2000 WL 972656
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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Delaware.

IRISH HUNT FARMS, INC., Appellant,
v.
Suzanne STAFFORD and Industrial Accident Board, Appellees.

No. C.A. 99A-02-003 WCC.
|
Submitted Oct. 28, 1999.
|
Decided April 28, 2000.

Appeal from the Industrial Accident Board-Affirmed.

**Attorneys and Law Firms**

Kathleen M. Jennings, Oberly & Jennings, Wilmington, DE, for Appellant.

Cassandra Faline Kaminski, and Natalie S. Wolf, Young Conaway Stargatt & Taylor, LLP, Wilmington, DE, for Appellee, Suzanne Stafford.

ORDER

CARPENTER, J.

***1** This 28th day of April, 2000, after considering Irish Hunt Farms, Inc.'s, ("Employer") appeal of the Industrial Accident Board's ("Board") decision, it appears that:

1. Employer, which operates a boarding stable, hired Suzanne Stafford ("Appellee") in 1997 to give riding lessons and to exercise, train and care for horses owned by Employer ("lesson horses"). On June 3, 1997, Appellee injured her ankle after mounting one of her student's horses.

2. On November 19, 1998, the Board held an evidentiary hearing to determine whether Appellee was in the course and scope of her employment at the time of her injury, whether she was acting as an independent contractor, and whether 19 *Del. C.* § 2307(b), the farm laborer exemption to the Worker's Compensation Act, applied. After evaluating the evidence, the Board found that Appellee was an employee rather than an independent contractor, that Appellee was acting within the scope of her employment at the time of the accident, and that 19 *Del. C.* § 2307(b), the statutory exemption for farm laborers, did not apply to Appellee. Employer filed a Motion for Reargument on December 18, 1998, seeking a review of new evidence, [1] which was denied. As such, Employer appealed the Board's decision. [2]

3. Appellee, who was twenty years old at the time of the injury, worked thirty hours a week, [3] providing approximately thirty-five horseback riding lessons a week. The group or private lessons, which were initially scheduled by Karen Garland, President of Employer, lasted one hour [4] and took up the majority of her working time. The rest of her time consisted of completing assignments that were left for her by Ms. Garland on a daily calendar, [5] rescheduling lessons, and caring for the lesson horses, which included exercising, training, grooming, feeding and cleaning up after them. [6] While Appellee gave lessons on both the lesson and boarded horses, the boarded horses, which the Employer did not own, were only used when the owner was the rider, and they were kept in stalls, where another individual, Lee Banini, was responsible for maintaining and feeding them. There were approximately 12-13 boarded horses and 5-6 lesson horses. Appellee also stated that her responsibilities included attending horse shows on behalf of Employer, by using its vehicles and holding herself out as Employer's representative. In addition, Appellee stated that while she had one private student, who paid her separately, she would not give these lessons during her work hours. Lastly, Appellee denied her status as an independent contractor. [7]

On June 3, 1997, at 5:30 p.m., Appellee observed one of her students, Melissa Kid, having trouble mounting her pony, Murphy, which was a boarded horse. Melissa, who was eight-years-old, did not have a scheduled lesson at the time. Because the horse appeared to be unsettled and nervous, Appellee came to Melissa's aid and mounted the horse in an attempt to calm it. When she did, the horse veered up and fell on her leg, injuring her ankle. Despite Employer's contrary

  

allegations, Appellee denied that she was told that Murphy was dangerous and could not be ridden. She also stated that she was unaware that Murphy had problems before the accident. As a matter of fact, two days prior to the accident, on Sunday, June 1, 1997, Appellee stated that while she was not present at the show, Murphy attended a horse show and performed average.

***2** Karen Garland, President of Employer, explained that she had no worker's compensation insurance [8] and that Irish Hunt Farms was assessed as a farm by New Castle County and the Farm Bureau. Ms. Garland also stated that Appellee was hired as an independent contractor and that on three separate occasions, she explained this status to Appellee. She further said that Appellee's schedule varied because Appellee would take time to train and compete her own horse. She also testified that Appellee would train her private student during work hours and that she attended no shows in 1997. In addition, Ms. Garland stated that during the winter months, Appellee would provide more care to the lesson horses because they would be housed inside. She also explained that the boarded horses were only to be used during the owner's lesson and were otherwise off limits. In support of her allegation that Appellee was aware of Murphy's condition, she testified that Appellee told her that Murphy had failed his vet exam prior to the Kid's purchase, and that two weeks after Murphy's purchase, the horse started causing problems. [9] Furthermore, Ms. Garland said that on Monday, June 2, 1997, the day before Appellee's accident, she told Appellee that due to Murphy's behavior at the horse show the day before, where Murphy was rearing, bucking and kicking, the horse was dangerous and should not be used. [10]

Lastly, Kim Meyer, Secretary and Treasurer of Employer and sister to Ms. Garland, testified similarly to Ms. Garland about Appellee's duties, her flexible schedule, and her awareness of Murphy's dangerousness. She testified that she was present at the June 1st show and that it took a few people to get a saddle on Murphy. When asked why a horse with such problems would compete with an eight-year-old rider, she stated that it was the owner's decision.

4. This Court's standard of review for an appeal from a Board decision is to determine whether there was substantial evidence to support the Board's findings and conclusions. [11] The Court does not sit as trier of fact with authority to weigh evidence, determine questions of credibility, nor make its own factual findings and conclusions. [12] Weighing the evidence and determining questions of credibility, which are implicit in factual findings, are functions reserved exclusively for the Board. [13]

5. First, the Court will consider Employer's argument that the Board's determination that Appellee was an employee rather than an independent contractor was not supported by substantial evidence. The test used to determine employee status is: (1) who hired the employee; (2) who had the right to fire the employee; (3) who paid the employee's wages; and (4) who has the power to control the conduct of the employee when she is performing the particular job in question. [14] The issue in dispute here is the question of control.

The Court finds substantial evidence to support Appellee's employee status. Employer controlled Appellee's pay, hours and the number of students. While it is noted that Appellee had some flexibility in scheduling, Ms. Garland set up her initial schedule and provided her with “to-do” lists and written instructions. Appellee used Employer's tools and instruments and held herself out as a representative of Employer during lessons and at horse shows. While this evidence is contradicted by testimony given by Employer's witnesses, it does not necessarily follow that it is not supported by substantial evidence or that the Board disregarded Employer's witnesses. Instead, the Board's finding is supported by Appellee's testimony, which the Board found more credible. Because such credibility decisions are Board functions, the Court will not disturb it when there is evidence to support such findings.

***3** 6. Next, Employer argues that the Board erred in failing to address its argument that Appellee acted outside the scope of her employment at the time of her accident when she disobeyed Employer's instructions not to ride the dangerous horse and not to ride a boarded horse outside of a lesson. As such, this argument is two fold.

First, Employer argues that the Board failed to explain why it rejected the testimony of Employer's witnesses regarding the horse's dangerousness. When a dispute arose as to whether Appellee was aware of Murphy's dangerousness, the Board found that the events leading up to the injury logically suggested that Murphy's dangerousness was unknown to Appellee. Otherwise, the Board would have to find that “a riding instructor knowingly permit[ted] an eight year old student to ride a dangerous horse and herself knowingly mount[ed] a horse that was considered unmountable.” [15] Due to the illogic of such a finding, the Board found Appellee's

  

testimony more credible. As noted above, the Court will not disturb such a credibility determination.

Secondly, Employer argues that the Board failed to address whether Appellee was acting outside the scope of her employment when she improperly mounted a boarded horse outside of a lesson. According to 19 *Del. C.* § 2304, an employer is bound to pay compensation for injuries "by accident arising out of and in the course of employment." [16] Employer disputes that Appellee acted in the course of her employment. The term "in the course of employment" refers to the time, place and circumstances of the accident. [17] It covers those things that an employee may reasonably be expected to do within the time during which he is employed and at a place where he may reasonably be during that time. [18]

While Employer may have instructed Appellee not to use a boarded horse outside of a lesson, the Court finds no error that under the circumstances, this act was a logical extension of Appellee's teaching responsibilities. The Board made the following findings as it related to this issue:

> while Claimant was not teaching at that time, it had been her practice to assist any student who might be having difficulty with mounting. Taking such a step was an extension of Claimant's teaching responsibilities. It follows that as a riding instructor, Claimant would come to the aid of any student regardless of whether it was the student's appointed time for a lesson. [19]

The Court believes that the conclusions above are correct and that Employer's argument on this point substantially undermines their credibility. To argue that they would not want one of their instructors to come to the aid of a young rider obviously in trouble is disturbing and can only be characterized as a desperate attempt to craft some legal argument to justify their nonpayment of compensation. Appellee's assistance to a young student in need is clearly a reasonable duty that Appellee was expected to do despite Employer's argument that it lacked control of the boarded horses. [20] In addition, Appellee's practices of assisting students with mounting difficulties were supported in the record by her testimony. As such, the Court finds substantial evidence to support that Appellee acted in the course of employment under 19 *Del. C.* § 2304 at the time of her accident and that the Board sufficiently addressed this issue.

***4** 7. In regards to Employer's next argument, the Court finds that the Board properly found that the farm laborer exemption in 19 *Del. C.* § 2307(b) did not apply to Appellee. The exemption provides that the Worker's Compensation Act "shall not apply to farm laborers or to their respective employers unless such an employer carries insurance to insure the payment of compensation to such employees or their dependents." [21] But, "farm laborers" is not defined in this chapter. As such, the Board looked to other portions of the Delaware Code and the ordinary meaning of the words to reach its conclusion.

Employer argues that the Board erred because it failed to use the definitions of "agricultural labor" in 19 *Del. C.* § 3302(11) [22] or "agricultural operations" in 10 *Del. C.* § 8141(a)(9) [23] in determining the meaning of "farm laborer." Instead, the Board used the "farm" dictionary definition, which states that "[a] farm is defined as a plot of land devoted to agricultural purposes, to the raising crops or animals, especially domestic livestock," [24] and the "farmland" definition in 25 *Del. C.* § 6701(1), which states "any rural parcel ... which is capable of being farmed." As such, the Board concluded that a "farm laborer," is "one who works on a farm doing activities that have been traditionally performed on the farm." [25] Error is not shown just because the Board did not use the definitions suggested by Employer. Without a definition provided in the Worker's Compensation Act, the Court finds that the Board used appropriate resources in determining the meaning of "farm laborer."

Turning to whether the exemption applied, the Board relied upon the test set forth in *Bohemia Hall, Inc. v. Sturgill.* [26] In *Sturgill,* this Court found that an analysis of the nature or character of the employee's work is required to determine whether the exemption applies. [27] As such, the character of the work that the employee was hired to perform is the key element and not the nature and scope of the employer's business. [28] Here, while the Board found that Employer was a "horse farm," it found that Appellee was not a "farm laborer" after considering the whole character of her work. While the Court will not disturb this Board finding since it

  

believes its conclusion on the type of work performed by Appellee was correct, the Court has difficulty supporting a conclusion that Employer was a "farm" based on the drafters' intent of the farm laborer exemption. At the time this legislation was adopted in 1918, [29] Delaware was largely agricultural with large family farms, which often relied upon migratory workers to supplement their work force during the growing season. At best, Employer's operation was a small stable where horse lessons and stabling were the primary business. This was not an operation that was in the business of breeding and training horses for race. To say that the intent of the legislation was to define stable operations as a "farm" stretches beyond the intent of this legislation.

***5** The Court finds substantial evidence to support the Board's finding that Appellee was not a "farm laborer" under the statute. In assessing the whole character of Appellee's work, the Board focused on what Appellee was hired to perform as suggested in *Sturgill.* As supported fully in the record, Employer hired Appellee as a riding instructor. While part of her duties included caring for the lesson horses, the majority of Appellee's time was devoted to giving riding lessons, which was the purpose of her hire. [30] As such, the Court finds substantial evidence that the duties relating to caring for the horses were incidental to the riding lessons and that Appellee was not a "farm laborer" as reasonably defined by the Board.

8. Lastly, Employer argues that it was denied fundamental fairness and due process during the Board hearing. Employer cites to several times during the hearing where Board members interrupted Employer's counsel during cross-examination and direct examination, either to stop repetitive questions or to accelerate the hearing. But, Employer also concedes that the Board is allowed to "[e]xclude irrelevant, immaterial, insubstantial, cumulative, privileged matter and unduly repetitive proofs, rebuttals and cros s-examination." [31]

Despite these various interruptions, which were also imposed upon Appellee's counsel, the Court finds that they did not create a fundamentally unfair hearing. For example, during the two interruptions that the Board made during Employer's cross-examination of Appellee, they were done to put an end to repetitive questions and to speed up the process after her point was made. Employer's counsel asked 106 questions to Appellee, so these interruptions in no way denied Employer its right to elicit relevant evidence and to properly cross-examine this witness.

In addition, Employer argues that its witnesses and its closing were unfairly rushed. Employer's argument concerning the rushing of its witnesses centers around the following Board comments, which were made to Employer's counsel prior to her first witness, "[w]e'll give you a few more minutes for the next witness. Let's go. We want to move this along. We have a general idea about we're going with this already. Go ahead." [32] Despite these comments, an unfair hearing did not result because Employer's two witnesses were provided ample questioning time. For example, one was asked 92 questions and the other was asked 37 questions during direct examination. Lastly, the Board's final interruption during Employer's closing was made after six pages of transcript when she was summarizing her defenses.

Furthermore, the Board explained that while it recognized Employer's rights, it had time constraints so it asked counsel to remain focused:

> Here's what we're going to do, and let me explain to you the reasons why beyond what has already been said so far. You've heard that we do in fact have two more evidentiary hearings following this. Please understand we do not schedule these hearings nor the time allotted. We have to proceed on the basis of what's given to us. However, we have an obligation, our duty is to hear these cases as I said before, fully and fairly, and we do want to give you that opportunity. You deserve it and that's what the law says you shall have. The other problem that we have to address is we have people outside waiting that we-I think need to say something to them simply as a courtesy to explain to them as we're explaining to you, that we have a problem. The other problem is one of human nature. These people have not eaten and they've been sitting here since approximately 8:30 this morning. So why don't we do this. We will allow the testimony to go forward with this particular witness, again asking you to please stay focused and bring it to a conclusion and efficiently if you will....We will at that time prior to

  

> taking your next witness take a one-half hour break....We will reconvene for your following witnesses but we have to try to pull all of these things together and do ask for your understanding. We don't want to unduly rush you through your testimony. [33]

***6** It is important for parties and counsel to recognize that administrative boards have been developed to allow individuals who have expertise and knowledge in the board's unique area of jurisdiction to initially attempt to resolve disputes. This unique setting is different than a courtroom where jurors, who are usually not trained in the area, need to be educated on the basic grounds of the litigation. It is fair for the Board to remind counsel of this difference and to require the parties to focus on the real issue in dispute. To treat these forums like a courtroom is a mistake. As such, the Court finds the Board's comments to be an acceptable way to adequately manage its caseload and not a violation of Employer's fundamental rights. The Court finds that the Board recognized the areas of contention and tried to proceed efficiently, fairly and speedily to resolve the issue.

9. For the reasons set forth above, the Board's decision is AFFIRMED. IT IS SO ORDERED.

**All Citations**

Not Reported in A.2d, 2000 WL 972656

## Footnotes

1 Employer contended that Appellee's testimony that she did not attend the horse show where Murphy, the horse that injured her, exhibited dangerous behavior two days before the accident was untrue.

2 This Court denied Appellee's motion to affirm. *Irish Hunt Farms. Inc. v. Stafford,* Del.Super., C.A. No. 99A-02-003, Carpenter, J. (Aug. 27, 1999)(ORDER).

3 Appellee worked from approximately 3:00-8:00 p.m. on Mondays-Fridays and for about 4-5 hours on Sundays. She stated that her weekend work depended on whether there were horse shows that she would attend with the students.

4 Appellee was paid $6.20 an hour and Employer charged $21 for group lessons and $26 for private lessons.

5 Such assignments pertained to rescheduling lessons or caring for a particular horse.

6 Appellee also stated that the lesson horses were not ordinarily put in stalls but remained outside unless the horses were hurt or in a show.

7 But, she admitted that her taxes were not withheld by Employer and that she did declare herself as self-employed in 1997 on her tax returns, which her mother prepared.

8 Putting Appellee aside, Ms. Garland stated that she had no employees. She explained that the stable manager, Lee Banini, worked for her horses' board and was not paid compensation.

9 She explained that Murphy had back problems and would act out whenever a saddle was put on his back. Ms. Garland also stated that Melissa would ride another horse when Murphy was acting up.

10 She further explained that Murphy was put out to pasture the day after the show.

  

11 *DiSabatino Bros. Inc. v. Wortman,* Del.Supr., 453 A.2d 102 (1982).

12 *Johnson v. Chrysler Corp.,* Del.Supr., 213 A.2d 64 (1965).

13 *Breeding v. Contractors-One-Inc.,* Del.Supr., 549 A.2d 1102, 1106 (1988); *Conner v. Wells Fargo,* Del.Super., C.A. No. 92A-11-006, Goldstein, J. (Oct. 4, 1994)(ORDER).

14 *Lester C. Newton Trucking Co. v. Neal,* Del.Supr., 204 A.2d 393 (1964).

15 (Bd. Dec. at 10.)

16 19 *Del. C.* § 2304.

17 *Riddell v. California Plant Protection, Inc.,* Del.Super., C.A. No. 87A-0C-1, Bifferato, J. (June 28, 1988)(*citing Dravo Corp. v. Strosnider,* Del.Super., 45 A.2d 542, 543 (1945)).

18 *Riddell* at 2 (*citing Dravo Corp.,* 45 A.2d at 543). In addition, an act. although dangerous which is outside an employee's regular duties and is undertaken in good faith to advance the employer's interests is within the course of employment. *Riddell* at 2. And, an employee who honestly attempts to serve his employer's interest by some act outside his fixed duties should not be held to the exercise of infallible judgment on what best serves those interests. *Id.*

19 (Bd. Dec. at 10.)

20 *See Riddell* at 2.

21 19 *Del. C.* § 2307(b).

22 19 *Del. C.* § 3302(11)(A)(I), entitled Unemployment Compensation, provides that any service “on a farm ... in connection with ... raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock ...”

23 10 *Del. C.* § 8141(a)(9) provides that agricultural operations means an operation for the purpose of “[p]roduction and raising of horses of all types and descriptions or other equine activity for the purpose of profit.” 10 *Del. C.* § 8141 refers to nuisance actions.

24 (Bd. Dec. at 8-9 (*quoting* Webster's Dictionary 421 (10th ed.1997).)

25 (Bd. Dec. at 9.)

26 Del.Super., C.A. No. 86A-0C-5, Stiftel, P.J. (Jan. 7, 2988).

27 *Id.* at 3.

28 *Id.*

29 The farm laborer exemption was first seen in a supplement of Code 1915, § 3193vv. It was approved on April 2, 1917 and became effective on January 1, 1918.

30 *See Seley v. Unemployment Compensation Bd.,* Pa.Super., 138 A.2d 174 (1958)(suggesting that in this unemployment compensation appeal, if the appellee had handled dogs during hunting and guided hunters and it was a larger part of his duties, this would be sufficient to change the character of his duties from agricultural labor, where his other duties consisted of feeding and watering pheasant and dogs). *See also*

  

*Stables v. Unemployment Ins Appeal Board,* Del.Super., C.A. No. 89A-MRS, Graves, J. (Aug. 6, 1992); *Hayden v. Unemployment Compensation Bd.,* Pa.Super., 182 A.2d 70 (1962).

31 29 *Del. C.* § 10117(1)(c).

32 (Bd. Dec. at 61.)

33 (Bd. Dec. at 73-74.) In addition, by way of explanation after an earlier interruption, a board member similarly stated:

> Well, the issue here, we certainly want to give you the opportunity to present your cases completely and fairly. One of the problems that we run into by way of explanation is that it was estimated this matter would take sixty minutes on today's calendar, and we've already gone over sixty minutes, but we do obviously want to, first and foremost, be fair. We would simply ask that you concentrate your questions and the testimony that's to be provided in a well-focused manner so that we can move it along. We understand where you want to go.
>
> (Bd. Dec. at 49.)