

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

JOSE A. RIVERA,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D05-1597

MIAMI-DADE COUNTY
SCHOOL BOARD AND
GALLAGHER BASSETT
INSURANCE COMPANY,

Appellees.

Opinion filed November 21, 2005.

An appeal from an order of the Judge of Compensation Claims.
Honorable Kathryn S. Pecko, Judge.

R. Cory Schnepfer, Esquire, Levine, Busch, Schnepfer & Stein, P. A., Miami , for
Appellant.

Isabel S. Martinez, Esquire and Xiomara I. Garcia, Esquire, Villaverde & Martinez,
PLLC, South Miami, for Appellees.

PER CURIAM.

Appellant appeals the Judge of Compensation Claims' ("JCC") denial of his
motion requesting employer/carrier's payment of his attorney's fees, pursuant to
sections 440.34(3)(a) and (b), Florida Statutes (1993). We affirm the JCC's denial of

appellant's petition for attorney's fees under section 440.34(3)(a) without further comment.

However, because the JCC failed to rule on whether claimant is entitled to attorney's fees under section 440.34(3)(b),¹ we reverse. We have ruled that:

In cases in which the JCC fails to enter a ruling on a fully tried issue that is ripe for adjudication and does not reserve jurisdiction on the issue, this court will consider the absence of a ruling to constitute a denial of the claim only for jurisdictional purposes, and the order will, therefore, be deemed final and appealable. As to the merits in such cases, this court will continue to consider the JCC's failure to rule reversible error based on the JCC's noncompliance with the duty to adjudicate all issues that are ripe for adjudication.

Betancourt v. Sears Roebuck & Co., 693 So. 2d 680, 682 (Fla. 1st DCA 1997) (en banc); see also City of West Palm Beach Fire Dep't v. Norman, 711 So. 2d 628, 630 (Fla. 1st DCA 1998). We remand to the JCC for a determination of appellant's entitlement to attorney's fees under section 440.34(3)(b), Florida Statutes (1993).

AFFIRMED in part; REVERSED in part and REMANDED with directions.

ALLEN, VAN NORTWICK AND POLSTON, JJ., CONCUR.

¹Section 440.34(3)(b) allows a claimant to recover attorney's fees from the employer/carrier "[i]n any case in which the employer or carrier fails or refuses to pay a claim filed with the division which meets the requirements of s. 440.19(1)(e) on or before the 21st day after receiving notice of the claim, and the injured person has employed an attorney in the successful prosecution of his claim."