

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

BETSY ROSS PIZZA,	:	
	:	C.A. No. 00A-07-004
Plaintiff,	:	
	:	
v.	:	
	:	
DENISE SINGLETON,	:	
	:	
Defendant.	:	

Submitted: November 2, 2000
Decided: January 18, 2001

ORDER

Upon Plaintiff's Appeal of Decision of the
Industrial Accident Board. Affirmed.

R. Stokes Nolte, Nolte & Brodoway, P.A., Wilmington, Delaware, Attorneys for the Plaintiff.

Kenneth J. Young, Young & Malmberg, P.A., Dover, Delaware, Attorneys for the Defendant.

WITHAM, J.

Before this Court is the employer's appeal from an Industrial Accident Board award.

1. The Industrial Accident Board ("IAB") conducted a hearing on June 7, 2000, pursuant to Denise Singleton's ("Singleton", "Employee") petition to determine

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compensation due. The Board granted Singleton's petition and increased the compensation rate from \$130.82 to \$266.67 per week based on 19 *Del. C.* § 2324. Betsy Ross Pizza ("Defendant", "Employer") appeals this increase in the compensation rate.

2. Singleton, an employee of Betsy Ross Pizza since 1978, suffered a work related injury on November 1, 1997. She continued to work until her first surgery which occurred on November 18, 1999. The workers' compensation insurance carrier calculated Plaintiff's compensation rate of \$130.82 based on the \$200.00 that Betsy Ross Pizza had officially recorded as Singleton's weekly pay. Since 1997, Singleton had also been paid \$200.00 per week unofficially or "under the table." Plaintiff accepted the initial compensation rate based on the \$200.00 amount while reserving her right to argue the amount of compensation before the IAB. On June 19, 2000, the Board awarded Singleton a weekly compensation rate of \$266.67, based on the stipulation of the parties that Singleton was earning \$400.00 per week.¹ 3.

The limited appellate review of the factual findings of an administrative agency is well settled in Delaware. The function of the reviewing Court is to determine whether the agency's conclusions are supported by substantial evidence and are free from errors of law.² If no questions of law are presented the Court's role is to

¹ At the IAB Hearing, Betsy Ross Pizza submitted a handwritten letter stating that Singleton had been employed for 22 years. The letter further stated that Singleton was paid \$10.00 per hour and worked at least 45 hours per week. The parties agreed to stipulate that Singleton earned \$400.00 per week.

² *General Motors v. Freeman*, Del. Supr., 164 A.2d 686, 689 (1960); *Johnson v. Chrysler*

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determine whether the agency's decision is supported by substantial evidence.³ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁴ The appellate court does not weigh the evidence, determine questions of credibility or make its own factual findings.⁵ It merely determines if the evidence is legally adequate to support the agency's factual findings.⁶ Moreover, the Court must take "due account of the experience and specialized competence" of the IAB and the purposes of the Workers' Compensation

Corp., Del. Supr., 213 A.2d 64, 66-67 (1965).

³ *Freeman* at 689; *Johnson* at 66-67.

⁴ *Oceanport Ind. v. Wilmington Stevedores*, Del. Supr., 636 A.2d 892, 899 (1994); *Battista v. Chrysler Corp.*, Del. Super., 517 A.2d 295, 297 (1986), *app. disp.*, Del. Supr., 515 A.2d 397 (1986).

⁵ *Johnson* at 66.

⁶ 29 *Del. C.* § 10142(d).

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Act.⁷ The Court must also determine whether the Board's decision is free from legal error. The Court's review of alleged errors of law is *de novo*.⁸

4. The issue before this Court is a question of law and can be simply stated as whether or not "under the table" wages count as "wages" under the Workers' Compensation Act. The IAB relied on 19 *Del. C.* § 2324 which states that "the compensation to be paid during the continuance of total disability shall be 66 2/3% of the wages of the injured employee, as defined by this Chapter." The Board then used the parties' \$400.00 per week stipulated amount for calculating the amount of compensation. All that remains for this Court to review is what constitutes "wages." More specifically, this Court must determine whether "wages" encompasses both recorded, taxed income as well as "under the table" compensation. The Workers' Compensation Act in 19 *Del. C.* § 2302(a) states that "the term 'wages' means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident." The parties stipulated that Singleton was earning \$400.00 per forty hour work week at the time of the accident. The difficulty presented

⁷ *State v. Cephas*, Del. Supr., 637 A.2d 20,23 (1994).

⁸ *Brooks v. Johnson*, Del. Supr., 560 A.2d 1001, 1002 (1989).

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in this case lies in determining whether or not the portion of Singleton's weekly income (\$200.00) that was paid "under the table" should constitute part of her wages for workers' compensation purposes. This is a novel issue under Delaware's Workers' Compensation Act.

5. The Workers' Compensation Act has a twofold purpose: "to provide prompt payment of benefits without regard to fault; and to relieve employers and employees of the burden of civil litigation."⁹ With regard to these purposes, the Workers' Compensation Act "should be construed and administered with a reasonable liberality."¹⁰ The Defendant in this case argues that the Board ignored the criminal activity and public policy considerations of the payment scheme used by Betsy Ross Pizza and Singleton.

6. The Defendant claims that by paying Singleton "under the table" the

⁹ *Champlain Cable Corp. v. Employers Mut. Liab. Ins. Co.*, Del. Supr., 479 A.2d 835, 840 (1984); *Kofron v. Amoco Chemicals Corp.*, Del. Supr., 441 A.2d 226, 231 (1982).

¹⁰ *Children's Bureau v. Nissen*, Del. Super., 29 A.2d 603, 609 (1942); *cited with approval, State v. Calhoun*. Del. Supr., 634 A.2d 335, 337 (1993).

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employer was able to avoid higher premiums and withholding taxes. In addition, Singleton was also able to avoid paying taxes on half of her income. While these are legitimate concerns of the Court, they are not addressed by Delaware's Workers' Compensation Act. The basic purpose of workers' compensation is the efficient compensation of injured workers, not the enforcement of tax regulations and insurance law. Three parties are involved in a workers' compensation action: the employee, the employer and the insurance carrier. Defendant points out that only two of the parties were involved in the criminal activity in this case, the employer and employee; however, the consequences of the illegal activity are being paid for by the insurance carrier. Betsy Ross Pizza is getting more insurance than it paid for because presumably its premium was based on a deflated number of work hours and wages. While this is an unfortunate result, other measures exist under Delaware law such as 18 *Del. C.* § 2401, *et. seq.*, to deal with insurance fraud. Similarly, the Federal and State government can deal with the tax ramifications within their respective tax codes. By this ruling the Court is in no way condoning the actions of Betsy Ross Pizza and Singleton. Instead, the Court is ruling that the workers' compensation statute is not the proper place to resolve this criminal activity. Until the Legislature incorporates the idea of using the workers' compensation statutes to deal with criminal activity into the Workers' Compensation Act, the Court may not do so.

7. The Court finds further support in 19 *Del. C.* § 2315 which deals with workers' compensation for illegally employed minors.¹¹ According to § 2315, the

¹¹ "The right to receive compensation under this chapter shall not be affected by the

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illegality of the minor's employment does not bar the minor from receiving the benefits of workers' compensation. In this one scenario, the Legislature chose to explicitly state that illegality does not bar application of Workers' Compensation. In the immediate case, Defendant claims that the Board ignored public policy considerations; however, the Workers' Compensation Act does not explicitly state public policy concerns that address the criminal activity that occurred here. The above section of the Workers' Compensation Act dealing with illegally employed minors involves a number of public policy considerations, including child labor laws.

While not all of the same public policy considerations that exist in § 2315 are present in the current case, it is nonetheless indicative of the idea that the enforcement of statutes involving tax considerations and insurance fraud are beyond the general purposes behind the Workers' Compensation Act. The General Assembly addressed illegal activity with regard to employment of minors and declared that the right to compensation would not be affected. Applying this rationale to the case *sub judice*, the Court finds that workers' compensation has two primary purposes which do not include the enforcement of other statutes such as those implicated presently.¹²

8. Defendant characterized the Board's actions as "ignoring" criminal activity and public policy considerations. The Court finds that the Board did not

fact that a minor is employed or is permitted to be employed in violation of the laws of the State relating to employment of minors or that the minor obtained employment by misrepresenting the minor's own age." 19 Del. C. § 2315.

¹² "To provide prompt payment of benefits without regard to fault; and to relieve employers and employees of the burden of civil litigation." *Champlain* at 840.

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“ignore” those considerations but correctly realized that they were beyond the scope of the Workers’ Compensation Act. Based on the purposes of workers’ compensation and the liberal construction to be applied thereto, this Court finds that the Board correctly included both the recorded and “under the table” wages when determining the amount of compensation for Singleton’s disability; therefore, the determination of the Board is *affirmed*.

J.

dmh

oc: Prothonotary

xc: Order Distribution