Industrial Commission of Illinois
State of Illinois

County of Dekalb

ROBERT MEJIA, Petitioner
v.
ROCKFORD REGISTER STAR, Respondent
No. 97 W.C. 42373, No. 01 I.I.C. 0819
November 15, 2001

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of employee/employer relationship and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 15, 2000 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The probable cost of the record to be filed as return to Summons is the sum of $35.00, payable to the Industrial Commission of Illinois in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

Diane Dickett Smart

Douglas F. Stevenson

Barbara A. Sherman

Attachment 1

NOTICE OF DECISION OF ARBITRATOR

ROBERT MEJIA, Petitioner

v.

ROCKFORD REGISTER STAR, Respondent

Case No. 97 WC 42373

Take notice that on August 15, 2000, there was filed with the Industrial Commission, at Chicago, Illinois, the Decision of the Arbitrator in the above entitled matter, a copy of which Decision is enclosed to you herewith.

Attachment 2

STATE OF ILLINOIS

COUNTY OF DEKALB

ROBERT MEJIA, Petitioner

v.

ROCKFORD REGISTER STAR, Respondent

Case No. 97 WC 42373

MEMORANDUM OF DECISION OF ARBITRATOR

An Application for Adjustment of Claim was filed in this matter and notice of hearing mailed to each party. The matter was first heard by Arbitrator Mindy Ferrer designated by the Commission in the City of Rock Falls, Whiteside County, State of Illinois on May 18, 1998. Proofs were closed before Arbitrator James J. Giordano in DeKalb, DeKalb County, State of Illinois on June 29, 2000. After hearing the proofs and allegations, having made careful inquiry in this matter, the Arbitrator concludes:

On July 17, 1997, Respondent Rockford Register Star was operating under and subject to the provisions of the Illinois Workers Compensation Act; and on this date it is a matter in dispute as to whether or not the relationship of employee and employer existed between the Petitioner Robert Mejia and said Respondent.

The earnings of the Petitioner during the year next preceding the injury and the average weekly wage is disputed.

Petitioner at the time of injury was 38 years of age, single and had no children under 18 years of age.

Necessary first aid, medical, surgical and hospital services have not been provided by Respondent herein.

The sum of $0.00 has been paid on account of this injury.

The Arbitrator renders findings on the following disputed issues:

(B) Employee/Employer relationship;
(D) Whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent;
(F) Earnings;
(I) Reasonableness or necessity of medical, surgical or hospital bills or service;
(K) Nature and extent of the injury:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to (B) Employee/Employer relationship, the Arbitrator finds the following facts:

The Terms of the Agreements

Petitioner signed two Agreements with Respondent on June 15, 1997. The Agreements entered into by the parties stated that Petitioner would deliver Respondent's newspaper in Areas of Primary Responsibility (APR) as an independent contractor. Respondent's District Manager, Ray Wessells, testified that prior to signing the Agreements he explained the terms of the Agreement to Petitioner. Petitioner owns and operates a tax preparation business through which he has encountered the Federal tax form No. 1099. Respondent's District Manager provided Petitioner a 1099 tax form and a W-9 form. Respondent did not withhold any taxes from its payments to Petitioner in 1997, and Petitioner did not complain about this. In 1997, Petitioner filed a form 1040 Schedule C along with a W-9 and 1099. Petitioner deducted vehicle and supply expenses on his Schedule C. Mr. Wessells testified that Petitioner stated that he understood the significance of the forms in light of his business experience. Petitioner disputes that fact. The Arbitrator finds that Petitioner's account of the parties discussions prior to the moment when Petitioner signed the contracts is not credible. Further, Petitioner was obligated to read the contracts and cannot now plead ignorance in order to avoid their effect.

Petitioner was allowed to and did provide a substitute at his discretion. Although Petitioner chose to call Mr. Wessells to inform him that he wanted to use a substitute after July 17, 1998, Respondent had no right to and did not interfere with Petitioner's choice of substitutes. Petitioner was responsible for determining his substitute's rate of pay. In fact, Respondent never made a payment to Petitioner's substitute during the four months that Petitioner engaged the substitute after his accident.

Petitioner purchased newspapers from Respondent at a wholesale rate and sold the papers at a retail rate. Petitioner's profits consisted of the difference between the wholesale and retail rates, and his profits rose and fell depending on the number of customers within his APR. Petitioner was not precluded from negotiating the wholesale rate. Petitioner was not eligible for benefits offered by Respondent to its employees. The terms of the Agreement state that Petitioner retains the

risk of economic loss for continued deliveries after 14 days of customer non-payment. Non-party carrier Leatherman testified that she did suffer loss under this provision. The Arbitrator finds that testimony credible and corroborative of the testimony of Ray Wessells and the parties' written contracts. Petitioner's first reaction after the July 17, 1998, accident was not to seek financial relief through Respondent; rather, he sought and obtained $5,000 relief from the homeowner's insurer. The Arbitrator finds that testimony evidences that Petitioner believed he was an independent contractor. Further, non-party carrier Davis testified that when he had an auto accident, he replaced his vehicle himself, and looked to his personal insurance policy to cover damages. He never personally elicited financial help from Respondent. In fact, his first instinct was to call his substitute to guarantee that his newspapers were delivered. He never informed Ray Wessells of the accident. The Arbitrator finds this testimony is credible evidence that Respondent's carriers understand that they were independent contractors under the terms of the Agreements and detracts from the credibility of Petitioner's statements to the contrary.

After providing 28 days notice, either party could terminate the Agreements for any reason. The parties could only terminate the Agreements without notice if the other party breached the terms of the Agreements. Petitioner evidenced his knowledge of, his adherence to, and the importance of the terms of his Agreements when he testified that he initiated the termination of the contracts and that he had to give 28 days notice. Petitioner was required to indemnify Respondent against all claims for damages caused by Petitioner and/or his substitute. In fact, non-party carrier Leatherman testified that if such damages occurred, she understood that she would be responsible for said damages. The Arbitrator finds that this additional objective testimony puts a credible light on this matter.

Petitioner was required to purchase any necessary licenses. Petitioner and other non-party contractors performed all their contract services away from Respondent's premises. The testimony of carriers Leartherby, Davis and Petitioner shows that Petitioner had the right to negotiate a location for picking up his newspapers, although he was unsuccessful at negotiating his first choice of locations. Petitioner had the right to deliver other publications or products. In short, Respondent treated Petitioner and other carriers who signed identical agreements in accordance with the terms of the contract.

The Right of Control

The Petitioner retained the sole right to control the mode, manner, method and means of performance. Peesel v. Industrial Commission, 224 Ill.App.3d 711, 716-19, 586 N.E.2d 710, 713 (1992); Early v. Industrial Commission, 197 Ill.App.3d 309, 318, 553 N.E.2d 1112, 1118 (1990); Wenhold v. Industrial Commission, 85 Ill.2d 76, 80, 447 N.E.2d 404, 406 (1983); Kirkwood v. Industrial Commission, 84 Ill.2d 14, 20, 416 N.E.2d 1078, 1080 (1981); Bauer v. Industrial Commission, 51 Ill.2d 169, 282 N.E.2d 448 (1972); Cable v. Perkins, at 129, citing Manahan v. Daily News-

Tribune, at 14. Respondent did not tell Petitioner how to deliver newspapers. Petitioner had the discretion to choose when to bag papers and where to place them. Although Respondent set an overall delivery deadline for its morning daily publication, Petitioner had the right to determine when to pick up papers for delivery and the sequence of delivery. In fact, non-party carriers Leatherby and Davis testified that they changed their delivery sequence at their discretion in order to avoid boredom or to meet customer requests. Petitioner was responsible for providing and maintaining a vehicle to complete his delivery obligations under the contract. Petitioner was responsible for purchasing his own supplies, such as rubber bands and plastic bags. Petitioner did purchase such supplies through Respondent. Non-party carriers Davis and Leartherby testified they also purchased their supplies.

Petitioner had the right to solicit subscribers. He had the right to adjust customer complaints or requests as he saw fit, without interference from Respondent. Respondent did not follow up on how Petitioner adjusted customer complaints and requests. Petitioner testified that Mr. Wessells followed him around his route on occasion in order to make sure papers were being delivered. Arbitrator finds this testimony relatively impotent, if not incredible, in light of testimony by non-party carriers Leatherby and Davis, and Mr. Wessells himself, who testified that he never followed carriers around on their routes. In fact the two carriers testified that they only had contact with Mr. Wessells once or twice a month, at their initiation, in order to purchase more supplies. Wessells testified that he had contact with Mejia once or twice a month, which is consistent with the testimony of Davis and Leatherby. Petitioner was responsible for handling customer requests and complaints, which often were passed to him through Respondent. Petitioner was required to indemnify Respondent against damages caused by Petitioner.

Other Common Law Factors

Petitioner exercised the discretion not to purchase newspaper carrier accident insurance. Had he elected this insurance package, he would have been responsible for paying the premiums. Petitioner was not required to participate in any meetings sponsored by Respondent. Petitioner was not required to participate in any sales or other promotions sponsored by Respondent. Petitioner was not required to adhere to a dress code and was prohibited from sporting Respondent's logo on Petitioner's car. He had the right to negotiate for additional delivery areas.

In summary the Arbitrator concludes that Petitioner was an independent contractor because he was hired to perform a specific task for an agreed price, used his own car and was subject only to a degree of control to ensure that the end result, the satisfactory delivery of the newspapers, was met. Certainly another factor to consider is the independent contractor agreement signed by Petitioner. While such a contractual agreement does not, as a matter of law, determine an individual's employment status, it a factor to be considered.

BASED UPON THE ABOVE FINDINGS OF FACT, THE ARBITRATOR ARRIVES AT THE FOLLOWING CONCLUSIONS:

(B) An Employee/Employer relationship did not exist between the Petitioner, Robert Mejia and the Respondent, Rockford Register Star on July 17, 1997.

Since Petitioner failed to prove that an Employee/Employer relationship existed, all other issues relating to (D) Whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent, (I) Medical Expense, (F) earnings and (K) Nature and Extent of the Injury are moot and compensation is denied.

You are further notified that unless a Petition for Review is filed with the Industrial Commission within thirty (30) days after receipt of this decision, and a Review perfected in accordance with the Workers' Compensation Act and the Rules of the Industrial Commission, then the Decision of the Arbitrator shall be entered as the decision of the Industrial Commission. Subject to §19(n) of the Illinois Worker's Compensation Act, the interest rate for purposes of an appeal in this case is 6.07%. However, should an Employee's appeal of this case result in either no change or a decrease in this award, interest shall not further accrue from the date of such appeal.

Dated and Entered: Monday, August 7, 2000

James J. Giordano

Arbitrator

Date filed: August 15, 2000

2001 WL 1692601 (Ill.Indus.Com'n), 01 I.I.C. 0819, 97 IL.W.C. 42,373

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