WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

Issued in accordance with section 294 of the *Workplace Injury Management and Workers Compensation Act 1998*

Matter Number: **3644/19**
Applicant: **Janet Carter**
Respondent: **Clinical Laboratories Pty Ltd**
Date of Determination: **4 November 2019**
Citation: **[2019] NSWWCC 355**

The Commission determines:

1. There was not a real and substantial connection between the applicant's employment and the accident or incident out of which the applicant's injury arose.

2. The requirements of s 10(3A) of the *Workers Compensation Act 1987* are not met.

3. The applicant did not receive an injury on a journey to which s 10 of the *Workers Compensation Act 1987* applied.

4. Award for the respondent.

A brief statement is attached setting out the Commission's reasons for the determination.

Rachel Homan
Arbitrator

I CERTIFY THAT THIS PAGE AND THE FOLLOWING PAGES IS A TRUE AND ACCURATE RECORD OF THE CERTIFICATE OF DETERMINATION AND REASONS FOR DECISION OF RACHEL HOMAN, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

A Reynolds

Antony Reynolds
Senior Dispute Services Officer
As delegate of the Registrar

STATEMENT OF REASONS

BACKGROUND

1. Ms Janet Carter (the applicant) was employed on a casual basis as a pathology collector by Clinical Laboratories Pty Ltd (the respondent). On Monday, 4 March 2019, the applicant injured her lumbar spine when she fell down the stairs of a double decker "B-Line" bus on a journey to work.

2. The applicant made a claim for workers compensation and, on 28 March 2019, the respondent's insurer issued a notice pursuant to s 78 of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act), disputing liability. It was asserted that the applicant was on a journey to or from work and there was no real and substantial connection between the applicant's employment and the accident out of which the injury arose pursuant to s 10(3A) of the *Workers Compensation Act 1987* (the 1987 Act).

3. Proceedings were commenced in the Commission in matter 1884/19 but later discontinued. The present proceedings were commenced by an Application to Resolve a Dispute (ARD) filed on 22 July 2019, seeking compensation in the form of weekly benefits on an ongoing basis from 4 March 2019 and incurred medical expenses pursuant to s 60 of the 1987 Act.

PROCEDURE BEFORE THE COMMISSION

4. The parties attended a conciliation conference and arbitration hearing on 10 September 2019. The applicant was represented by Ms Grotte of counsel. The respondent was represented by Mr Guest, solicitor.

5. During the conciliation conference, the ARD was amended to claim weekly benefits from 4 March 2019 to 18 March 2019 only. The parties agreed that the applicable pre-injury average weekly earnings (PIAWE) figure was $348.55 as claimed. The parties further agreed that in the event of a favourable determination for the applicant a "general order" for s 60 expenses would be appropriate.

6. Unfortunately, only 20 minutes of the arbitration hearing was successfully recorded due to an equipment failure. The parties were advised of the issue at the conclusion of the hearing and agreed to proceed by way of additional written submissions after a transcript of the recorded portion of the hearing was made available to them. The parties were informed of my intention to determine the matter "on the papers" at the conclusion of this timetable.

7. Further written submissions were received from the applicant on 14 October 2019. Written submissions in reply were received from the respondent on 15 October 2019. Written submissions from both parties, prepared in the context of the previous Commission proceedings were also attached to the ARD.

8. I am satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied. I have used my best endeavours in attempting to bring the parties to the dispute to a settlement acceptable to all of them. I am satisfied that the parties have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the dispute.

ISSUES FOR DETERMINATION

9. The parties agree that the following issues remain in dispute:

    (a) whether there was a real and substantial connection between employment and the accident or incident out of which the injury arose for the purposes of s 10(3A) of the 1987 Act;

(b) the applicant's entitlement to weekly benefits as claimed, and

(c) the applicant's entitlement to s 60 expenses as claimed.

EVIDENCE

Documentary evidence

10. The following documents were in evidence before the Commission and taken into account in making this determination:

    (a) ARD and attached documents;

    (b) Reply and attached documents;

    (c) further written submissions from the applicant, dated 14 October 2019, and

    (d) further written submissions from the respondent, dated 15 October 2019.

11. Neither party applied to adduce oral evidence or cross-examine any witness.

Applicant's evidence

12. The applicant's evidence is set out in statements made by her on 11 March 2019 and 5 July 2019.

13. The applicant stated that she was employed by the respondent for six years, working three days per week for around four hours each day. Usually, the applicant worked at Gordon and would drive to work but had received a text message from her employer asking her to work at a medical centre in Haymarket on 4 March 2019. The applicant did some research and found the best way to get to the Haymarket address was to catch the B-Line bus from the Northern Beaches where the applicant lived. The applicant said she had caught the B-Line bus a lot but had only caught it once before for work.

14. The applicant said the accident occurred at about 7.30 am on 4 March 2019. The applicant boarded the bus to travel to the city. The bus was full, so the applicant proceeded to try to find a seat upstairs. The applicant discovered that the upper deck was also full so returned down the stairs with a view to getting off the bus. As the applicant was coming down the stairs, the bus took off, causing the applicant to fall from the upper deck to the lower deck.

15. The applicant said that the only reason she caught a bus that day was because her employer did not pay for transport costs such as parking or petrol. The applicant was aware of parking nearby but would not have been reimbursed. The applicant's day of earnings would have gone on parking. The applicant felt the only reasonable mode of transport was the bus.

16. The applicant said she had agreed to change her workplace on short notice to help the company out. The accident would not have taken place if the applicant was going to her normal place of work.

17. The applicant said her normal routine was to drive her car to work as she was able to park it there. On 4 March 2019, the applicant was required to attend a different place of work and take the bus as she could not afford to take the car and pay for parking and the expense of getting an Uber from the Northern Beaches would have been in excess of $100.

18. The applicant said she was travelling earlier than she normally would to her normal place of work. The applicant said she had never caught a bus at this time before so was unaware the bus could be full, which led to the events of her fall.

19. Attached to one of the applicant's statements is a copy of a text message which is undated. The text message reads:

> "Hi Janet
> Any chance you could
> work at Darling square this
> coming Monday and the
> 11?
> I am completely stuck
> The. After that I should be
> ok with a new staff
> member starting"

20. The applicant responded,

> "This Monday yes, not the
> 11th is it 9-1?"

21. A discharge summary from the Northern Beaches Hospital dated 4 March 2019 indicates that the applicant presented to the Emergency Department after a fall in a double-decker bus, falling down the stairs, hitting her lower back on steps.

22. A CT scan of the lumbar spine showed non-displaced L3/4 transverse process fractures and an overlaying subcutaneous haematoma. The applicant's case was discussed with the neurosurgical registrar at Royal North Shore Hospital who deemed the matter suitable for conservative management with analgesia and no need for neurosurgical follow-up. The applicant was kept in overnight for pain management and discharged in the morning after review by a physiotherapist. The discharge recommendations were:

> "For regular paracetamol and ibuprofen
> For PRN endone
> -not for work for 2 weeks"

23. The applicant was given a certificate of capacity certifying her as having no current capacity for work from 4 March 2019 to 17 March 2019 by Dr Elana Roseth on 13 March 2019.

24. A letter of employment offer addressed to the applicant dated 7 June 2013 states that as a casual employee, the applicant's employment commenced on each engagement and ceased at the completion of each engagement. The applicant may be offered subsequent engagements and the applicant could accept the offer of such engagements although she was under no obligation to do so.

Respondent's evidence

25. No documents were attached to the respondent's Reply although email correspondence between the employer and insurer appears in the ARD. On 28 March 2019, Ms Rosalie Fernance from the respondent responded to a series of questions from the insurer as follows:

> "• Is this this Janet's normal place of work? No. However, Janet has previously worked at a different location occasionally if she is asked by her supervisor and if she is available. Janet had worked at the Haymarket site on Wednesday 20 February and rostered for 4 March (day of incident). Majority of time is at Gordon.
>
> • Was she travelling direct from home to work? Yes

- How often is Janet expected to work at the site? Only when no one else can work at the site. Janet was asked if she can do a shift there and she agreed.

- In Janet's contract is it expected that she work at different sites? Janet's contract does not have a specific location. Contract says she can work up to 76 hours per fortnight over a seven-day week for all shifts. We don't have specific locations in any of our contracts due to the nature of our business as casual staff may be asked to work at other locations from time to time."

Applicant's submissions

26. The applicant referred to the consideration given to the expression, "real and substantial connection" in s 10(3A) of the 1987 Act in *Dewan Singh and Kim Singh t/as Krambach Service Station v Wickenden*[1] (*Wickenden*) and said that the connection between employment and the incident in which the injury arose need not be a *causal* connection. An association or relationship between employment and the incident was required.

27. The applicant's unchallenged evidence was that she had only used the B-Line bus to travel to work on one previous occasion. On the day of the incident, she was required by her employer to work at the Haymarket premises on short notice. The applicant usually worked at Gordon and travelled there by car.

28. The applicant submitted that her injury was caused by the sudden acceleration of a bus that she would not have been on, had she travelled to her usual place of employment in Gordon. The applicant had been required by her employer to travel to an unfamiliar venue at the Haymarket site. This required travel by the bus, which was an unusual or unexpected mode of transport, at an unfamiliar time. The applicant would not have been on the bus at that time had she not been required by her employer to work at Haymarket. The applicant submitted that the connection between her employment and the injury was real and substantial as it was her employer who required her to get to the Haymarket premises.

29. With regard to a submission by the respondent that the applicant was not directed to attend Haymarket for work, the applicant submitted that she was a casual worker and required to take work in shifts as they were offered. The applicant's inability to work on the 11th did not mean she was in a position to refuse the work or pick and choose her locations. The applicant submitted that there was an unequal relationship between employer and employee. By agreeing to work at Haymarket, the applicant consolidated her relationship with the employer and would be regarded in more positive light as someone who could be relied upon and in this way was induced to attend the Haymarket site. The only feasible way of getting there was by bus, a mode of transport which was unusual or unfamiliar.

30. The applicant said in practical terms she had no other choice but to catch the bus. The applicant was not able to afford the cost of parking. The applicant was placed by the respondent's request in a particular location at a particular time, and those circumstances caused the injury.

31. The applicant submitted that she was asked to change her location of employment as a favour, as the employer was "really stuck". This was to the applicant's disadvantage. The applicant was unable to drive her car as parking was too expensive and the employer did not offer to pay for car parking. The fact that her location was changed led to the injury.

32. The applicant said the facts were similar to those in *Field v Department of Education and Communities*[2] (*Field*), where the worker was hurrying to get to work and looking ahead when he tripped and was injured. The worker was not performing the activities of a casual teacher

[1] [2014] NSWWCCPD 13 at [37]-[42].
[2] [2014] NSWWCCPD 16.

at the time of the injury. The applicant said there did not need to be a real and substantial connection with employment activities but simply with employment itself.

33. Referring to the decision in *Badawi v Nexon Asia Pacific Pty Ltd t/as Commander Australia Pty Ltd*[3], the applicant said the connection did not have to be significant but rather something more than tenuous and that requirement was fulfilled in the present case.

Respondent's submissions

34. The respondent submitted that the applicant's evidence indicated that it was her decision to use the bus on the day of the incident as in her mind it was the best way to get to Haymarket. The evidence did not suggest that the applicant was unable to use other means of transport such as driving, taking a cab or Uber.

35. The respondent said there was no evidence to suggest that the activities associated with the applicant's employment had caused or contributed to the injury. The only connection between the injury and employment was that the applicant was travelling on a bus on her way to work when she fell down the stairs. The respondent submitted that the injury was caused by the actions of the bus driver and had nothing to do with the applicant's employment duties. The respondent submitted that travelling on a bus did not give rise to any additional risk, was the applicant's choice and was not something directed by her employer.

36. The respondent submitted that there was no evidence to suggest that the injury took place because of the applicant's unfamiliarity with the Haymarket location. The applicant had worked there before and any unfamiliarity with the location was not causative of injury.

37. The applicant was not unfamiliar with bus travel and admitted to catching the B-Line bus a lot and having travelled on it once previously for work.

38. The respondent submitted that there was no real and substantial connection as required by the Act. The usual risk of travelling to and from work was specifically removed from the journey provisions of the Act.

39. The respondent referred to the cases of *Field*, *Wickenden*, *Mitchell v Newcastle Permanent Building Society Ltd*[4] (*Mitchell*) and *Bina v ISS Property Services Pty Limited*[5] (*Bina*) and said there must be a connection of substance between the injury and the activities of employment. In *Field* the substantial connection lay in the late notice provided by the employer and the worker rushing to get to the school on time. In *Wickenden*, the worker had been required to undergo additional training which meant that she was working late and leaving work at a time when it was dark. The darkness contributed to the accident in which the worker was injured. The respondent submitted that in the present case, there was no actual connection of substance between the applicant's employment activities and the incident causing injury.

40. The respondent submitted that the mere fact of being employed was not sufficient to establish a real and substantial connection. The connection had to be to the activities of or incidental to the employment. Referring to *Bina*, the respondent submitted that just travelling to work also did not satisfy the criteria.

41. The respondent submitted that the applicant was requested, not directed, to attend work at the Haymarket site. The applicant was approached by her employer as to her availability to work at short notice at the site, being a site at which she had previously worked and for which attendance was consistent with her contract of employment. The applicant was unable to attend on the 11th but could on the 4th, for the mutual benefit of both parties.

[3] [2009] NSWCA 324.
[4] [2013] NSWWCCPD 55.
[5] [2013] NSWWCCPD 72.

42. The respondent submitted that to accept that there was a real substantial connection to employment in the circumstances of this case would render s 10(3A) otiose because obviously a worker has to get to and from the place of work to undertake their duties.

FINDINGS AND REASONS

43. Section 10 of the 1987 Act relevantly provides:

> "10 Journey claims
>
> (1) A personal injury received by a worker on any journey to which this section applies is, for the purposes of this Act, an injury arising out of or in the course of employment, and compensation is payable accordingly.
>
> …
>
> (3) The journeys to which this section applies are as follows—
>
> (a) the daily or other periodic journeys between the worker's place of abode and place of employment,
>
> (b) the daily or other periodic journeys between the worker's place of abode, or place of employment, and any educational institution which the worker is required by the terms of the worker's employment, or is expected by the worker's employer, to attend,
>
> (c) a journey between the worker's place of abode or place of employment and any other place, where the journey is made for the purpose of obtaining a medical certificate or receiving medical, surgical or hospital advice, attention or treatment or of receiving payment of compensation in connection with any injury for which the worker is entitled to receive compensation,
>
> (d) a journey between the worker's place of abode or place of employment and any other place, where the journey is made for the purpose of having, undergoing or obtaining any consultation, examination or prescription referred to in section 74 (3),
>
> (e) a journey between any camp or place—
>
> (i) where the worker is required by the terms of the worker's employment, or is expected by the worker's employer, to reside temporarily, or
>
> (ii) where it is reasonably necessary or convenient that the worker reside temporarily for any purpose of the worker's employment,
>
> and the worker's place of abode when not so residing,
>
> (f) a journey between the worker's place of abode and the place of pick-up referred to in clause 14 of Schedule 1 to the 1998 Act,
>
> (g) a journey between the worker's place of abode and place of employment, where the journey is made for the purpose of receiving payment of any wages or other money—

(i) due to the worker under the terms of his or her employment, and

(ii) which, pursuant to the terms of his or her employment or any agreement or arrangement between the worker and his or her employer, are available or are reasonably expected by the worker to be available for collection by the worker at the place of employment.

(3A) A journey referred to in subsection (3) to or from the worker's place of abode is a journey to which this section applies only if there is a real and substantial connection between the employment and the accident or incident out of which the personal injury arose."

44. In the present case it has not been disputed that the applicant was on a journey pursuant to s 10(3). The only dispute is whether there is a real and substantial connection between the employment and the accident or incident out of which the applicant's injury arose in accordance with s 10(3A).

45. Subsection 10(3A) was inserted by the *Workers Compensation Legislation Amendment Act 2012*. In the Second Reading Speech of the Workers Compensation Legislation Amendment Bill 2012, the Minister said:

> "… journey claims will no longer be covered by the New South Wales workers compensation scheme consistent with the position in many other Australian jurisdictions. While workers who travel for work will still be covered by the scheme, employees [sic, employers] will no longer be liable for a journey between a worker's home and his or her place of work where the risk of injury is outside the control of the employer."[6]

46. In *Wickenden*, to which both parties referred, Roche DP said at [41]-[43]:

> "In s 10(3A), which talks about a real and substantial connection between the employment and the accident or incident, the connection may be provided by establishing that the employment caused the accident, but that is not a necessary requirement. Even if, contrary to my view, s 10(3A) requires a causal connection between the employment and the accident, the employment does not have to be the only, or even the main, cause. It is trite law that an accident can have many causes (*ACQ Pty Ltd v Cook* [2009] HCA 28 at [25] and [27]).
>
> The use of the indefinite article 'a', in s 10(3A), makes it clear that employment does not have to be 'the' connection between the accident or incident. It only has to be 'a' connection, albeit one that is real and of substance (*Bina* at [112], citing *Badawi v Nexon Asia Pacific Pty Ltd t/as Commander Australia Pty Ltd* [2009] NSWCA 324; 75 NSWLR 503 (*Badawi*) at [82]–[83] and [107]). That requirement is satisfied on the facts of the present case because Ms Wickenden's employment required her to work later than normal. That meant she finished work in darkness and had to journey home on a narrow country road in darkness.
>
> For the reasons already canvased above, the darkness unarguably played a role in the accident. That role did not have to be the cause of the accident. It only had to provide 'a' connection, of substance, between the employment and the accident. In other words, the employment had to create, and did create, a factual association or connection with the employment that was real and of substance."

[6] Hansard, Legislative Assembly 19 June 2012

47. In *State Super Financial Services Australia Limited v McCoy*[7] (*McCoy)* Keating P said at [69]:

> "The test to be applied under s 10(3A) is a different and less demanding test to that applied to establish that an injury arose out of or in the course of employment pursuant to s 4 of the 1987 Act. The test under s 4 requires a causative element which is to be inferred from the facts as a matter of common sense. The test under s 10(3A) of a 'real and substantial connection' may, but does not necessarily, convey the notion of a causal connection. It requires an association or relationship between the employment and the accident or incident, which may be provided by establishing that the employment caused the accident or incident. However, employment does not have to be the only, or even the main cause."

48. In *Bina*, Keating P at [112] agreed with the findings of the Arbitrator below that:

> "(a) that a substantial connection is one 'of substance' (*Badawi* at [82]-[83], [107]);
>
> (b) that 'employment' in s 10(3A) is the same as in s 9A, that is, it is the activities of, or incidental to the employment, as opposed to the (mere) fact of being employed (*Federal Broom Co Pty Ltd v Semlitch* [1964] HCA 34; (1964) 110 CLR 626 at [11]);
>
> (c) the mere fact that a worker must travel to and from work is insufficient to establish a real and substantial connection between the employment and the accident - there must be some real relationship (connection) between the activities of the employment and the accident out of which the personal injury arose, and
>
> (d) if merely travelling to and from work was sufficient to establish the relevant connection, s 10(3A) would be otiose."

49. Further at [117]:

> "It is therefore clear that s 10(3A) has work to do. Its purpose is found in the words used in the subsection, read in the context of the 1987 Act as a whole. In my view, the purpose of the provision is to ensure that injuries received in the circumstances provided for are injuries that are deemed to arise out of or in the course of employment and compensation is payable accordingly. The subsection will usually be satisfied, depending on the facts, when there is a real and substantial connection between some feature of what the worker is reasonably required, expected or authorised to do, by reason of his or her employment, and the accident or incident out of which the personal injury arose."

50. President Keating said,

> "Whether and in what circumstances, s 10(3A) will be satisfied will be a question of fact, applying the words of the provision, in a common sense and practical manner in each case (Doyle CJ in Brophy)."[8]

51. A real and substantial connection between employment and the incident out of which an injury arose was found in *McCoy* where the worker tripped and fell because she was tired after a long day of work and was hurrying to get to a work function on time.
52. In *Wickenden* the fact that the worker had been required to work late and therefore travel in darkness was sufficient to establish a connection with employment that was real and of substance.

[7] [2018] NSWWCCPD 26.
[8] At [120].

53. A real and substantial connection was found in *Field* because the worker was rushing to commence work on time in circumstances where he had been given short notice to attend the workplace.

54. In the present case, the applicant asserts that there was a real and substantial connection between her employment and the incident out of which the injury arose because:

    (a) the applicant was required by the employer to work at a location which was not her usual place of work;

    (b) the applicant was given short notice of the location change;

    (c) the only feasible or practical means of transport to the different location was the bus;

    (d) the bus was an unusual form of transport to work for the applicant, and

    (e) the time at which the applicant was required to travel on the bus was unusual for her.

55. I accept on the evidence before me that on the day of the accident, the applicant was to work at a location that was not the usual location at which she worked. This is consistent with the evidence of both the applicant and Ms Fernance. I also accept that the applicant did not usually travel by bus to work and did not usually travel by bus at the time she did on the day of the accident.

56. The evidence does not indicate, however, that the applicant had never worked at the Haymarket location previously or that she had not travelled by B-Line bus previously. Ms Fernance's email indicates that the applicant had worked at the Haymarket location on 20 February 2019, less than two weeks prior to the accident on 4 March 2019.

57. Whilst there is no evidence before me as to the time at which the applicant travelled to work on that day or the method by which she travelled, the applicant's evidence that travel by bus to Haymarket was the only feasible method of transport for her suggests that it is likely the applicant travelled by bus on that occasion too. I note the applicant gave evidence that she had caught the B-Line bus for work once previously. The applicant's own evidence was that she travelled by B-Line bus "a lot" although not for work. In these circumstances, I am not satisfied that the applicant was unfamiliar either with travel on the B-Line bus or with travel to the Haymarket work location.

58. I am prepared to accept that the applicant may not have previously travelled on the B-Line bus at the time she did on 4 March 2019. I also accept that the bus may have been busier at the time of the accident than at other times when the applicant had caught the bus for non-work purposes. I do not, however, accept that this circumstance alone establishes a real and substantial connection between employment and the accident.

59. The accident was caused by the sudden acceleration of the bus whilst the applicant was on or at the top of the stairs between the two decks. There was no connection between the applicant's employment and the sudden acceleration of the bus.

60. The applicant's evidence suggests that she was on the stairs at the time of the acceleration because the bus was full, there were no seats and she intended to disembark. This was said to be connected to employment because the applicant had been asked to arrive at Haymarket by 9.00 am and so had to travel at a busy time. The applicant has also claimed that the lack of feasible alternative forms of transport to Haymarket gave rise to a real and substantial connection between employment and the accident.

61. The facts of this case appear akin to those in *Bina* in this regard. In *Bina*, the worker was injured in a motor vehicle accident whilst travelling between her place of employment and home. The worker's normal hours of work were from 5.30 am-8.00 am and then from 3.00 pm-6.30 pm. The worker stated it was necessary for her to drive to and from work because of the early starting time and the split shift. Additionally, there was no train station near the school and there was no direct bus service between her home and the school.

62. The Arbitrator in *Bina* concluded that there was no connection between the worker's employment and the injuries she sustained in the motor vehicle accident in a private vehicle on her way home from work. The particular matters relied upon by the worker to establish a connection with her employment included the unavailability of public transport and the fact that she was required to work a split shift. Neither factor however was a connection with the activities of her employment in her particular job. No error was found in the Arbitrator's approach.

63. In my view, the facts of this case are distinguishable from those *Field*, *Wickenden* and *McCoy*. There is in this case no suggestion that the applicant was tired for any reason related to work. Although the applicant says she was given little notice of the location change, there is nothing to suggest she was rushing to get to work. I do not accept that the applicant was unfamiliar with travel on the B-Line bus, having caught it "a lot" previously. As indicated above I am also not satisfied that the applicant was unfamiliar with working at the Haymarket location.

64. I do not accept that the respondent compelled or required the applicant to work at the Haymarket location at the early time. The applicant was under no contractual obligation to accept the engagement in Haymarket. Her ability at both a contractual and personal level to decline the engagement is evidenced by the text message in which she declined the engagement on the 11th. The applicant's acceptance of the engagement on 4 March 2019 was to the parties' mutual benefit.

65. While the applicant says the time at which she was required to travel on 4 March 2019 contributed to the fall because the bus was crowded, I do not accept that this is sufficient to establish a real and substantial connection between the particular activities of and incidental to the applicant's employment with the respondent. There is no indication that the applicant's employer directed or required her to catch the bus at that time or any other time. The applicant could have chosen from a number of methods of travel to work. Her decision was to take the most convenient and cost-effective method but this does not establish a real and substantial connection between her employment and the accident.

66. The applicant was in no different position to any other commuter travelling on the bus to work in peak hour. The applicant's particular employment did not require her to be standing on the bus's stairs at the moment of sudden acceleration. Nothing about the applicant's particular employment placed her at any greater risk of injury.

67. I find that the applicant was merely on a journey to her place of work when she most unfortunately sustained injury. I am not satisfied that there was a real and substantial connection between the applicant's employment and the accident or incident out of which the personal injury arose. The requirements of s 10(3A) are not met. The applicant was not on a journey to which s 10 applied and there will be an award for the respondent.

SUMMARY

68. There was not a real and substantial connection between the employment and the accident or incident out of which the applicant's injury arose. The requirements of s 10(3A) are not met.

69. Award for the respondent.