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Supreme Court, Appellate Division, Third Department, New York

Matter of ROSEMARY RODRIGUEZ, appellant,  
v  
NYC TRANSIT AUTHORITY, respondent,  
and  
WORKERS' COMPENSATION BOARD, Respondent.

Decided May 31, 2018

Facts: Claimant was employed as a train conductor and was scheduled to start her shift at 6:05 a.m. At 5:10 a.m., claimant was waiting for a train at a station through which she was passing on route to her assigned work place, when another passenger asked to be admitted without paying. When she told him that she could not open the gate for him, he assaulted her. The case was disallowed, and affirmed by the Board.

Holding: *Affirmed.*

Discussion: In general, injuries sustained during travel to and from work are not covered. The assault occurred almost an hour before claimant's work shift. The employer neither encouraged nor benefitted from claimant's commute. Thus, at the time of the assault, claimant was not yet on duty or at her assigned station and was not performing any duties of her employment or undertaking an errand for the employer. Although claimant was wearing her work uniform on her commute, she was not required to do so, nor was she required to use public transportation to get to work. Although provided with a free train pass, the use of same did not make claimant's commute part of her employment. Substantial evidence supports Board determination that there was an insufficient nexus between claimant's employment and uniform and the motivation for the assault.