UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1242

September Term, 2016

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BALTIMORE COUNTY, MARYLAND

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v.

JAMES MORRISON

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Wright,
Shaw Geter,
Eyler, James R.,
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Wright, J.

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Filed: September 15, 2017

This appeal arises out of a worker's compensation action. Appellee, Officer James Morrison, is employed as a police officer by appellant, Baltimore County, Maryland ("the County"). Morrison brought a workers' compensation claim for injuries sustained in a motorcycle accident on May 12, 2015, while Morrison was traveling home from attending a training, held at a different location from his usual workplace, and held on a day he was scheduled to be using leave.

The County contested Morrison's claim, and a hearing was held by a Workers' Compensation Commission ("the Commission") on August 5, 2015. On November 6, 2015, the Commission ruled that Morrison's accident arose out of and in the scope of his employment, under the special mission or errand exception, and was, therefore, compensable.

The County then appealed the Commission's award to the Circuit Court for Baltimore County. Cross motions for summary judgment were filed along with memoranda of law. A hearing on the motions was held on July 18, 2016. On that same day, the circuit court granted Morrison's motion for summary judgment and remanded the case to the Commission for further proceedings.

It is from that order that the County appealed, questioning whether the circuit court erred in granting Morrison's motion for summary judgment.[1]

[1] The County, in its brief, asks:

> Did the Workers' Compensation Commission err in finding that the Claimant was performing a special mission for the Employer at the time the injury occurred?

For the following reasons, we affirm the judgment of the circuit court granting summary judgment in favor of Morrison and remanding the case to the Commission for further proceedings.

## FACTS

The material facts are not in dispute.[2]

Morrison is a sworn Baltimore County police officer. In calendar year 2015, and at all times relevant hereto, Morrison was assigned to the Police Training Academy ("the Academy") as an instructor. His normal working hours were 7:00 a.m. until 3:00 p.m.

Morrison had requested leave days from the Academy to be used on May 11, 2015, and May 12, 2015. Several weeks before his scheduled leave, he was approached by one of his training officers about attending a two day training seminar at the Maryland State Highway Administration complex ("State Highway complex") in Hanover, Maryland. This two day seminar was designed to "train the trainers" and was scheduled for May 11, 2015, and May 12, 2015, Morrison's scheduled days off.

When asked why he went to the training on his day off, Morrison responded: "My Lieutenant ordered me to go so we had two people trained in case one person couldn't make it. We always like to have a back up instructor." On cross-examination, the following exchange occurred:

> COUNTY: So, in any event, at some point Officer Peach indicated to you that there was an opening in the training, the trainer course, and that they needed somebody to sort of serve as a backup trainer. You weren't ordered

[2] All of the facts have been derived from testimony before the Commission and documents presented at the August 5, 2015 hearing.

to go. You volunteered to go, didn't you. Didn't you say I'll do it; I'll fill in?"

MORRISON: Yeah. Because there was nobody else. The lieutenant thought it was the right thing to do.

COUNTY: Okay. But my point is - - the lieutenant's here - - if I asked her I suspect she would tell me she didn't order you to go in a sense that there would be consequences if you didn't.

MORRISON: Yeah. There's never consequences. She asked if I could clear my schedule to go.

COUNTY: And you did?

MORRISON: Yes.

On May 11, 2015, Morrison rode his motorcycle from his home in Bel Air to the offices of the Baltimore County Crash Team ("Crash Team site"), located on Belair Road. Once at the Crash Team site, he and three other officers carpooled together in an unmarked police car to the State Highway complex where the training was to be held. Morrison testified that the four officers involved in the carpool met at the Crash Team site because it was centrally located for each of them. The four officers drove to the State Highway complex, attended the training, and drove back to the Crash Team site. From there, each of the officers went their separate ways in their separate vehicles.

On May 12, 2015, the next day, the four officers again met at the Crash Team site and carpooled together to the State Highway complex. The class worked through lunch and they were allowed to go home early. The carpool group returned to the Crash Team office site again, and again each went their separate ways using their personal vehicles.

Morrison's transportation that day was the same motorcycle. He got on it a little after 12:00 p.m. on May 12, 2015.

Morrison testified that he was going to take Harford Road home because it was the most direct route. Morrison's usual route to his normal place of employment, the Academy at 7200 Sollers Point Road, was to take Route 24 from his house in Bel Air to 1-95 to I-695 to Merritt Boulevard to Sollers Point Road, and then to follow the same route on his way home. When asked, "So when you're coming home from . . . your normal workplace . . . do you ever take Harford Road?" Morrison replied "Not normally, no. It's always up 95."

Had Morrison driven directly to the State Highway complex rather than carpooling, he would have been paid mileage for the extra miles that he had to travel beyond his normal work duty station. Since the mileage to the Crash Team site from which he car pooled was less than the mileage to his normal work station, he did not request nor was he paid mileage.

Morrison was paid for the full day from 7:00 a.m. to 3:00 p.m. even though the officers completed the training early, around noon.

On the motorcycle ride home, Morrison was involved in a single-vehicle accident and was badly injured. The crash occurred at approximately 12:36 p.m.

## DISCUSSION

"Workers' compensation cases . . . occupy a special niche in Maryland civil law." *Baltimore Cty. v. Kelly*, 391 Md. 64, 67 (2006). Therefore, before we turn to the merits,

we first revisit the procedural considerations of workers' compensation appeals and the relevant case law.

The Maryland Workers' Compensation Act (the "Act") provides benefits to employees who suffer an accidental injury that "arises out of and in the course of employment." Md. Code (1993, Repl. Vol. 2008), Labor & Employment Article ("L&E") § 9-101(b)(1).

The "course of employment" test directs our attention to the time, place, and circumstances of the accident. *Montgomery Cty. v. Wade*, 345 Md. 1, 11 (1997) (citations omitted). Specifically, "[i]n determining whether an injury occurred 'in the course of employment,' we consider the time, place, and circumstances of the accident in relation to the employment." *Livering v. Richardson's Rest.,* 374 Md. 566, 576-77 (2003) (quoting *Wade,* 345 Md. at 11).

"'Arises out of' refers to the causal connection between the employment and the injury." *Id*. at 574. However, the phrase "arises out of" does not require that the injury be directly caused by the performance of an employment-related task, but rather requires, "more broadly, that the injury be incidental to the employment, such that it was by reason of the employment that the employee was exposed to the risk resulting in the injury." *Id.* at 574-75 (quoting *Mulready v. Univ. Research Corp.*, 360 Md. 51, 57 (2000)).

The facts and circumstances of each individual case determine whether an injury arises out of and in the course of employment. *Id.* at 574 (citing *Knoche v. Cox*, 282 Md. 447, 454 (1978)).

The Act is "remedial, social legislation designed to protect workers and their families from various hardships that result from employment-related injuries." *Id.* (citation omitted). Therefore, the Act is to be construed liberally in favor of injured employees in order to effectuate its "benevolent purposes." *Id.* (quoting *Bethlehem-Sparrows Point Shipyard, Inc. v. Hempfield*, 206 Md. 589, 594 (1955)).

"Ordinarily, an employee that suffers an injury going to or returning from their place of work is not considered to be acting in the course of their employment." *Garrity v. Injured Workers' Ins. Fund,* 203 Md. App. 285, 293 (2005) (citations omitted). However, there are a several exceptions to this "going and coming" rule barring recovery. *Bd. of Cty. Comm'rs for Frederick Cty. v. Vache*, 349 Md. 526, 532 (1998).

An employee seeking compensation for a work-related injury first files a claim with the Commission. *See* L&E § 9-709. The "Commission is an administrative agency and was created specifically to develop an expertise in its field. The Commission forms part of a comprehensive scheme of liability set up by the Workmen's Compensation Act, which largely abrogates the common law." *Newell v. Richards*, 323 Md. 717, 732 (1991) (citations omitted).

"A party dissatisfied by the action of the Commission may seek review in a circuit court by either proceeding on the record made before the Commission (much like a judicial review of the final action of most state administrative agencies) or receive a new evidentiary hearing and decision before a jury (much like an original civil complaint brought in a circuit court)." *Kelly*, 391 Md. at 67-68; *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357, 364-66 (1997) (extensively detailing the two pathways for an appeal of a

determination by the Commission); L&E § 9-745.[3] On appeal, the Commission's decision is entitled to a presumption of correctness, *i.e. prima facie correct*, that must be

[3] L&E provides the following procedure for circuit court proceedings for appeals of decisions from the Commission:

> (a) *In general.*—The proceedings in an appeal shall:
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> (1) be informal and summary; and
>
> (2) provide each party a full opportunity to be heard.
>
> (b) *Presumption and burden of proof.*—In each court proceeding under this title:
>
> (1) the decision of the Commission is presumed to be *prima facie* correct; and
>
> (2) the party challenging the decision has the burden of proof.
>
> (c) *Determination by court.*—The court shall determine whether the Commission:
>
> (1) justly considered all of the facts about the accidental personal injury, occupational disease, or compensable hernia;
>
> (2) exceeded the powers granted to it under this title; or
>
> (3) misconstrued the law and facts applicable in the case decided.
>
> (d) *Request for jury trial.*—On a motion of any party filed with the clerk of the court in accordance with the practice in civil cases, the court shall submit to a jury any question of fact involved in the case.
>
> (e) *Disposition.*—
>
> (1) If the court determines that the Commission acted within its powers and correctly construed the law and facts, the court shall confirm the decision of the Commission.

overcome. *Kelly*, 391 Md. at 68. However, the presumption of correctness "is only pertinent when the issue on appeal to the circuit court is one of fact and not of law." *Simmons v. Comfort Suite Hotels,* 185 Md. App. 203, 211 (2009) (citations omitted). Essentially, although courts accord deference to an administrative agency's interpretation of the statute it administers, we may always determine whether the agency made an error of law. *Long v. Injured Workers' Ins. Fund,* 448 Md. 253, 264 (2016).

The County is seeking review by the court "on the record made before the Commission," *Kelly*, 391 Md. at 67, via the "routine appeal process." *Id.* at 74 (citation omitted).

On appeal from a decision of the circuit court, where the sole issue presented is one of law, the appellate court reviews the decision *de novo,* without deference to the decisions of either the Commission or the circuit court. *Prince George's Cty. v. Proctor*, 228 Md. App. 579, 587 (2016); *see also Walk v. Hartford Cas. Ins. Co.*, 382 Md. 1, 14, (2004). Here, the circuit court addressed the strictly legal question of whether Morrison's injury was barred by the going and coming rule or whether it arose out of and in the scope of his employment because he was on a special mission or errand. *See Mayor and City Council of Baltimore v. Jakelski*, 45 Md. App. 7, 8 (1980) (where the Commission stated that a case with undisputed facts gave rise to "(s)tricly a legal

> (2) If the court determines that the Commission did not act within its powers or did not correctly construe the law and facts, the court shall reverse or modify the decision or remand the case to the Commission for further proceedings.

question" of whether the going and coming rule barred recovery for an accidental injury which occurred during transit to a work-related duty).

Under Md. Rule 2-501(a), a "party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." Appellate courts review grants of summary judgment *de novo*. *Kelly*, 391 Md. at 73 (citations omitted). The proper standard of review is whether the trial court's decision was legally correct. *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 476 (2004).

In order to review the legal correctness of the court's grant of summary judgment, we look to the case law regarding exceptions to the bar against recovery for injuries sustained while traveling to a work-related duty.

As stated previously, injuries suffered while a person is traveling to or from work are usually not compensable. *Barnes v. Children's Hosp.,* 109 Md. App. 543, 555 (1996) (citations omitted). "The rule is based on the notion that the Act does not protect employees against the common perils of life, and the dangers of ordinary commuting dangers that are common to all people." *Id.* (internal citations omitted).

However, although the rule prohibits recovery generally, there are a number of exceptions. The Court of Appeals has enumerated them as follows:

> [1.] [W]here the employer furnishes the employee free transportation to and from work, the employee is deemed to be on duty, and an injury sustained by the employee during such transportation arises out of and in the course of employment. [2.] Compensation may also be properly awarded where the employee is injured while traveling along or across a public road between two portions of the employer's premises. [3.] The "proximity" exception allows compensation for an injury sustained off-premises, but

> while the employee is exposed to a peculiar or abnormal degree to a danger which is annexed as a risk incident to the employment. [4.] Injuries incurred while the employee travels to or from work in performing a special mission or errand for the employer are likewise compensable.

*Vache*, 349 Md. at 532 (quoting *Alitalia Linee Aeree Italiane v. Tornillo*, 329 Md. 40, 44 (1993)) (internal citations omitted).

Here, the County avers that the going and coming rule applies to Morrison's injury and bars recovery because the journey to the training is not special or onerous enough so as not to be considered a special errand or mission, because Morrison was merely going to another worksite at his usually scheduled time of work. Morrison responds, reaffirming the position argued before the Commission, that the going and coming rule does not preclude recovery and states that each of the following facts supports this conclusion:

> that he was required to work on a day that was his scheduled day off, that he was attending the training course at the request of his employer, that he was being paid at the time of the accident, that to attend the training course he was required to travel to a site other than the location at which he was employed, that the work activity that he was engaged in the day of the accident was not regular or recurring, that the site he was assigned to report to on the day of the accident was farther from home than his usual place of employment and that had he traveled directly to the site of the training course he would have been paid mileage for the miles in excess of his usual commute to work.

The "special mission or errand" exception is one of the enumerated exceptions to the going and coming rule. In *Barnes*, we reiterated the definition of the rule as follows:

> When an employee, having identifiable time and space limits on his employment, makes an off-premises journey which would normally not be covered under the usual going and coming rule, the journey may be brought within the course of employment by the fact that the trouble and time of making the journey, or the special inconvenience, hazard, or urgency of

> making it in the particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the service itself.

109 Md. App. at 556-57 (quoting *Fairchild Space Company v. Baroffio,* 77 Md. App. 494, 501 (1989)).

In *Barnes,* the appellant was an employee at Children's Hospital. *Id.* at 550. She was shopping with her family on a Saturday, a day she did not normally work, but was called to work to perform a task usually performed by a subordinate. *Id.* She planned to take her family home before proceeding to work and realized she needed gas to make the drive to work. *Id.* When she stopped for gas, she slipped in a puddle of oil, and was injured. *Id.* The Commission determined that her injury did not arise out of and in the course of her employment, and the circuit court affirmed. *Id.* We examined when a "mission is sufficiently 'special' to be brought within the ambit of the rule." *Id.* at 557.

We stated that in order to assess if a mission is sufficiently special so as to be considered an exception to the going and coming rule, the court must focus on the characteristics of the journey rather than the work to be performed,[4] and must first "consider the relative regularity or unusualness of the particular journey." *Id.* (citation

[4] Relatedly, the law in Maryland also provides that "certain company-sponsored social events are sufficiently work related to be incidents of employment, so that injuries which occur during such events are compensable" under the special mission exception. *Coats and Clark's Sales Corp. v. Stewart,* 39 Md. App. 10, 14 (1978) (citing *Sica v. Retail Credit Co.*, 245 Md. 606, 618-19 (1967); *Selected Risks Ins. Co. v. Willis*, 266 Md. 674, 677-78 (1972)). Further, in *Stewart,* we held that a worker's "self-contained trip to a grocery store, to obtain food for a baby sitter needed to enable him to attend a company-sponsored social event is a special errand or mission" because the social event was sufficiently work related, and the "task would not have been undertaken except for the obligation of employment[.]" *Id.* at 17.

and quotation marks omitted). "If the journey at issue is 'relatively regular,' in the context of the employee's normal duties, then the case begins with a strong presumption that the trip is not special and instead falls within the normal going and coming rule." *Id.* (citation and quotation marks omitted). Second, the court must consider "the relative onerousness of the journey compared with the service to be performed at the end of the journey." *Id.* at 558 (citation omitted). Onerousness depends not only on the length of travel, but also on the circumstances under which it is made, including the time of day, and on whether it is a regular workday. *Id.* Third, the suddenness or whether the call was made with an "element of urgency" is also a relevant factor, although this factor is not dispositive. *Id.* at 558-59 (citations omitted).

We ruled that Barnes's journey was sufficiently special, despite the hospital's assertions that it was not special because the duty for which she was called in was part of her normal supervisory duties since the work was the duty of a subordinate, and that the work was routine because the report at issue was generated monthly. *Id.* at 559. We held that Barnes's travel to the hospital on a Saturday was unusual because it was sudden, and because it was not her normal workday, and because the hospital did not show the frequency under which weekend trips to the hospital were made. *Id.* at 560.

By contrast, when an employee is traveling to a work related function in a way that is only *slightly* unusual, the travel will not be sufficiently special to allow recovery for an accidental injury.[5] In *Jakelski*, 45 Md. App. at 11-14, we concluded that a police

[5] The Court of Appeals addressed a related question in *Roberts v. Montgomery Cty.*, 436 Md. 591 (2014), and concluded that where an employee was traveling from a

officer's injury on his way to testify at traffic court was not compensable because the travel was not sufficiently special. There, we focused on the regular nature of the travel, and the fact that the officer made monthly trips, which made them a "regularly repetitive" part of his job duties. *Id*. at 11. The trip and the testimony were, therefore, a regular course of monthly conduct. *Id.* at 12. Similarly, in *Baroffio,* 77 Md. App. at 501-03, we held that an employee's travel to her regular work site only one-half-hour before her regularly scheduled employment was insufficiently special so as to permit recovery for an injury that occurred while she was traveling to work.

Turning to the case at bar, the question is one of law which depends on the particular facts of the case. *Reisinger-Siehler Co. v. Perry,* 165 Md. 191, 198 (1933) (where the Court of Appeals first recognized the special mission exception and stated that "the question, therefore, whether a case is an exception to the [going and coming] rule, depends upon its own particular facts"); *Jakelski,* 45 Md. App. at 8. The facts of Morrison's injury are undisputed.

It is undisputed that the travel to the training was sufficiently work-related and that Morrison would not have been traveling the route except for the obligation of employment so as to fulfill the "arises out of" requirement. However, Morrison was

work-related activity to another site where he was to engage in a work-related act, the going and coming rule did not apply, but the positional-risk test held sway. *Id.* at 607. Morrison, in his brief, incorrectly asserts that the positional-risk test is to be applied here. However, the positional-risk test is a test for whether the injury arose out of employment. *Id.* at 604. It is not a test for whether an exception to the goings and comings rule applies to the facts of a particular case. *Id.* at 607 (the Court did not need to get to the question of the applicability of the going and coming rule or its exceptions, *because* the positional risk test held sway).

traveling from his home to a work-related function. Therefore, the going and coming rule would control and require that he was not "acting in the course of his employment" which would render the injury non-compensable, unless an exception to the rule applies.

The County avers that travel to the training was akin to Morrison's usual commute to his place of employment, thereby invoking the going and coming rule, and prohibiting recovery from his auto accident that occurred *en* route to his home. Morrison responds that the journey to the training was sufficiently different so as to constitute a special mission, and that his injury is therefore compensable under the special mission exception.

Relying primarily on *Barnes* and *Roberts,* on the facts before the Commission, we hold that Morrison was on a special mission, and his claim is, therefore, not barred by the going and coming rule. In our evaluation, we consider the "relative regularity or unusualness," as well as the onerousness and the urgency, of the journey. *Barnes,* 109 Md. App. at 557-59. The record is silent as to whether Morrison had attended other trainings like this one, but does note that he had never been ordered to report to work at the State Highway complex. This is an important element, as the lack of regularity in travel is a crucial element of a special mission. *Id.* This lack of regularity sufficiently distinguishes the facts from those of *Jakelski,* on which the County heavily relies, where the employee made monthly trips. 45 Md. App. at 11. Looking to the onerousness, we note that although Morrison did work all morning after the commute, Morrison does not typically carpool from a centrally located location to his normal place of work, allowing an inference that this location was a more onerous commute than his usual one. Finally, we agree that Morrison did have adequate notice to eliminate any element of urgency in

the travel. However, the "element of urgency may supply the necessary factor converting a trip into a special mission," but no law states that "the absence of an emergency automatically means that the claimant is not on a special mission." *Barnes*, 109 Md. App. at 561. On the other hand, the date of the travel does share an important element with *Barnes* in that Morrison was scheduled to be away from his worksite on the day of the accident and had to clear his schedule to report to work. As in *Barnes*, "the trip was sufficiently onerous, as it required [the appellant] to report to [work] on a day on which [appellant] did not expect to work." *Id.* at 560. Here, Morrison's work schedule reflects scheduled time away, but he reported to the office for the training, because his employer requested that he do so.

For these reasons, we find no error in the circuit court's legal determination that the special missions exception allowed recovery for the traffic accident that occurred during Morrison's travel home from work.

In the alternative, the free transportation exception, as first recognized by the Court of Appeals in *Harrison v. Central Constr. Co.*, 135 Md. 170 (1919), would also allow Morrison to recover for his injuries.[6] We briefly explain.

[6] In *Maryland Cas. Co. v. Lorkovic*, 100 Md. App. 333, 353 (1993), we addressed whether this court can affirm summary judgment on an exception to the going and coming rule, other than the exception that was relied upon by the trial judge when granting summary judgment. We stated:

> In the case *sub judice*, we have held that there were no disputes as to material facts and that [the employee] was entitled to summary judgment as coming within the free transportation exception. Thus, the trial judge would have had no discretion in denying the motion on that ground. *See* Md. Rule 2-501(e) ("The court *shall* enter judgment in favor or against the

At the hearing before the Commission, Morrison testified as follows:

COUNSEL: Okay. If you had been going from your home, what is the policy and procedure, if you don't mind me asking?

MORRISON: All right [sic]. So they pay for the extra mileage you travel. So I've got to take the mileage that is my house to my work normal duty station, and then my house to the State Highway Administration, and then they would pay me for that extra mileage.

COUNSEL: So let me ask you this: In this specific case, as a matter of policy – well, in this specific case as a factual matter, you did not get any mileage; is that correct?

MORRISON: Correct.

COUNSEL: Why is that?

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moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.") (Emphasis added). Hence, the trial court had no "discretion to deny summary judgment" on this "alternative ground." *Three Garden Village LTD Partnership* [*v. United States Fidelity and Guar. Corp.*, 318 Md. 98, 107-108 (1989)]. Moreover, the record concerning [the employee's] status at the time of his accident was fully developed below.

*Id.* at 357-58. We find this to be true in the case at bar as well. Although unlike in *Lorkovic,* where we noted that the party's "trial memorandum and joint appellate brief present a detailed analysis of all the known exceptions to the coming and going rule," the parties did not fully brief this exception. *Id.* at 358. However, the parties refer repeatedly to *State v. Okafor,* 225 Md. App. 279 (2015), where a detailed discussion of the free transportation exception is readily available, and the parties fielded questions regarding mileage claims and benefits coverage where the employer has paid transportation expenses. The County also stated to the judge that they had "to stay within the special mission exception, because that is what [the Commission] found." However, as discussed *supra,* we review *de novo* for legal correctness. As in *Lorkovic,* because Morrison was entitled to summary judgment as to coming within the free transportation exception as a matter of law, we are not precluded from affirming based on the free transportation exception, when the trial court granted the motion on the special mission exception, when we hold that both are applicable in this case. *Id.*

> MORRISON: Because I met at a shorter distance from my house to carpool?
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> COUNSEL: So there was no mileage due as a matter of fact, not as a matter of policy?
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> MORRISON: Correct.

Morrison's testimony regarding mileage reimbursement raises a question regarding the free transportation exception.

In *Harrison*, 135 Md. at 180, the Court of Appeals reversed a denial of compensation for an employee who was injured when he attempted to get on a free train that was provided by the employer to transport employees from Baltimore City to a Baltimore County construction site. The Court of Appeals held that the going and coming rule did not preclude the employee from receiving benefits, stating:

> [W]here the workman is employed to work at a certain place, and as a part of his contract of employment there is an agreement that his employer shall furnish him free transportation to or from his work the period of service continues during the time of transportation, and if an injury occurs during the course of transportation it is held to have arisen out of and in the course of the employment.

*Id.* at 177-78.

The body of law on this exception developed over time, and in *Ryan v. Kasakeris*, 38 Md. App. 317 (1977), we examined whether injuries suffered by an employee while walking from the bus to a client's house were compensable, where the client paid for the employee's bus transportation. *Id.* at 319. We held that her injuries were compensable, and summarized the state of the law to be that the terms of the employment contract, not the specific details of the payment for travel, dictate whether the exception will apply:

> [A]n injury occurring while an employee is on his way to or from work, which otherwise would be noncompensable as being the result of normal hazards unconnected with the employment, becomes compensable only if, under the terms of the employment, the employer is under some obligation to provide the transportation to the employee. ***It is that underlying obligation which brings the travel within the scope of the employment.*** Where that obligation exists, the method of carrying it out becomes irrelevant; but where it does not exist, there is no coverage under this exception.

*Id.* at 328-29 (emphasis added). Stated another way, "mere reimbursement alone does not suffice to extend coverage" but rather, coverage is extended by the underlying contractual obligation to provide, or compensate for, transportation. *Id.* at 332 (footnote and citations omitted).

We then necessarily examined the distinction between an injury that occurred while on the bus itself, compared to an injury that occurred between the bus and the place of employment, stating, "[h]ad appellee's injury occurred during the bus ride, we would need say no more. But it didn't. It occurred two blocks from the bus stop, along the 'walking' leg of the journey. This raises another question: how much of the total journey is covered that for which the employer has paid or all of it?" *Id.* at 333. We answered that the "very rationale of the 'free transportation' doctrine is that the travel is part of the employment, that the day's employment therefore commences when the employee starts on the course of his journey," and that relying on that rationale, "the underlying base upon which the 'free transportation' doctrine itself rests, necessarily compels extension of the doctrine to include this last leg of the journey." *Id.* (footnote ommitted).

We find *Ryan* to be instructive. Here, had Morrison chosen to drive his motorcycle from his home to the State Highway complex, he would have been

compensated for a portion of his travel – any mileage beyond his usual commute length. Morrison did not elect to travel the entire route solo, but rather, he accepted free transportation in an unmarked police car for a portion of the journey. However, the contractual obligation to reimburse him for this travel creates an extension of coverage. *Id.* at 332. Had Morrison elected to travel the route solo, he would have been paid for his travels, obviously invoking the free transportation doctrine, and his injuries would have been compensable. It is only because Morrison instead elected to carpool (perhaps notably in a County police car), a fiscal and socially responsible decision which saved the County funds in reimbursed mileage, that an extension of coverage is not immediately obvious under this doctrine. However, upon closer examination, the extension of coverage under the free transportation exception is indeed present.

Just as it was in *Ryan*, where an employer has a contractual obligation to pay for travel, the employee is covered from the time he began his transit, through the "last leg of the journey." *Id.* at 333-34. This is especially true given that the Act is to be construed liberally in favor of injured employees in order to effectuate its benevolent purposes. *Livering*, 374 Md. at 574. To hold otherwise would both discourage an employee from making the choice to carpool, which benefits the employer.

Although the doctrines of free transportation and the special mission exception are distinct and unrelated, we do note one point that perhaps connects them here. Morrison's usual travel was *not* contractually covered by his employer. However, on the day of his injury, the record reflects that his employer *did* have a contractual obligation to reimburse him for any distance beyond his usual route – an obligation that was unique compared to

his usual employment. The presence of this unusual contractual obligation supports an inference that there was something unique and onerous about the travel itself, thereby seemingly also offering affirmation that the travel fell within the special mission exception.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. CASE REMANDED TO THE COMMISSION. COSTS TO BE PAID BY BALTIMORE COUNTY.**