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Supreme Court, Appellate Division, Third Department, New York

In the Matter of MARCUS WARNER, Appellant
v.

NEW YORK CITY TRANSIT AUTHORITY, Respondent
and
WORKERS' COMPENSATION BOARD, Respondent

April 25, 2019

Facts: The claimant was a subway train cleaner who worked the midnight shift. 10 minutes prior to the end of his shift, he clocked out and got on a train to go home. After travelling six stops, the claimant informed another passenger that the other passenger was about to sit in a seat where a prior passenger had relieved herself. The other passenger became enraged and assaulted the claimant, who sustained multiple injuries. The claimant filed a workers' compensation claim. The judge disallowed the claim, finding that the claimant's injuries did not arise out of an in the course of employment. The Board Panel affirmed.

Holding: Affirmed.

Discussion: The Third Department noted that injuries sustained in the course of travel to and from employment are generally not compensable. While there are exceptions to the "coming and going" rule, none of them apply in this case. The claimant was permitted to clock out 10 minutes before his shift ended to compensate for arriving early. He was not at his assigned train station during the assault, was not on duty or performing any duties of employment, nor was he on an errand for the employer. The claimant was not required to use the train to commute home and there was no evidence the employer benefited from the route the claimant chose. The claimant was wearing a company hat, jacket and safety vest. However, he was only required to wear the vest while at work and the employer did not

provide the hat and jacket. The Third Department affirmed that there was no nexus between the motivation for the assault and the claimant's employment in light of the claimant's having been six train stops from his assigned station, the assault having occurred after the claimant's shift and the lack of any relationship between the motivation for the assault and the claimant's employment.

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