

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

FILED October 7, 1999 Cecil Crowson, Jr. Appellate Court Clerk

TONY MORRIS,)	
)	HAMILTON CHANCERY
Plaintiff/Appellant)	
)	
v.)	NO. 03S01-9808-CH-00097
)	
MALONE FREIGHT LINE, INC.,)	
)	HON. R. VANN OWENS,
Defendant/Appellee)	CHANCELLOR

For the Appellant:

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For the Appellee:

Phillip A. Fleissner
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800 Vine Street
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MEMORANDUM OPINION

Members of Panel:

Justice Frank F. Drowota, III
Senior Judge John K. Byers
Special Judge Roger E. Thayer

AFFIRMED

BYERS, Senior Judge

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 filed an action under the Workers' Compensation Act to recover for injuries he allegedly suffered while employed by the defendant.

The defendant filed a Motion for Summary Judgment averring and showing by proper pleadings that it was a common carrier operating under a certificate of convenience and that the plaintiff was a leased-operator or owner-operator.

The trial judge found the plaintiff was a leased-operator or owner-operator and that the defendant was operating under a certificate of convenience.

Tenn. Code Ann. § 50-6-106, in those parts applicable to this case, provides: "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."

Based upon this record, we find the evidence does not preponderate against the judgment of the trial judge. Costs of this appeal are taxed to the plaintiff.

John K. Byers, Senior Judge

CONCUR:

Frank F. Drowota, III, Justice

Roger E. Thayer, Special Judge

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TONY MORRIS,)	Hamilton Chancery
)	No. 97-0269
Plaintiff-Appellant,)	
)	
v.)	Hon. R. Vann Owens, Judge
)	
MALONE FREIGHT LINE, INC.,)	NO. 03S01-9808-CH-00097
)	
Defendant-Appellee,)	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.

Costs are taxed to the plaintiff-appellant and his surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

Drowota, J., Not Participating