

Insomnia due to shift work warrants compensation, Nova Scotia tribunal rules

A Nova Scotia tribunal has awarded workers' compensation benefits to an employee suffering from debilitating insomnia caused by shift work.

Since 1987, Richard Ross had worked rotating shifts at the Michelin plant in Nova Scotia. By 1996, Ross was having trouble sleeping and the problem grew increasingly worse. There were times when Ross was so tired that it was difficult for him to function. He found himself falling asleep and unable to drive long distances. At work, he was so tired that he worried about safety and sometimes, when extremely fatigued, he did not go to work at all. Following medical consultation, Ross applied for workers' compensation. He claimed to have developed shift work maladaptation syndrome, a syndrome arising from severe disruption of the body's natural sleep-wake cycle.

In March 2000, a case manager for the Workers' Compensation Board determined that the syndrome did not arise out of and in the course of Ross' employment. However, in May 2000, a hearing officer for the Board reached the opposite conclusion. Michelin appealed the hearing officer's decision to the Nova Scotia Workers' Compensation Appeals Tribunal.

The question in the appeal was whether Ross' alleged syndrome was a "personal injury" that arose "out of or in the course of employment", as required by section 10(1) of the *Nova Scotia Workers' Compensation Act*.

Ross argued that his injury involved a "cognitive deficit," namely an inability to stay alert and awake. He alleged that the injury arose from Michelin's imposition of a rotating schedule, forcing him to work outside of his natural sleep patterns. Michelin argued that a causal link had not been established. It alleged that the rotating schedule did not cause the problem - it simply exposed Ross' personal lack of tolerance to shift work.

The Tribunal upheld the hearing officer's decision. It found that it was "at least as likely as not" that Ross suffered from a "cognitive deficit" that was, at times, severe enough to be disabling. It noted that the legal definition of disablement is incapacity to perform work and that incapacity arises whenever a worker is unable to perform work safely. The Tribunal emphasized that Ross' case was a rare one and that the physician testifying on Ross' behalf described Ross' shift work maladaptation as the most severe case she had ever observed.

Further, the Tribunal found that "the cognitive deficit" had its origins in Ross' employment, and in particular, the scheduling of rotating shifts. In this regard, the evidence presented by Ross eliminated other potential sources of sleep disruption. Moreover, Ross' symptoms disappeared when he worked regular, instead of rotating, shifts. Given this, the Tribunal found it unnecessary "to probe deeper and find the underlying medical reasons why the worker developed disabling symptoms under the same conditions that may not have rendered other workers disabled."

Michelin Inc. v. Richard Ross and Workers' Compensation Board of Nova Scotia
Nova Scotia Workers' Compensation Appeals Tribunal
Alexander MacIntosh, Alison Hickey and Michael Hadskis, Appeal Commissioners
January 25, 2002