

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE, JANUARY 1996 SESSION

FILED

May 17, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

GARY REATHERFORD,)	WAYNE CIRCUIT
)	
Plaintiff/Appellee)	NO. 01S01-9504--CV-00058
)	
v.)	
)	HON. WILLIAM B. CAIN
LINCOLN BRASS WORKS, INC.)	JUDGE
)	
Defendant/Appellant)	
)	

For the Appellant:

Mark C. Travis
Wimberly & Lawson
929 West First North Street
P. O. Box 1066
Morristown, TN 37816

For the Appellee:

Andrea Huddleston
Jane M. Jennings
Hairrell & Jennings
P. O. Drawer H
200 Mahr Avenue
Lawrenceburg, TN 38464

MEMORANDUM OPINION

Justice Frank F. Drowota, III
Senior Judge John K. Byers
Special Judge Robert L. Childers

AFFIRMED and REMANDED

BYERS, Senior Judge

This workers' compensation appeal has been referred to the Special Workers'

Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Plaintiff was doing construction work at the Lincoln Brass Works facility, moving the employee break room from one side of the building to another, when a nail flew into his right eye, requiring several surgical procedures and resulting in total permanent loss of vision in the eye. The trial judge found that he was a statutory employee of Lincoln Brass Works and held the company liable for 100 percent permanent disability to plaintiff's right eye.

We affirm the judgment of the trial court.

The only issue before us is the status of the plaintiff for workers' compensation insurance purposes. The plaintiff contends, and the trial judge held, that he was a statutory employee and Lincoln Brass Works was a principal contractor (statutory employer) under TENN. CODE ANN. § 50-6-113. Lincoln Brass Works contends plaintiff was either an independent contractor or a casual employee.

Under TENN. CODE ANN. § 50-6-113(a), "A principal, or intermediate contractor, or subcontractor shall be liable for compensation to any employee injured while in the employ of any of the subcontractors of the principal, intermediate contractor, or subcontractor and engaged upon the subject matter of the contract to the same extent as the immediate employer," (commonly referred to as a "statutory employer").

This court has consistently held that where a business enterprise undertakes to act as its own principal contractor and contracts directly with a subcontractor for various phases of construction on its own premises, the business enterprise is subject to liability imposed by the Workers' Compensation Act. *Acklie v. Carrier*, 785 S.W.2d 355 (Tenn. 1990).

Lincoln Brass asserts the construction workers were independent contractors rather than statutory employees under TENN. CODE ANN. § 50-6-113(a). The factors to be considered in determining whether a relationship to the principal was that of employee or independent contractor include: (1) the right to control the conduct of

the work; (2) the right to termination; (3) the method of payment; (4) whether the alleged employee furnishes his own helpers; and (5) whether the alleged employee furnishes his own tools. *Carver v. Sparta Electric System*, 690 S.W.2d 218 (Tenn. 1985).

The injury sustained by plaintiff was the result of work on defendant's premises, during construction of a new break room. As in *Acklie, supra*, the agreements were oral and David Sharpe, Materials Manager for the defendant, testified that he supervised the job from start to finish. The two other construction workers also testified that David Sharpe was in control of the project. As in *Acklie, supra*, various Lincoln Brass employees helped with the work and Sharpe coordinated the various phases of the work. Further, Sharpe testified that he assumed he had the right to fire anyone who did not perform according to his expectations, although it was never discussed.

The right of control is the vital test in determining whether a worker is an employee or an independent contractor for workers' compensation purposes. *Wooten Transports, Inc., et al. v. Hunter*, 535 SW2d 858 (Tenn. 1976).

In determining whether a worker is an employee or an independent contractor for workers' compensation purposes, it is the court's duty to give the act a liberal construction in favor of the fact that one is an employee rather than a strict construction holding him to be an independent contractor. *Wooten, supra*.

Lincoln Brass asserts that in the alternative, plaintiff was a casual employee as defined in TENN. CODE ANN. § 50-6-106(2): "Any person whose employment at the time of injury is casual, that is, one who is not employed in the usual course of trade, business, profession or occupation of the employer." Casual employees are not covered under the Workers' Compensation Act. TENN. CODE ANN. § 50-6-106(2).

Maintenance, repair, painting, cleaning and the like are 'in the course' of business because the business could not be carried out without them, and because they are an expectable, routine and inherent part of carrying on any enterprise. *Armstrong v. Spears*, 393 S.W.2d 729 (Tenn. 1965); LARSON ON COMPENSATION, § 51. Persons engaged in necessary maintenance are not casual employees for

workers' compensation purposes. *Smith v. Lincoln Memorial University*, 304 S.W.2d 70 (Tenn. 1957).

Finally, we note that the purpose of the workers' compensation statute is to insure, as far as possible to all workers payment of benefits when they are injured in the course and scope of their employment by passing coverage from employers who might not have coverage under the Workers' Compensation Act to intermediate or principal contractors who do have coverage. *Stratton v. United Inter-Mountain Telephone*, 695 S.W.2d 947 (Tenn. 1985).

We find that plaintiff was an employee of Lincoln Brass Works for purposes of workers' compensation coverage and we therefore affirm the trial court's award of workers' compensation benefits. Costs are assessed to the appellant. The case is remanded to the trial court for entry of any orders necessary to carry out this judgment.

John K. Byers, Senior Judge

CONCUR:

Frank F. Drowota, III, Justice

Robert L. Childers, Special Judge