SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

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Re: ***David Lowe v. Vincent Farms, Inc.***
C.A. No. 11A-12-001 RFS

Claimant's Appeal of a Decision of the Industrial Accident Board.
Affirmed.

Submitted: February 2, 2012
Decided: February 23, 2012

Dear Counsel:

This is my decision affirming an order of the Industrial Accident Board ("Board") finding that Claimant David Lowe is exempt from workers' compensation benefits because he was a farm laborer, pursuant to 19 *Del.C.* § 2307(b). At issue is whether Claimant was a farm laborer or a mechanic, as he described himself. Based on the record and the briefs, the Board's decision stands.

The parties do not dispute that Employer Vincent Farms, Inc. operates a farm that produces vegetables and grain. Employer hired Claimant to work on the farm in October 2004 because he had farming experience and mechanical ability.

Claimant's duties included planting crops, irrigating crops, harvesting beans, planting seed, operating the field machinery and maintaining the farm equipment, both in the field and in the shop. His mechanical work was related to the farming operation, except for his occasional repair of the owner's personal vehicles. Claimant alleges that as time progressed, he did more mechanical work.

Although Claimant did not work with the migrant workers harvesting crops, he worked with them on farm machinery. He was issued a service truck that he took home. He ordered parts to keep up the equipment inventory. Claimant estimated that he spent 3 percent of his time making hydraulic hoses in Employer's irrigation shop, which was an operation separate from the farm. Employer did not dispute this estimate.

After allegedly injuring himself while trying to drain the irrigation system that waters the crops, Claimant filed a petition to determine compensation due. Claimant appeals the Board's decision granting Employer's motion to dismiss.

On appeal from a decision of the Board, this Court determines whether the Board's decision is supported by substantial evidence and is free from legal error.[1]

Title 19 *Del.C.* § 2307(b) provides: "This chapter [Workers' Compensation] shall

[1]Title 19 *Del.C.* § 3323(a); *Starkey v. Unemployment Ins. Appeal Bd.*, 340 A.2d 165, 166 (Del. Super. 1975), *aff'd* 364 A.2d 651 (Del. 1976).

not apply to farm laborers or to their respective employers unless such an employer carries insurance to insure the payment of compensation to such employees or their dependents." The insurance issue was not litigated below and is not before the Court.

Based on the testimony of both Claimant and Clay Vincent, Employer's treasurer, the Board's finding that Claimant is a farm laborer is supported by substantial evidence. Although Claimant presented himself as a mechanic, he described duties that were farm-related. His mechanical expertise was used to maintain the equipment needed to run the farm. An occasional repair to the owner's personal vehicle and the minimal amount of time spent in the irrigation shop do not change the fact that Claimant was hired to work on the farm and continued to work on the farm.

Claimant's argument incorrectly rewrites the statutory phrase ""farm laborer" to mean "field laborer." The evidence from both parties shows that Claimant was a farm laborer, pursuant to 19 *Del.C.* § 2307(b).

As to legal merit, the Board relied on this Court's finding in *Bohemia Hall, Inc. v. Sturgill*,[2] that the emphasis is on the nature of the claimant's work, not on the nature of the business, when determining whether a person is a farm laborer. The Board correctly applied *Bohemia Hall* to the facts presented and made no legal error in concluding that Claimant was a farm laborer and therefore exempt from receipt of workers' compensation

[2]1988 WL 4755, at *2 (Del. Super.).

benefits.[3]

A topical summary of the agricultural or farm exemption is found in 99 CJS Workers' Compensation § 104:

> Many, but not all, state worker's compensation acts exempt farm or agricultural labor or employment from their operation. . . . The tests applied by the courts in determining whether a particular type of work constitutes agricultural employment so as to be exempt from coverage vary widely among the states, some authority holding that it is the nature of the employer's business which will determine the exemption and not the work performed by the employee, other authority holding that coverage is to be determined by the character of the work performed, and not by the nature and scope of the employer's business. (Citations omitted.)

This passage from CJS cites to three cases in jurisdictions other than our own. In *Bartunek v. Becker*,[4] the employer operated both a farm and an automobile body shop. The Workers' Compensation Act provided that "The act shall not apply to. . . service performed when performed for an employer who is engaged in an agricultural operation. . . ." Neb.Rev. § 48-106. The employee was found not to be a farm laborer because he was injured while working in the body shop was not therefore barred from recovery.

In this case, Employer operated a farm and a separate irrigation shop. There is no dispute that Claimant spent approximately 3 percent of his time making hydraulic hoses in

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[3]Employer relied in part on a 1981 unreported Arkansas case that has no precedential value and cannot be relied on or cited in any proceeding. Ark.Supr.St.R. 5-2.

[4]382 N.W.2d 300, 302 (Neb.1986).

the shop or that Claimant was not working in the shop when he was injured. On a *Bartunek* analysis, Claimant was allegedly injured while working on the irrigation system, a non-covered capacity, when he was injured and would therefore be exempt from receipt of benefits.

In *Keil v. Nelson*,[5] the employee was hired by the employer to drive commercial trucks and to supplement as a farm worker. The governing statute provided that "this title [workers' compensation] does not apply to. . . farm or agricultural laborers." SDCL § 62-3-15. The employee estimated that he spent 75 percent of his time as a commercial driver, 20 percent of his time hauling for the employer's personal uses and 5 percent of his time doing farm work. Although the trucking business was small in comparison to the farm, the court found that the claimant was injured while working in the trucking business and therefore not exempt from workers' compensation.

In this case, Claimant spent a fraction of his time making hydraulic pumps in Employer's irrigation shop, allegedly a separate business. But Claimant was injured while draining the irrigation system on the farm, not making a pump in the shop, which under *Kiel* means that he is exempt from workers' compensation.

In *Buchanan v. Pankey*,[6] the court found that a dairy farm laborer was exempt from receipt of benefits because the nature of his work milking cows was no less farm work

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[5]355 N.W.2d 525 (S.D.1984).

[6]531 So.2d 1225 (Ala.Ct.Civ.App.1988).

than plowing fields on a grain farm. That is, the focus of the determination was on the nature of the employee's work. The relevant statute stated that worker's compensation "shall not be construed or held to apply . . . to an employer of a farm laborer." In the case at bar, Claimant engaged in field work as well as mechanical work that was essential to running the farm. Under *Buchanan*, Claimant's work as a mechanic on a farm would exempt him from receipt of workers' compensation.

Thus, from various points of view, not only Delaware but also other jurisdictions, Claimant was a farm laborer within the meaning of the statute because he performed actual farm work and also worked on farm equipment that was essential to running the farm. Claimant was injured while trying to drain the irrigation system, equipment that is crucial to a successful farming operation.

For all these reasons, Claimant's appeal is **DENIED,** and the Board's decision is **AFFIRMED.**

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary