

RENDERED: FEBRUARY 26, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000331-MR

DANNY EVANS

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 08-CI-00314

PIKE COUNTY BOARD
OF EDUCATION

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * ** * ** *

BEFORE: COMBS, CHIEF JUDGE; DIXON, JUDGE; BUCKINGHAM,¹
SENIOR JUDGE.

BUCKINGHAM, SENIOR JUDGE: Danny Evans appeals from an order of the
Pike Circuit Court dismissing his petition to enforce a workers' compensation

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

award. He contends that the court was required to enforce the award according to its terms without giving his ex-employer, Pike County Board of Education (Pike County), credit for payments it had made to him for sick days. We agree and thus reverse and remand.

While employed by Pike County, Evans sustained a work-related injury on January 23, 2005, but he continued working through May 27, 2005. From June 6, 2005, through January 14, 2007, he received temporary total disability benefits from Pike County that were paid at a rate of two-thirds of his average weekly wage. He also received payment from Pike County for accumulated sick days from July 4, 2005, through March 10, 2006, at full salary. After a hearing before an administrative law judge (ALJ), Evans was awarded permanent total disability benefits commencing May 28, 2005, to run until his social security retirement age.

Pike County ceased making payments pursuant to the award, claiming that it was entitled to a credit against the award for its payments to Evans for sick days during a time he was receiving benefits. Evans filed a petition in the Pike Circuit Court to enforce the award pursuant to KRS 342.305 without giving the credit. He claimed that the court was required to enforce the award according to its terms. The court dismissed the petition on the pleadings, and this appeal followed.

The ALJ's award stated in relevant part as follows:

The Plaintiff, Danny Evans, shall recover of the defendant-employer, Pike County Board of Education, and/or its insurance carrier, the sum of \$253.87 per week for total disability benefits from May 28, 2005 and continuing thereafter for so long as he is disabled, together with interest at the rate of 12% per annum on all due and unpaid installments of such compensation. The defendant-employer shall take credit for any payment of such compensation heretofore made, including those payments of temporary total disability benefits already made. (Emphasis added.)

No specific mention of credit for sick day payments was made in the award.

Pike County contends, however, that “[a]ccording to the terms of the Award of ALJ Kerr, the Appellees were entitled to take credit for sick pay benefits which overlapped the receipt of TTD benefits.” Without citing to the record, it asserts that “there can be no question that this issue was litigated in the underlying workers’ compensation proceeding.” Further, Pike County states that the ALJ intended to allow such credit as evidenced by the language used in the order.

KRS 342.305 provides in part that an order or decision of an ALJ may be enforced by any party in interest by filing a certified copy of the order or decision in the circuit court of the county where the injury occurred. The statute further states that “[t]he court shall render judgment in accordance therewith and notify the parties.” *Id.*

KRS 342.730 states in part:

(6) All income benefits otherwise payable pursuant to this chapter shall be offset by payments made under an exclusively employer-funded disability or sickness and

accident plan which extends income benefits for the same disability covered by this chapter, except where the employer-funded plan contains an internal offset provision for workers' compensation benefits which is inconsistent with this provision.

In *Stearns Coal & Lumber Co. v. Duncan*, 271 Ky. 800, 113 S.W.2d

436 (1938), Kentucky's highest court stated:

The sole purpose of [the statute] is to enforce the agreement approved by the board, or the order, decision, or award of the board, if unappealed from, or affirmed on appeal. Where, as here, that is the situation, all that the circuit court can do is to enforce the agreement, decision, or award, no matter how erroneous it may be.

Id. at 437 (citation omitted). Further, the court stated in *Travelers Ins. Co. v. Cole*, 336 S.W.2d 583 (Ky. 1960), as follows: "The court's authority is limited to enforcement of the award which may not be extended or modified in any manner. Even if erroneous, the circuit court has no option except to enforce the award as made." *Id.* at 584 (citation omitted).

Pike County asserts that the language in the ALJ's order is subject to interpretation. We agree. "[T]he legal significance of language in an administrative order is always subject to interpretation by a reviewing court, which must enforce such orders according to existing law." *W.T. Sistrunk & Co. v. Kells*, 706 S.W.2d 417, 418 (Ky. App. 1986).

The award in this case relates only to workers' compensation benefits. *See* KRS 342.730. It is clear from the language in the award that "such compensation" refers to workers' compensation benefits previously described in

the award and not general compensation such as accumulated sick day payments. In fact, there is no mention of sick day payments in the award, much less reference to Pike County receiving a credit for those payments.

We do not address whether Pike County should have received credit in the award for its sick day payments. We hold only that the award made no mention of such a credit. We are bound to enforce the award by its terms, “no matter how erroneous it may be.”² *Stearns*, 113 S.W.2d at 437.

We therefore reverse the dismissal of the petition to enforce the award and remand the case to the circuit court with directions that the court enter an order enforcing the ALJ award in accordance with this court’s interpretation of it herein.

ALL CONCUR.

BRIEF FOR APPELLANT:

Thomas W. Moak
Prestonsburg, Kentucky

BRIEF FOR APPELLEE:

Todd P. Kennedy
Pikeville, Kentucky

² Evans states in his brief that “the Defendant/Employer ‘dropped the ball’ when attempting to establish any alleged credit or offset for sick pay.” The issue of credit for any sick day payments was not listed as a contested issue before the ALJ.