IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

(October 22, 1996 Session)

DOUGLAS WAYMON TAYLOR, Plaintiff/Appellant, VS. BGL MINING COMPANY, INC. and AMERICAN MINING INSURANCE COMPANY, Defendants/Appellees.	)	MARION CHANCERY Hon. Jeffrey F. Stewart, Chancellor No. 01S01-9604-CH-00066

For the Appellant:

Thomas L. Wyatt
SUMMERS, McCREA & WYATT
Chattanooga, Tennessee

For the Appellees:

Donald E. Warner
Sean A. Hunt
LEITNER, MOFFITT, WILLIAMS, DOOLEY & NAPOLITAN
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Associate Justice, Supreme Court
Robert S. Brandt, Senior Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

Brandt, Judge

MEMORANDUM OPINION

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 of findings of fact and conclusions of law.

The fundamental issue in this case is whether an injury on the way from work occurring on a road neither owned nor maintained by the employer, but which is the only available route from the work place, was an injury "arising out of and in the course of employment." Tenn. Code Ann. § 50-6-102(a)(4). We conclude that it is not and affirm the trial court's summary judgment for the employer.

Tennessee Consolidated Coal Company (TCC) uses independent contractors to mine coal on its 35,000 Cumberland Plateau acres by leasing individual mines to individual operators. The plaintiff's employer, BGL Mining Company, leased mine 34, and mined TCC's coal for which TCC paid BGL a per-ton fee.

TCC hauled the coal away from mine 34 and other mines on a haul road TCC built and maintained along the Marion-Sequatchie county line. The haul road was the only way to get to and from mine 34. The private road leads from a county road a short distance from the county road's intersection with Tennessee Highway 108. TCC's haul roads are strictly private roads, and TCC limits access to them.

Victoria Arlene Anderson did not have permission to use TCC's haul road on the afternoon of March 11, 1992, but she drove her Dodge pick-up on it anyway and collided head-on with the plaintiff's car as he was driving from his work at mine 34. The severely injured plaintiff was air-lifted to Chattanooga's Erlanger Medical Center.

There is some confusion about it in the record, but it seems that the collision occurred 5.3 miles from mine 34 and 1.8 miles from where TCC's haul road splits from the county road near Highway 108.

The plaintiff contends that he is entitled to workers compensation because the haul road was the sole means of ingress and egress to mine 34. He also asserts that confusion over the language in the TCC-BGL lease creates a genuine issue of material fact over whether BGL Mining, his employer, was responsible for maintaining the haul road, thus making it BGL's premises.

After searching for decades for a test for deciding whether an en route injury should be excluded from the rule that such injuries are not compensable, the Tennessee Supreme Court in *Lollar v. Wal-Mart Stores, Inc.*, 767 S.W.2d 143 (Tenn. 1989) adopted the premises test. "A worker who is on the employer's premises coming to or going from the actual work place is acting in the course of employment," the Court held. *Id*. at 150. Otherwise, the en route injury is not compensable.

The plaintiff in this case was not injured on his employer's premises. TCC owned and maintained the haul road where the plaintiff was injured. TCC president Ronald Edwin Calhoun testified to that in his deposition, and so did Buddy Gene Layne, owner of BGL Mining, in his deposition.

The plaintiff argues that confusing language in the lease about road maintenance creates a genuine issue of material fact over whether BGL Mining was responsible for maintaining the haul road. The lease is confusing, to be sure, but it does not create a genuine issue of material fact. No court could possibly find that tiny BGL Mining was responsible for maintaining miles and miles of TCC's haul roads leading to several mines in addition to mine 34.

The plaintiff asks that the premises rule be stretched to include off-premises areas through which workers must travel to get to work. But there is no rational basis for that extension. That would mean in this case, for instance, that if the plaintiff were injured on the TCC haul road, or the county road, or Highway 108,

he would have been acting in the course of his employment. Travel over each of these roads is required to get to mine 34.

Because the undisputed material facts show that the plaintiff was injured while going from work and he was off his employer's premises, his injury was not in the course of his employment. The trial court's judgment is affirmed at plaintiff's costs.

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Robert S. Brandt, Judge

CONCUR:

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Frank F. Drowota, III, Associate Justice

_____
Joe C. Loser, Jr., Judge

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

DOUGLAS WAYMON TAYLOR Plaintiff/Appellant, V. BGL MINING COMPANY, INC. and AMERICAN MINING INSURANCE COMPANY Defendants/Appellees.	)	Marion Chancery No. 5586 Hon. Jeffrey F. Stewart S. Ct. No. 01-S-01-9604-CH-00066 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 plaintiff/appellant, and surety, for which execution may issue if necessary.

It is so ordered this 21st day of February, 1997.

PER CURIAM

Drowota, J., not participating