

**IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE**

WILLIAM ALLEN FRAZIER,)	
)	
Plaintiff/Appellant)	SULLIVAN LAW COURT
)	
v.)	NO. 03S01-9706-CV-00064
)	
LANDAIR SERVICES, INC.,)	HON. JOHN McCLELLAN, III,
d/b/a LANDAIR TRANSPORT, INC.,)	JUDGE
)	
Defendant/Appellee)	

FILED
February 13, 1998
Cecil Crow son, Jr. Appellate Court Clerk

For the Appellant:

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P.O. Box 1215
Johnson City, TN 37605

For the Appellee:

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207 Mockingbird Lane
P.O. Box 3038
Johnson City, TN 37602

MEMORANDUM OPINION

Members of Panel:

Chief Justice E. Riley Anderson
Senior Judge John K. Byers
Special Judge Roger E. Thayer

AFFIRMED

BYERS, Senior Judge

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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 to the Supreme Court of findings of fact and conclusions of law.

The plaintiff alleged in his petition that he was injured while unloading a trailer while in the employment of the defendant.¹ The defendant filed a Motion for Summary Judgment supported by affidavits, and the plaintiff answered the motion by filing affidavits also. The trial judge granted summary judgment to the defendant and dismissed the plaintiff's petition.

We affirm the judgment.

The issue raised in this case is whether the plaintiff was an employee of the defendant and thus entitled to recover workers' compensation benefits for his injury. The structure of the relationship between the plaintiff and the defendant was derived from the employment of the plaintiff as a driver with a company known as Central Trucking, Inc.

Landair Transport, Inc. entered into a contract with Central Trucking whereby Central Trucking would tow the defendant's trailers on shipments to the defendant's customers. The contract provided that the employees of Central Trucking would not be employees of the defendant.

The plaintiff contended in his petition and affidavit that he was injured while unloading a trailer for the defendant and that all unloading fees were negotiated between him and a terminal manager of the defendant. The plaintiff claims this created an employer-employee relationship between him and the defendant. One of the owners of Central Trucking filed an affidavit in support of the plaintiff's claim that the amount to be paid for unloading was negotiated between the plaintiff and the defendant.

The trial judge considered the affidavits, the contract between the defendant and Central Trucking, and various documents filed in support of and in opposition to the Motion for Summary Judgment. After reviewing the documents and hearing

¹ It appears the actual defendant relevant to this case is Landair Transport, Inc.

arguments of counsel, the trial court granted the defendant's Motion for Summary Judgment and said:

. . . the Court finds and is of the opinion that there is no genuine issue as to whether or not Plaintiff was employed by Defendant

The trial court further found that the plaintiff could not, pursuant to Tenn. Code. Ann. § 50-6-106(1)(A), be an employee of the defendant. As a separate ground for dismissing the action, the trial court found the plaintiff was an employee only of Central Trucking.

The pertinent portion of Tenn. Code. Ann. § 50-6-106(1)(A) as it applies to this case is as follows:

. . . that no common carrier by motor vehicle operating pursuant to a certificate of public convenience and necessity shall be deemed the "employer" of a leased-operator or owner-operator of a motor vehicle or vehicles under a contract to such a common carrier.

The plaintiff by reason of this statute could not be an employee of the defendant because he was a driver for Central Trucking. The question then becomes whether the plaintiff was an employee of the defendant when he unloaded the trailers at the delivery point.

The agreement between the defendant and Central Trucking specifically provided for compensation to be paid by the defendant to Central Trucking. Among these provisions, listed under secondary compensation from the defendant to Central Trucking is the following term:

LOADING/UNLOADING- 100% of amount collected from customer for loading if properly documented.

The record in this case shows this was done. The plaintiff and Central Trucking, by affidavit of the owner, contend that Central Trucking only handled the payment to the plaintiff for unloading for convenience and that Central Trucking had nothing to do with the amount paid, etc.

It is clear that the plaintiff's claim and the affidavit from the owner of Central Trucking do not create a factual issue sufficient to raise a genuine issue of fact on the employment status of the plaintiff vis-a-vis the defendant. Therefore, the trial court properly granted the defendant's Motion for Summary Judgment.

The plaintiff contends summary judgment is not appropriate in workers' compensation cases. He relies upon *Byrd v. Hall*, 847 S.W.2d 208 (Tenn. 1993), wherein the Supreme Court noted that a dim view of the use of summary judgment

was taken by the trial court in workers' compensation cases. He also relies on *Berry v. Consolidated Sys., Inc.*, 804 S.W.2d 445 (Tenn. 1991), where the Court said summary judgment was almost never an option in contested workers' compensation actions.

However, the Supreme Court in the case of *Long v. Stateline Sys., Inc.*, 738 S.W.2d 622 (Tenn. 1985), approved the use of summary judgment in a case involving the application of Tenn. Code. Ann. § 50-6-106(1)(A) to a person situated as are the parties involved in this case. Subsequent, unreported cases by the Special Workers' Compensation Panel have held summary judgment is appropriate when the record shows there is no genuine factual dispute or issue between the parties so that the court can determine the issue of law upon the record of the case. *Uselton v. Conwood Co.*, No. 02S01-9607-CV-00070, 1997 WL 76807 (Tenn. Feb. 25, 1997); *Bailor v. American Bread Co.*, No. 01S01-9406-CH-00063, 1995 WL 120491 (Tenn. Mar. 21, 1995).

John K. Byers, Senior Judge

CONCUR:

E. Riley Anderson, Chief Justice

Roger E. Thayer, Special Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

WILLIAM ALLEN FRAZIER,)	SULLIVAN LAW COURT
)	No. C10030
Plaintiff/Appellant)	
)	
vs.)	Hon. John McClellan, III
)	Judge
)	
LANDAIR SERVICES, INC.,)	
d/b/a LANDAIR TRANSPORT, INC.)	NO. 03S01-9706-CV-0064
)	
Defendant/Appellees.)	

FILED
February 13, 1998
Cecil Crowson, Jr.
Appellate Court Clerk

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation 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 Memorandum Opinion of the Panel should be accepted and approved; 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.

Costs on appeal are taxed to William Allen Frazier and Howard Dunbar, surety, which execution may issue if necessary.

02/13/98

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.

Costs will be paid by the plaintiff-appellant and sureties, for which execution may issue if necessary.

IT IS SO ORDERED this ____ day of June, 1997.

PER CURIAM

Anderson, J. - Not Participating

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.

Costs will be paid by the plaintiff-appellant and sureties, for which execution may issue if necessary.

IT IS SO ORDERED this ____ day of June, 1997.

PER CURIAM

Anderson, J. - Not Participating

al to the Special Worker' Compensation 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 Memorandum Opinion of the Panel should be accepted and approved; and

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

Costs on appeal are taxed to the plaintiff-appellant, Vernon Harris and Gilbert and Faulkner. surety, for which execution may issue if necessary.

06/03/97