

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON

December 12, 2011 Session

**DELTA FAUCET COMPANY v. JEFFREY NOLES**

**Appeal from the Chancery Court for Madison County**  
**No. 66169 James F. Butler, Chancellor**

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**No. W2011-00383-WC-R3-WC - Mailed April 10, 2012; Filed May 11, 2012**

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CHILDRESS, SP.J., concurring in part and dissenting in part.

I concur fully in the majority's conclusions on all issues except for the notice of the aggravation or advancement of the carpal tunnel syndrome claim, and it is on that issue that I must respectfully dissent. On the issue of notice the trial court found that "Notice was available to Delta not only through its pre-employment physical, but through its own doctor's records, particularly Dr. Pearce who performed CT surgery on Noles. No prejudice was shown to Delta by any delay in notice." I fully agree with the majority's conclusions that Delta did not receive proper notice from the preemployment physical and Dr. Pearce's medical records. The majority correctly states that Mr. Noles testified that he informed Delta's plant nurse that he had numbness in his left hand and right thumb at the time he reported his elbow injury and that Delta did not produce the plant nurse to testify at trial. The majority then states that Mr. Noles' testimony on that point was unrefuted at trial. Since the trial court had resolved some conflicts in evidence in favor of Mr. Noles, the majority infers that the trial court accredited Mr. Noles' testimony on the notice issue as well. Based upon this inference the majority concludes that Delta received notice of the advancement of the carpal tunnel injury by way of Mr. Noles' conversation with Delta's plant nurse.

While it is true that Delta did not produce the plant nurse to refute Mr. Noles' testimony, Delta did elicit answers from Mr. Noles during its cross examination of him that raised some doubts as to whether Mr. Noles told the plant nurse about the problems he was having with his hands. Delta's counsel also elicited an answer from Mr. Noles during its cross examination of him that established that Mr. Noles was not truthful when answering an interrogatory. Also, during closing arguments, Mr. Noles' counsel stated "That to – to my understanding takes care of the carpal tunnel syndrome causation and notice . . ." The trial court then asked Mr. Noles' counsel, "All right. Tell me about notice again. What – you said that took care of notice?" Mr. Noles' counsel responded, "Well, his testimony that he told [Delta's plant nurse], who was I believe the supervisor, about carpal tunnel." Delta's counsel

interjected, “No.” Mr. Noles’ counsel said, “I’m sorry,” and the trial court stated, “No, he did not say that.” Finally, the trial court found that Delta was not prejudiced by any delayed notice. Mr. Noles’ testimony, however, was that he had informed Delta’s plant nurse that he had numbness in his left hand and right thumb at the time that he reported his elbow injury.

A court speaks through its orders, Palmer v. Palmer, 562 S.W.2d 833, 837 (Tenn. Ct. App. 1977), and in its order this trial court stated the ways it found that Delta received notice. Mr. Noles telling Delta’s plant nurse was not one of those ways. The fact that the trial court found that Delta was “not prejudiced by any delayed notice” indicates that the trial court concluded that the notice Delta received was delayed, and a finding of delayed notice does not support a conclusion that the trial court accredited Mr. Noles’ testimony that he told Delta’s plant nurse about his hands. In fact, if the trial court had accredited Mr. Noles’ testimony on this point, notice would not have been delayed. Instead, it would have been timely. Finally, the trial court requested during closing arguments that Mr. Noles’ counsel tell him what “took care of notice” for the carpal tunnel and then stated “No, he did not say that” to counsel’s response. Although a court does not speak through its oral pronouncements, the trial court’s response to Mr. Noles’ counsel’s statement indicates that the trial court may have been having some doubts as to whether Mr. Noles had told Delta’s plant nurse about his hands.

The majority is absolutely correct that the trial court resolved some conflicts of evidence in favor of Mr. Noles. The trial court as the trier of fact in this case “is free to believe or disbelieve all or part or none of a witnesses testimony, even where the testimony is uncontradicted or not directly impeached.” Cornell v. State, 118 S.W.3d 374, 378 (Tenn. Ct. App. 2003)(citing Blackmon v. Estate of Wilson, 709 S.W.2d 596, 603 (Tenn. Ct. App. 1986)). Considering that the trial court went to the lengths it did to specify the ways in which Delta received notice and that Delta was not prejudiced by any delayed notice, I would infer that the trial court did not accredit Mr. Noles’ testimony that he told Delta’s plant nurse about his hands. Thus, I conclude that Delta did not receive notice of the advancement or aggravation of the carpal tunnel claim. Since an employee who fails to give his employer notice is not allowed to recover benefits, McCaleb v. Saturn Corp., 910 S.W.2d 412, 415 (Tenn. 1995), I would reverse the trial court’s award for the aggravation or advancement of the carpal tunnel syndrome and remand this matter to the trial court for a determination of the award Mr. Noles should receive for the injury to his elbow.

Therefore, I concur in part and respectfully dissent in part.

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TONY A. CHILDRESS, SPECIAL JUDGE