IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

UNITED AIRLINES and GALLAGER BASSETT SERVICES, INC.,

Appellants,

v.

KAZUO NEMOTO,

Appellee.

_____/

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D10-2767

Opinion filed April 15, 2011.

An appeal from an order of the Judge of Compensation Claims.
Thomas W. Sculco, Judge.

Date of Accident: February 27, 2003.

Patrick John McGinley of the Law Office of Patrick John McGinley, P.A., Winter Park, for Appellants.

Monte R. Shoemaker of Shoemaker & Shoemaker, P.A., Altamonte Springs, and Richard W. Ervin, III, of Fox & Loquasto, P.A., Tallahassee, for Appellee.

PER CURIAM.

In this workers' compensation case, the Employer/Carrier (E/C) appeals two orders of the Judge of Compensation Claims (JCC). The first, a nonfinal order

entered December 4, 2009, rejected the E/C's defense that the parties had settled the case. In the second order, entered May 11, 2010, the JCC awarded Claimant attorney's fees for prevailing on a claim filed prior to the settlement agreement; the JCC again rejected the E/C's defense that the parties had agreed to settle the case. In particular, the JCC found that a letter dated September 25, 2008, from Claimant's counsel to E/C's counsel, described "a conditional agreement to settle . . . because of contingencies contained in the letter." A review of the plain language of the letter indicates, however, that it does not objectively create any contingencies. Accordingly, because the parties had indeed reached a settlement agreement, we quash the 2010 order, reverse the 2009 order, and remand for approval of fees associated with the settlement agreement.

REVERSED and REMANDED for proceedings in accord with this opinion.

DAVIS and HAWKES, JJ., CONCUR; WOLF, J., DISSENTS WITH OPINION.

WOLF, J., Dissenting.

The decision and factual determinations of the JCC should be affirmed. The E/C, in its trial memorandum, argued the parties had negotiated a washout settlement, confirmed by letter dated September 25, 2008, and sought enforcement of the agreement. The letter from Claimant's attorney to the E/C's attorney states, in its entirety:

> This is to confirm today's settlement discussions which resulted in the following agreement: $130,000 to settle with Mr. Nemoto and my firm, not to include any past due fees to Mr. Fisher. Mr. Nemoto will retire for medical reasons and will not seek re-employment with United Airlines. No vested Employee benefits will be affected by this settlement. Employee believes no MSA [Medicare Set-Aside] is necessary as he has no intention of becoming a Medicare recipient. The [E/C] is already in the process of obtaining an MSA allocation. Therefore, this settlement is not final until the parties have reviewed and approved any MSA requirement and my client and I have approved of all language in all settlement documents that United requires Mr. Nemoto to sign. The settlement documents must be filed with the Judge by November 30, 2008. Medical benefits remain available to Mr. Nemoto until JCC approval.
>
> Please be advised, that should the settlement documents not be submitted to the Judge by November 30, 2008, we will proceed to the Judge for a ruling on the pending Petitions. Mr. Nemoto wants to make it clear that if the judge has not been provided with the settlement documents for approval by November 30, 2008, THERE WILL BE NO FURTHER NEGOTIATIONS.

(Emphasis added).

The MSA documents were not presented to the Claimant for approval.

Upon explaining his ruling, the JCC explained that the E/C had not satisfied the burden of proof to enforce the settlement because the plain language of the letter showed that the settlement would not be final until the Claimant's attorney had reviewed and approved any MSA requirement. The JCC further observed that the Claimant had elected to rescind the agreement because, even up to the date of this hearing, no MSA requirement had been given to the parties.

On de novo review, the JCC's understanding of the agreement was not error. Despite the absence of the word "contingency," the plain language of the letter makes the contract contingent on Claimant's acceptance of an MSA. Similar to the wording in the contract reviewed in McLean v. McLane Grocery Dist., 41 So. 3d 334 (Fla. 1st DCA 2010), which said "'[t]his agreement shall have no force and effect . . . until . . . the [JCC] enters the aforementioned Order,'" the language here that "this settlement is not final until the parties have reviewed and approved any MSA requirement," indicates the parties had not reached a settlement until the MSA issue was resolved. The court should not attempt to impose a settlement upon a party contrary to the intent expressly stated in the agreement. See Jones v. Miami-Dade Cmty. Coll., 933 So. 2d 1221 (Fla. 1st DCA 2006). Thus, I would affirm.