1994. As a result of a rear-end automobile collision he sustained injuries causing spinal trauma to the cervical, thoracic and lumbar regions requiring specific spinal adjustments, supports and exercises.

[The Appellant] is employed in [text deleted], Manitoba at [text deleted], a business engaged in the collection of [text deleted]. He is responsible for maintaining a herd of [text deleted]. [The Appellant] was advised by his physician, [text deleted], on December 7, 1994, that he would require treatments 3 times per week for 4 to 6 weeks and indicated that he may have difficulties with some of his employment duties. On February 8, 1995, [Appellant's doctor] provided a report indicating that due to continuing spasms and weaknesses, [the Appellant] was not capable of fully resuming his main occupation. He was referred for continued treatments 1 to 2 times per week for a 4 to 6 week period. [The Appellant] returned to work on December 7th, 1994 and, until March 8th, 1995, he was able to work for only 3 hours a day within his usual 8 hour working day.

However, in order to assist [the Appellant] with his cash-flow requirements, an agreement was reached between [the Appellant] and his employer [text deleted], that the hours missed between December 7, 1994 and March 8, 1995 would be made up during July and August 1995. [The Appellant's] normal monthly salary continued to be paid, without deductions for the missed hours of work. It was agreed that his annual bonus of 1994 and 1995 would not be affected by the reduced hours of work. In other words, [the Appellant] and [Appellant's employer] agreed that a block of hours that would normally have been worked by [the Appellant] during winter months would, instead, be worked during the ensuing summer, without financial loss to either party.

At the hearing [the Appellant] testified that despite his injuries and the fact that it would have benefitted his rehabilitation to be off work, he felt a responsibility to monitor and regulate the [text deleted] collection process that greatly affects the grade and potency of the

product and ultimately the outcome for the company. [The Appellant] testified he is divorced and has arrangements for his [text deleted] -year-old daughter to visit him in July and August when she is on her school vacation. However, the deal that he worked out with [Appellant's employer] calls for him to work his regular day as well as the 4½ to 5 additional hours that were 'banked' and for which he had already been paid.

[The Appellant] was most sincere and forthright in his testimony outlining the events that occurred since his accident in December 1994. It is clear that he has a sense of loyalty to his employer and an appreciation for the employment situation in which he works. He also has an obvious devotion to his young daughter; his primary concern, and his reason for launching this appeal, is that unless MPIC compensates him for time that he wishes to take off work (so that he, in turn, may use those same funds with which to repay his employer) he will be unable to spend adequate time with that young lady during their annual, summer reunion.

THE LAW

Section 174 of the Manitoba Public Insurance Corporation Act ('the Act') gives Manitoba residents the right of appeal to this Commission from a decision of the Manitoba Public Insurance Corporation (MPIC's) Internal Review Officer involving compensation for personal injury. The powers of the Commission pursuant to section 184(1) of the Act, allow the commission after conducting a hearing, to confirm, vary or rescind a review decision of the corporation or to make any decision the Corporation could have made. The clear mandate of the Commission is to interpret and administer the law as enunciated in the Act and Regulations; we are not empowered to vary the law. MPIC coverage is in effect like any other form of general coverage and, like

those policies, it does not insure against every possible loss and inconvenience but does insure only to the extent described in the statute and regulations. Sections 81(1)(a) and 81(2)(a)(i), are relevant sections of the Act that provide a full-time earner's entitlement to an income replacement indemnity . They read as follows:

81(1) 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;

81(2) The corporation shall determine the income replacement indemnity for a full-time earner on the following basis:

(a) under clauses (1)(a) and (b), if at the time of the accident

(I) the full-time earner holds an employment as a salaried worker, on the basis of the gross income the full-time earner earned from the employment,

[The Appellant] and his employer, [text deleted], struck an agreement which both are honouring and, as a result, there has not been an income loss. This was a matter between the two parties and can not be remedied on appeal. Accordingly, in that [the Appellant] did not suffer any income loss he is not entitled to Income Replacement Compensation since he does not fall within the definition of Section 81(1) of the Act.

Despite the value the Commission places on family reunions and the sympathy for [the Appellant's] situation the Commission has no implied or inherent jurisdiction to exercise relief other than that which falls within the four corners of the Legislation. Accordingly, Section 81 of the Act establishes that there is no entitlement to income replacement and therefore the Appeal must fail.

For the foregoing reasons, [the Appellant's] appeal is dismissed and the decision of MPIC is confirmed.

Dated at Winnipeg this 1st day of August 1995.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED