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SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT, NEW YORK

David Bain, Claimant
v.
New Caps, LLC, Appellant

Decided January 18, 2018

Facts: The claimant was employed as a production assistant when he sustained injuries in a work-related motor vehicle accident. The employer submitted a payroll showing the claimant's earnings of $2,950 during the 52 weeks before the accident and earnings of $2,121,81 from other employers. They requested a 52-week divisor based upon these total earnings. The Board, noting the clamant only worked 16 days for this employer before the date of accident, used a 200 multiple.

Holding: Affirmed

Discussion: The 200-multiple method is properly used to compute the average weekly wage of a part-time or intermittent claimant only where there has been a finding that the claimant was fully available for the employment at issue, and should not be applied if a claimant has voluntarily limited his or her availability for work. In the present case, there was no evidence provided that showed the claimant, although he worked sporadically in the year before the accident, voluntarily limited his earnings.

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