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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

OYT JACKSON, *Petitioner Employee,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

FIRST TRANSIT, *Respondent Employer,*

NEW HAMPSHIRE INSURANCE COMPANY, *Respondent Carrier.*

No. 1 CA-IC 20-0013

FILED 5-6-2021

Special Action - Industrial Commission

ICA Claim No. 20190-250430

Carrier Claim No. 002456-586301-WC-01

The Honorable Colleen Marmor, Administrative Law Judge

AWARD SET ASIDE

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MEMORANDUM DECISION

Judge D. Steven Williams delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge David D. Weinzweig joined.

WILLIAMS, Judge:

¶1 Does a worker who gets injured at work during a fistfight with a potential customer have a compensable injury even though the worker is a willing participant in the fight and forgoes opportunities to walk away? This special action review of an Industrial Commission of Arizona (“ICA”) award denying compensability requires us to answer that question. Because we hold that the injury was accidental, the conflict arose out of the employment, the injury was not self-inflicted, and the worker did not abandon the course of his employment during the altercation, we set aside the award denying compensability.

FACTUAL AND PROCEDURAL HISTORY

¶2 In January 2019, Petitioner Oyt Jackson, a man in his sixties, was driving a public bus for Respondent First Transit when he got into a fistfight at a bus stop with Kevin Morgan. The undisputed relevant facts largely come from a video the parties entered into evidence that shows the entire encounter from nine different angles, captured by the bus’s video system. The audio is of poor quality, and because the interaction took place outside the bus, few words can be understood. The video shows the following events.

¶3 Shortly after noon, Jackson pulled an empty bus up to the bus stop at the Escalante Community Center in Tempe. Morgan sat at the bus stop with a backpack. Jackson parked the bus but did not open the door. Morgan stood up, walked to the front of the bus, and waited by the door. The doors remained closed while Jackson attended to work related tasks, including paperwork. Morgan sat back down and watched Jackson through the bus windows. Morgan yelled something and Jackson responded by

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swearing at Morgan from inside the bus. Jackson later testified that Morgan wanted him to leave right away because Morgan had missed the previous bus. Morgan admitted to police that he was angry because it looked like Jackson was taking a break and that he told Jackson he was going to call Jackson's supervisor. Jackson got off the bus and the two men proceeded to yell and swear at each other for about twenty seconds. During that time, Jackson moved back toward the bus door and shouted for "security" to come over. He later testified that he was calling to some nearby construction workers to get the attention of a security guard stationed at the Escalante Community Center.

¶4 Morgan again yelled at Jackson and started to walk away. Jackson walked a few steps toward him, and Morgan stopped and faced Jackson. Morgan was aggressive in his body movements while the two yelled at each other. Morgan then made a motion as if he was going to punch Jackson, but stopped, and then continued to walk away. Jackson remained close to Morgan. Morgan hit Jackson with his elbow, pushing him away. Jackson later testified that Morgan also spat on him. Morgan continued walking away and Jackson pursued him closely for a few steps. The two men then stood face-to-face in a fighting stance on the sidewalk near the back of the bus. Morgan dropped his backpack. Jackson kicked the backpack, kicked Morgan in the leg, and swung his fist at Morgan's head, missing. Morgan swung his fist at Jackson, but Jackson blocked the blow. Jackson backed up a few steps and Morgan pursued him. Morgan then turned, picked up his backpack and started to walk away. Jackson followed him and took another swing at Morgan but missed. Morgan then dropped his backpack, turned, and with one punch to the head, knocked out Jackson. Morgan then punched Jackson in the head eight more times while Jackson laid on the sidewalk, unconscious. As construction workers ran down the sidewalk to help Jackson, Morgan left the scene.

¶5 The entire encounter lasted about two and a half minutes. Thirty seconds elapsed from the time Jackson was spat on to when Morgan knocked him out. Jackson was knocked unconscious about ten yards behind the bus. Police investigated and later arrested Morgan, charging him with aggravated assault.

¶6 Jackson filed a workers' compensation claim for injuries he suffered as a result of the assault. His claim was denied. The ICA held an administrative hearing at which Jackson and a representative from Respondent First Transit testified. Jackson testified consistently with the video described above, clarifying parts of the verbal altercation and explaining his perspective. He testified that he does not have a good

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memory of the details of the incident. He further noted that the events happened quickly, that he acted in the “spirit of the moment,” and that he pursued Morgan out of anger. The First Transit representative testified about company policy and how drivers are trained to handle conflicts. She testified that fighting is prohibited and that drivers are trained to de-escalate conflict. She also testified that drivers should retreat to the safety of the bus when confronted outside the bus.

¶7 The relevant facts are undisputed, and the only question presented for determination was whether the injury is compensable as a work-related injury. The administrative law judge (“ALJ”) who heard the testimony found that Jackson was injured “while on the job and within his normal working hours” and framed the question as “whether [Jackson] deviated from his employment.” She then stated the following:

Instead of taking advantage of retreating to the safety of the bus after he felt threatened by Morgan, [Jackson] walked toward Morgan, [and] kicked his backpack and leg. It did not end there as [Jackson] continued in the direction of Morgan even though Morgan tried to retreat. . . . [Jackson] *attempted to pursue* Morgan before Morgan threw the punch knocking [Jackson] unconscious.

The ALJ concluded that:

[W]hen [Jackson] intentionally continued his involvement in the altercation with Morgan after he was spit upon, he was not engaged in an activity related to his employment. Therefore, the serious injury [Jackson] sustained when Morgan threw a knock-out punch was not accidental, but self-inflicted and therefore not compensable under the statute.

Based on these two conclusions – (1) that the injury was not incurred when Jackson was engaged in employment activity, and (2) that the injury was not accidental but rather self-inflicted – she denied compensability. The ALJ affirmed the decision on administrative review, and Jackson now seeks review by this court.

DISCUSSION

¶8 In reviewing a workers’ compensation award, we defer to the ALJ’s factual findings, *Young v. Industrial Commission*, 204 Ariz. 267, 270, ¶ 14 (App. 2003), but we review de novo questions of law, such as whether

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an injury was accidental or arose out of employment, *Ibarra v. Industrial Commission*, 245 Ariz. 171, 174, ¶ 12 (App. 2018). In this case, the material facts are undisputed. We therefore apply the law to the undisputed facts before us without deferring to the ALJ.

¶9 When interpreting the Workers' Compensation Act ("Act"), we must keep in mind its purpose, which is "to spread the risk of injury inherent in a job" over all employers. *Whittington v. Indus. Comm'n*, 105 Ariz. 567, 569 (1970). Because it is remedial, the statute is given a liberal construction to achieve the purpose underlying it. *Special Fund Div. v. Indus. Comm'n*, 191 Ariz. 149, 152, ¶ 9 (1998). We will not construe the Act to cover injuries unless those injuries meet every statutory requirement.

¶10 Under the Arizona Constitution, workers' compensation law is a no-fault system of benefits for employees injured by work-related causes. *Grammatico v. Indus. Comm'n*, 211 Ariz. 67, 71, ¶ 17 (2005). "The underlying principle of the compensation system is a trade of tort rights for an expeditious, no-fault method by which an employee can receive compensation for accidental injuries sustained in work-related accidents." *Stoecker v. Brush Wellman, Inc.*, 194 Ariz. 448, 451, ¶ 11 (1999). Therefore, we do not apply common law tort principles of fault in workers' compensation law. *Colvert v. Indus. Comm'n*, 21 Ariz. App. 409, 411 (1974) ("The concept of fault and other common law doctrine based on fault have been eliminated in the employment setting.").

¶11 A compensable claim results when a worker is injured by accident, arising out of and in the course of employment. A.R.S. § 23-1021. The only exception is an injury that is "purposely self-inflicted." *Id.* A compensable injury may arise out of a physical fight if the dispute that causes the fight is work-related. *Colvert*, 21 Ariz. App. at 411 (finding workers' injuries compensable because they were "received as a result of a work related disagreement"). If a fight that results in injury is work-related, whether the claimant was the aggressor is immaterial. *Id.* Respondents do not dispute that Jackson was injured. They dispute every other element of compensability. Because the ALJ found that Jackson's injury was "self-inflicted," we address that issue first.

I. Jackson's Injury Was Accidental and Not Purposely Self-Inflicted

¶12 In concluding Jackson's injury was "not accidental, but self-inflicted," the ALJ apparently found that Jackson brought a foreseeable injury on himself by fighting Morgan. For decades, Arizona workers' compensation law has provided that an injury is caused "by accident" if

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either the external cause or the resulting injury is unexpected or accidental. *Paulley v. Indus. Comm'n*, 91 Ariz. 266, 272 (1962). In *Glodo v. Industrial Commission*, 191 Ariz. 259, 264 (App. 1997), this court rejected the argument that an injury obtained as a result of a fistfight is expected and, therefore, cannot be accidental. There, this court contrasted throwing a punch at a metal door, which has an expected injurious outcome, with throwing a punch at a co-worker, which does not:

When a punch is directed at a fellow worker, the co-worker could evade the blow or run away without any injuries. The claimant might trounce the co-worker and suffer no injuries himself. He could land a punch and break his hand on the co-workers' nose, or the co-worker could trounce the claimant and break the claimant's nose. The outcome is inherently uncertain.

Id. Stated simply, the ALJ's conclusion that Jackson's injury was self-inflicted and not accidental is contrary to Arizona law. *See, e.g., id.; Rural Metro Corp. v. Indus. Comm'n*, 197 Ariz. 133, 135, ¶ 8 (App. 1999) (noting the court's presumption that "a claimant did not intend to injure himself or herself, regardless of how inadvisable, careless, or even reckless the claimant's conduct may have been"). Instead, under Arizona law, the injury was caused by accident. *See Burnett for Burnett v. Indus. Comm'n*, 158 Ariz. 548, 548-49 (App. 1988) (holding injury was compensable even though employee was injured, and later died, from fighting customer).

II. Jackson's Injury Arose Out of and In the Course of His Employment

¶13 An injury "arising out of" one's employment refers to the origin or cause of the injury, while "in the course of" concerns the time, place, and circumstances of the injury. *Peter Kiewit Sons' Co. v. Indus. Comm'n*, 88 Ariz. 164, 168 (1960). Although these tests are interrelated, each must be evaluated and satisfied separately. *Circle K Store No. 1131 v. Indus. Comm'n*, 165 Ariz. 91, 94 (1990). Despite being required to evaluate both, our supreme court has held that "an injury arising out of an employment almost necessarily occurs in the course of it." *Peter Kiewit Sons' Co.*, 88 Ariz. at 168 (emphasis added) (quoting *Goodyear Aircraft Corp. v. Gilbert*, 65 Ariz. 379, 383 (1947)).

¶14 A compensable injury may arise out of a physical fight if the dispute that causes the fight is work-related. *Colvert*, 21 Ariz. at 410. In *Colvert*, the petitioner was on a truck bed tossing insulation bales down to a co-worker when one of the bales struck the co-worker on the back. *Id.* The

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co-worker yelled at petitioner, tempers flared, and petitioner kicked the co-worker in the face. *Id.* Petitioner either fell or jumped off the truck and broke his arm. *Id.* There, this court held petitioner's injuries were compensable, concluding: "where injuries are received as a result of a work-related disagreement, the injuries ar[ise] out of and in the course of employment and are thus, by statute, compensable." *Id.* at 411. This court further noted, if a fight that results in injury is work-related, whether the claimant was the aggressor is immaterial. *Id.* ("[T]o base a defense on [whether the claimant was the aggressor] would be to interject a fault concept into the workmen's compensation laws, which concept is completely foreign to the purpose and intent of these laws.").

¶15 The uncontested record here shows that Morgan and Jackson did not know each other before the incident, only encountered one another because Jackson was a bus driver and Morgan needed a bus ride, and only fought because Morgan was upset with how Jackson was doing his job.

¶16 Respondents argue that because Morgan never got on the bus or paid the bus fare, he cannot be considered a customer and, thus, the incident was not work-related. We disagree. Morgan intended to ride Jackson's bus and the only relationship the two men had was based in Jackson's employment. The dispute plainly arose out of Jackson's employment as a bus driver.

¶17 The ALJ concluded that Jackson deviated from his employment and his injuries were "self-inflicted" because he "intentionally continued his involvement in the altercation with Morgan after he was spit upon [and] he was not engaged in an activity related to his employment," emphasizing that Jackson pursued Morgan rather than retreat. But "fault concepts have no bearing on whether or not workers' compensation should be awarded, [and] an employee should not have to explain how an injury occurs, as long as it occurs in connection with her [or his] employment." *See Circle K Store No. 1131*, 165 Ariz. at 96.

¶18 Instead, workers' compensation law focuses on the nature of the encounter and the circumstances in which it occurred. Here, the encounter arose out of Jackson's employment. And again, Jackson and Morgan only interacted as bus driver (service provider) and prospective bus rider (customer). *See Finnegan v. Indus. Comm'n*, 157 Ariz. 108, 110 (1988) (explaining that whether activity is related to employment depends upon the totality of the circumstances).

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¶19 Respondents note that the altercation did not occur on the bus or First Transit's property but happened on a public sidewalk. This argument was rejected by our supreme court in the *Peter Kiewit* case. 88 Ariz. at 169-70. Respondents also argue that Morgan was not a co-worker or customer because he never boarded the bus. But Morgan was a customer. He was waiting for the bus and sitting at a bus stop. Additionally, the relevant consideration is not Morgan's relationship to the bus company, but the dispute's connection to Jackson's work and whether Jackson acted in the course of that employment.

¶20 Respondents argue that Jackson's conduct was not "spontaneous," and that Jackson had the opportunity to consider the propriety of his actions, implying that because he did not take the opportunity, he abandoned his employment. No legal authority is cited for this proposition.

¶21 Respondents also argue that Jackson left his course of employment because his employer prohibited fighting. "The general rule is that action contrary to instructions precludes coverage, unless the prohibition merely relates to the manner of doing work rather than its scope or ambit." *Scheller v. Indus. Comm'n*, 134 Ariz. 418, 421 (App. 1982). But Jackson was trained and expected to manage unruly customers. While his methods were questionable, Jackson remained within the course of his employment. See *Burnett*, 158 Ariz. at 552 (holding that store clerk was acting within the course of employment where store policy required him to restore order caused by unruly customers, and his actions in fighting a customer, although an unauthorized means, furthered the employer's stated goal).

¶22 Both parties cite this court's decision in *Burnett*. In that case, a convenience store clerk was hit in the back of his head with a snowball thrown by a customer who had just entered the store. *Id.* at 549. A physical fight between the two ensued, in which the clerk was killed. *Id.* Under the store's policy, the clerk was required to challenge disorderly customers and to do so by ordering the customer to leave and by telling the customer the police would be called should the customer disobey. *Id.* The clerk did not have authority to fight with customers. *Id.* Nevertheless, this court ruled the clerk remained within the course of employment because his actions were in furtherance of the "ultimate goal sanctioned by his employer, i.e., restoration of order." *Id.* at 552.

¶23 The *Burnett* case supports our ruling that Jackson did not abandon his employment by pursuing and fighting Morgan. We noted

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above that Jackson was trained and expected to manage unruly customers. And an employee's use of unauthorized means in exercising authority does not render the employee outside the course of employment where the employee's conduct is in furtherance of that authority. *See id.*

¶24 For their argument that Jackson abandoned his employment, Respondents rely on our supreme court's decision in *Thomas v. Industrial Commission*, 54 Ariz. 420 (1939), and this court's decision in *Scheller*, 134 Ariz. 418. In *Thomas*, due to concerns about excessive amounts of business travel, an employee was forbidden from traveling for business without express permission from his supervisor. 54 Ariz. at 422. He did so anyway and was killed in an automobile accident. *Id.* at 423. Our supreme court distinguished between "prohibitions which limit the sphere of employment, and prohibitions which deal only with *conduct* within that sphere" noting that "[a] transgression of a prohibition within this latter class leaves the sphere of employment where it was, and of consequence will not prevent recovery, while a transgression of the former class carries with it the result that the employee has gone outside of the sphere." *Id.* at 429 (emphasis added). The court affirmed the award denying compensation, holding that because the employee was injured in a place where he was instructed not to be, he was outside the "sphere of his employment." *Id.* at 430.

¶25 In *Scheller*, claimant, a security guard for an apartment complex, was injured while chasing away criminals who were robbing a business across the street. 134 Ariz. at 419. The security guard had been specifically instructed not to leave his post and further instructed that, in the case of crime against another's property occurring on other premises, he was to observe the situation, attempt to identify the suspects, and notify the police. *Id.* There, we applied the general rule "that action contrary to instructions precludes coverage, unless the prohibition merely relates to the manner of doing work rather than its scope or ambit," and concluded that the prohibition at issue related to the scope of the security guard's work. *Id.* at 421. Thus, the security guard's violation of the prohibition, as demonstrated by his "attempt[] to enlarge the scope of his duties to chasing criminals burglarizing other premises," constituted an abandonment of employment precluding coverage. *Id.*

¶26 The ALJ's decision is not supported by either *Thomas* or *Scheller*. Unlike in *Thomas* and *Scheller*, here, the prohibition on fighting was not a limitation on the scope of Jackson's work but was rather a regulation on the manner in which Jackson was to handle unruly customers. In other words, Jackson's injuries are compensable because he did not commit a

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transgression of a prohibition which limited the sphere of his employment, but rather committed a transgression of a prohibition which regulated *conduct* within his sphere of employment. See *Thomas*, 54 Ariz. at 429.

¶27 Finally, Respondents argue that Jackson's actions had no benefit to First Transit and, therefore, were not in the course of his employment, relying on this court's decision in *Dependable Messenger, Inc. v. Industrial Commission*, 175 Ariz. 516 (App. 1993). In *Dependable Messenger*, a dispute between delivery drivers of separate companies who worked in the same building arose about an unassigned parking space preferred by Jordan, the claimant, who had already been warned about excluding others from parking in that spot:

Jordan arrived at the parking lot at about 10:30 p.m. One of the independent contractors, Steve Dawson, had already parked in Jordan's preferred spot and entered the building. Jordan parked in a nearby spot, checked in for work and began loading Dependable's van outside the building. He then interrupted his work, reentered the building and asked Dawson to move his vehicle. Dawson said that he would move it after he had finished copying his itinerary. Jordan returned to loading his van but, dissatisfied with Dawson's response, he again entered the building and demanded that Dawson immediately move his vehicle. When Dawson continued copying instead, Jordan loudly swore at and threatened him. The two men left the building. Dawson backed his vehicle into an adjoining space and Jordan moved his vehicle into the space that Dawson had vacated. A scuffle between the men ensued, during which Jordan stubbed his toe on a curb and tore a callus.

175 Ariz. at 517. This court held that the injury did not occur in the course of Jordan's employment because he "left his duties to confront Dawson" and did nothing to benefit his employer. *Id.* at 520. That case has no application here for multiple reasons. Here, the incident was work-related and sudden in its inception. Further, Jackson, albeit in an unauthorized manner, benefitted his employer by attempting to manage an unruly, unreasonable, and potentially violent passenger. Our ruling in *Dependable Messenger* does not support the ALJ's decision.

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CONCLUSION

¶28 Having ruled that Jackson's injury was accidental, that the dispute between Jackson and Morgan arose out of Jackson's employment, and that Jackson did not abandon the course of his employment when he fought Morgan, we set aside the ALJ's award denying compensability.



AMY M. WOOD • Clerk of the Court
FILED: AA