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Supreme Court, Appellate Division, Third Department, New York

In the Matter of

RAMON GUERRA MOLINA, Appellant
v
ICON PARKING LLC et al, Respondents
and
WORKERS' COMPENSATION BOARD

Decided October 17, 2019

Facts: The claimant worked six days a week from February 13, 2017 to May 14, 2017. His claim was established for injuries to the back and left shoulder. The WCLJ determined the claimant's average weekly wage to be \$933.14 using the total earnings, divided by the number of weeks worked. The Board Panel determined that the claimant's average weekly wage should be \$598.15 using a 200 multiplier (the claimant had worked 78 days).

Holding: Reversed and remitted.

Discussion: The Court found that the Board did not reasonably explain why WCL Section 14(2), the section for six day workers, would not be applicable. The Court also felt that the payroll of a similar worker should be submitted, if available. The Court held that if the Board determined the Section 14(2) could not be reasonably and fairly applied, then their assessment under 14(3) may apply.