

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN BIDDLE,	§	
	§	No. 58, 2005
Claimant-Appellant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	Kent County
	§	
KRAFT FOODS, INC.,	§	C. A. No. 04A-04-003
	§	
Employer-Appellee Below,	§	
Appellee.	§	

Submitted: June 8, 2005

Decided: June 14, 2005

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

**ORDER**

This 14<sup>th</sup> day of June 2005, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. The claimant-below appellant, John Biddle, appeals from an order of the Industrial Accident Board (“IAB”) setting Biddle’s wage rate for purposes of his workers’ compensation claim. Biddle claims that the IAB erred in setting his wage rate at the hourly “straight time” rate provided in his contract, because at the time he was injured he was working overtime and earning double his contractual wage rate. Because the IAB correctly set Biddle’s wage rate at his “straight time” rate rather than the “double time” rate, and because the IAB’s decision was based on substantial evidence, and free from legal error, we affirm.

2. Biddle was injured in a compensable industrial accident while employed by Kraft Foods. At the time of his injury, Biddle was a contract employee earning \$16.7030 in “straight time” hourly pay. Under the union agreement in force at the time of the accident, Biddle earned “overtime” whenever he worked hours outside his regular shift. When Biddle worked overtime, he accumulated two hours of paid time for every hour that he worked. At the time Biddle was injured, he was working outside his regular shift and was earning “double time” hours.

3. The only issue before the IAB was the proper wage rate to which Biddle was entitled for purposes of calculating his workers’ compensation benefits. Biddle claims that his wage rate should be a “double time” rate of \$33.4060 ( $\$16.7030 \times 2$ ), because he was working overtime when he was injured. The IAB disagreed, and held that under Delaware law, the applicable wage rate was Biddle’s straight wage rate of \$16.7030. Biddle appeals from that ruling.

4. This Court reviews the IAB’s legal conclusions *de novo*, and reviews the IAB’s factual findings to determine whether they are supported by substantial

evidence.<sup>1</sup> Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>2</sup>

5. In order to award worker's compensation benefits, the IAB was required to determine an employee's "wage rate." Section 2302(a) defines "wages" as "the money rate at which the service rendered is recompensed *under the contract of hiring in force at the time of the accident.*"<sup>3</sup> Under Section 2302(b), an employee's weekly wage rate is calculated by multiplying his hourly wage rate times "the number of ... hours in an average work week of the employee's employer at the time of the injury. Biddle claims that under his contract with Kraft, his hourly wage rate at the time of the accident was \$33.4060, because he was working overtime at the time of the accident.

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<sup>1</sup> *Flax v. State*, No. 450, 2003, 2004 WL 1535816 (Del. Jun. 29, 2004) (citing *Scheers v. Indep. Newspapers*, 832 A.2d 1244, 1246-47 (Del. 2003)).

<sup>2</sup> *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994).

<sup>3</sup> 19 *Del. C.* § 2302(a) (emphasis added).

6. Biddle relies upon *Rubick v. Security Instrument Corporation*<sup>4</sup> as support for his position. In *Rubick*, this Court interpreted the language of Section 2302(b), which provides that under “exceptional circumstances,” an employee’s weekly wages may be calculated based on an average employee’s average earnings for six months of similar employment.” In *Rubick*, based on that statutory language, the IAB concluded that because Rubick’s current contract paid significantly more than he ordinarily earned, “exceptional circumstances” required the IAB to calculate his wages based on the six-month average wage formula. This Court overruled that decision, holding that the “exceptional circumstances” language applied only to output employees, but not to hourly employees.<sup>5</sup>

7. Biddle contends that under *Rubick*, the IAB was required to award him wages based on his overtime pay, even though the overtime rate exceeded his “straight time” pay rate. That argument misstates the ruling in *Rubick*, however, which simply limited the use of the six-month average wage formula to “output” employees.

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<sup>4</sup> 766 A.2d 15 (Del. 2000). In *Rubick*, the claimant was employed by a company that contracted with various businesses. Rubick’s pay rate fluctuated depending on the business with whom his employer was contracting. At the time he was injured, Rubick was making \$26.72 an hour, which greatly exceeded the wages he made under most other contracts. The evidence showed that for the 6 months preceding the accident, Rubick averaged only \$12.60 an hour. The IAB concluded that calculating Rubick’s weekly wage using the \$26.72 hourly rate would overcompensate Rubick. This Court reversed that ruling, and held that under Section 2302, Rubick was entitled to the wages he was earning under the contract in force at the time of the accident, even though those wages greatly exceeded his average wages.<sup>4</sup>

<sup>5</sup> *Id.*

8. Here, the IAB correctly set Biddle's wages at \$16.7030, the wage rate provided in the contract in force at the time of his accident. Biddle's contract never fixed his wages at \$33.4060. Rather, it provided that Biddle would be credited for two hours of work for every overtime hour he worked. The IAB concluded that Biddle's wage rate did not change when he worked overtime; instead, he simply accumulated hours more quickly. The IAB took those extra hours into consideration in calculating the number of hours in Biddle's average work week. Accordingly, the IAB did not err in its ruling.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice