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WC Appellate Division Decision issued on June 14, 2018 – Average Weekly Wage

Average Weekly Wage The employee was employed by the same employer for 52 weeks prior to a December 17, 2014 injury, but for approximately 13 of those weeks she was out of work for non-occupational reasons and received STD benefits which were substantially lower than her customary weekly earnings. The ALJ determined the average weekly wage by excluding the weeks on which the employee was out of work on medical leave and averaging the remainder. The employer appealed to the Appellate Division. In *Thibeault v. Twin Rivers Paper Company, LLC*, Me. W.C.B. No. 18-20 (App. Div. 2018) the Division ruled that the STD benefits were not analogous to vacation pay and should not be included in the wage calculation. The Division found that during the period in which the employee had been taken out of work by her physician she received no wages, earnings, or salary. The Division found that including the weeks of STD benefits would artificially deflate the average weekly wage and would not fairly compensate the employee for the loss of earning capacity. Accordingly, the Division found that the ALJ had properly excluded from consideration the weeks in which the employee did not work and had correctly calculated the average weekly wage.

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