IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
(OCTOBER 9, 1995 SESSION)

FILED

October 30, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

BRIAN MATTHEW WOOSLEY,	)	
	)	
Plaintiff-Appellee,	)	
	)	MADISON CHANCERY
	)	
	)	
V.	)	Hon. Joe C. Morris
	)	Chancellor
	)	
	)	No. 02S01-9505-CH-00040
TOWNSEND ELECTRIC COMPANY,	)	
	)	
Defendant-Appellant.	)	

For Appellant:	For Appellee:
James E. Conley, Jr. & John Dotson Thomason Hendrix 2900 One Commerce Square Memphis, TN	George L. Morrison III 201 East Baltimore Jackson, TN

MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court
Joe C. Loser, Jr., Special Judge
Janice M. Holder, Special Judge

AFFIRMED

Holder, Judge

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court pursuant to Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. Our scope of review of findings of fact by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

The sole question raised on appeal is whether the evidence preponderates against the chancellor's holding that the employee's injury arose out of the course and scope of his employment. For the reasons set forth below, we affirm the trial court.

The plaintiff, Brian M. Woosley ("Woosley"), was employed as an electrician's helper for Townsend Electric. During the several months of his employment with Townsend, he worked at a series of job sites. The method by which he would arrive at the site varied. For two of the jobs, he met the foreman at the Townsend "shop" on the first day of the job; thereafter he drove his own vehicle to the job site. At a third job location, he met the foreman at the Townsend shop and rode with him to the job site. While at the shop, he sometimes loaded material for use on the job. At a fourth site, the foreman drove to Woosley's home and transported him to the job. Woosley was never paid until he arrived at the job site and he was never reimbursed for transportation expenses when he drove his own vehicle.

On July 13, 1992, Woosley was working at a fifth job in Brownsville when he was injured en route to the job site. For the two weeks prior to his injury, he met Harold Matlock ("Matlock"), the job foreman, at the shop each day and the two went to the Brownsville job together. While working in Brownsville, Woosley was not required to pick up or load materials; he received no instructions

at the shop.

Woosley testified that, for each job, Thomas Lane ("Lane"), the construction manager, instructed him to either meet Matlock at the work site or to meet him at the shop so that they could drive together. He did not question the instructions. Matlock, however, testified that during the Brownsville job there was no business reason to go to the shop every day and that the offer of transportation from the shop location was for Woosley's convenience and to "help him out." Matlock denied that he himself was ever instructed to transport Woosley.

Lane testified that there was no policy concerning how an employee gets to the job site. A vehicle would not be furnished and the employee would not be instructed how to get to the job. If materials needed to be loaded and transported to the job site, however, the construction manager or foreman would instruct an employee to meet at the shop. Lane denied that Woosley was instructed or required to ride with the foreman to the Brownsville job but that he told Woosley he could ride with Matlock in a company vehicle "just to help him out."

The testimony of Matlock and Lane was supported by the general manager of Townsend, as well as the testimony of another electrician's helper.

While preparing to leave the shop on the day of the accident, Matlock told Woosley that he was ill and did not intend to work the entire shift. Woosley was told to drive his own vehicle to the job site; Matlock would leave after showing Woosley what to do.

According to Woosley, Matlock questioned Woosley as to whether he had enough gasoline to get to the job site and then offered to provide him with gasoline from a container in the back of the company truck that Matlock had been using during the Brownsville job. Matlock, on the other hand, testified that Woosley stated that he did not have enough gas to get to the job site or enough

money to purchase gas. Matlock then offered to give Woosley the gasoline from the 2 ½ gallon plastic container located in the back of the truck.

Woosley testified that Matlock stated that he had purchased the gas with a credit card. The foreman denied that the gasoline was purchased with a company credit card and testified that the gasoline was purchased with cash for use in his personal lawnmower. He admitted that he used a company credit card to purchase gasoline while working at the Brownsville job, but did not recall if he had purchased any gasoline on July 13, 1992. A gasoline receipt signed by the foreman showed that 16.7 gallons of gasoline were purchased on credit on the day of the accident.

It is undisputed that Matlock told Woosley that they would wait until they were on the road to Brownsville before pouring the gasoline. Matlock testified that he did not want anyone to think that Woosley was being given company gasoline. On the way to Brownsville, Matlock drove to the side of the road and Woosley followed. While they were pouring the gasoline, Woosley was struck by another vehicle, causing injuries that ultimately resulted in the amputation of his left leg below the knee.

As a general rule, employees injured while en route to or from work are not entitled to workers' compensation benefits. The rationale behind the rule is that while traveling to or from work, no service is being provided for the employer and the injuries cannot, therefore, arise out of the course of employment. Harper v. Daun Ray Casuals, Inc., 596 S.W.2d 822, 823 (Tenn. 1980).

Exceptions to the general rule are when: 1) the journey itself is a substantial part of the services for which the employee was employed and compensated; or 2) the travel subjected the employee to risks and hazards incidental or peculiar to the employment. Hudson v. Thurston Motor Lines, Inc., 583 S.W.2d 597, 599 (Tenn. 1979); Smith v. Royal Globe Ins. Co., 551 S.W.2d

679, 681 (Tenn. 1977). Injuries occurring while an employee is furthering or facilitating his employer's business are said to be incurred in the course of the employment even if the journey also serves the purposes of the employee. Herron v. Fletcher, 503 S.W.2d 84, 87 (Tenn. 1973).

Following these principles, if an employee is on the way to and from the work station, recovery of workers' compensation benefits have generally been "restricted to those instances in which the employee is proceeding by a means furnished by the employer, or in a manner or over a route required by the employer, and this subjects the employee to a definite risk or hazard." Pacific Employers Ins. Co. v. Booker, 553 S.W.2d 586, 587 (Tenn. 1977).

The trial court found that Woosley:

> was on a mission in the furtherance of his employment. Although plaintiff was driving his personal vehicle on the day of the accident, he was doing so at the insistence and direction of his supervisor, and for the benefit of his employer, to wit, to be able to work a full shift was of utmost importance to the defendant.

The court further found that Woosley was acting at the direction and under the control of his employer at the time of the accident.

There was sharply conflicting testimony as to: 1) whether Woosley was required to ride with his supervisor, permitting the conclusion that Woosley was traveling in a manner and by a route required by the employer; and 2) whether the gasoline made available to Woosley was in fact purchased on company credit, thereby making the means of transportation furnished by the employer. The trial judge resolved these issues of credibility in favor of the plaintiff. "Where the trial judge has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, on review considerable deference must still be accorded to those circumstances." Jones v. Hartford Acc. & Indem. Co., 811 S.W.2d 516, 521 (Tenn. 1991).

This panel cannot find that the evidence preponderates against the trial

court's conclusion. The employer derived a benefit from having the employee transported by the foreman. Prior to the date of this incident, traveling together ensured that the foreman and employee arrived at the job site at the same time so that instructions could be given promptly and work could begin. On the date of the injury, Woosley needed to receive Matlock's instructions so that Matlock could leave and Woosley could continue working at the job site.

Lane testified that foremen are provided with a means of transportation because "that way I make sure they are at the job." The employer's desire to make sure that Woosley was on the job was apparent from the directions given to him concerning the transfer of gasoline. He was not simply given the container and permitted to drive to Brownsville, stopping when he felt it was necessary to use the gasoline. He was directed to follow the foreman. The foreman chose the time and place for the transfer and use of the gasoline. Stopping along the highway to transfer that gasoline subjected the employee to a risk or hazard that was realized when a third vehicle struck Woosley's vehicle.

> When an employee . . . 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.

Larson, Worker's Compensation Law Sec. 16.11 (1985).

The judgment is affirmed. Costs on appeal are taxed to the defendant-appellant.

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Janice M. Holder, Judge

CONCUR:

_____
Lyle Reid, Associate Justice

_____
Joe C. Loser, Jr., Special Judge

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AT JACKSON

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	)	NO. R.D. 46820
Plaintiff/Appellee,	)	
	)	Hon. Joe C. Morris
V.	)	Chancellor
	)	
TOWNSEND ELECTRIC COMPANY, 00040	)	S. Ct. No. 02-S-01-9505-CH-
	)	
Defendant/Appellant.	)	Affirmed

JUDGMENT ORDER

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Cost will be paid by Defendant-Appellant, for which execution may issue if necessary.

It is so ordered this _____ day of _____, 1996.

PER CURIAM

Reid, J., not participating