

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN A. POYNER :
Plaintiff : Civil Action
v. :
GEORGIA PACIFIC CORPORATION : No. 02-7937
and :
FORT JAMES OPERATING CO. :
Defendants :

Norma L. Shapiro, S.J.

March 18, 2004

MEMORANDUM AND ORDER

Plaintiff, John Poyner ("Poyner"), alleging claims of negligence and carelessness on the part of defendants Georgia-Pacific Corporation ("Georgia-Pacific") and Fort James Operating Company ("Fort James"), filed this action on March 17, 2003. Defendants moved for summary judgment on the ground that Poyner's claims were barred by the Pennsylvania Worker's Compensation Act, 77 P.S. §481, because, at the time of his injuries, he was a "borrowed servant" of Georgia-Pacific, his statutory employer.¹

¹ At the hearing on this motion, plaintiff conceded that Fort James was not a necessary party and Fort James was therefore dismissed by the court.

I. Background

Before daylight, on the rainy morning of March 13, 2001, Poyner suffered injuries to his knee and hand when he fell into a deep pothole, which he believed was a puddle, while working at the Georgia-Pacific facility located at 605 Kuebler Road in Easton, Pennsylvania ("Kuebler Facility"). At the time of his fall, Poyner was an employee of Labor and Logistics Management ("LLM") and was assigned to perform truck-driving services at the Kuebler facility.

When he fell, Poyner was performing truck-driving services for Georgia-Pacific, pursuant to a January 11, 2001 Agreement between LLM and Georgia-Pacific. A Motor Vehicle Operator Lease Agreement ("the Agreement") provided that Georgia-Pacific leased operators from LLM to perform truck-driving services. The Agreement stated that LLM would provide Georgia-Pacific with "such Operators and Laborers as it may require to operate motor vehicle equipment, owned or leased by [Georgia-Pacific]." The Agreement enumerated the responsibilities of LLM and Georgia-Pacific respectively with regard to the leased operators. LLM retained responsibility for: all proper payroll deductions, including income tax and social security tax deductions; appropriate unemployment insurance; worker's compensation insurance coverage; preparation and filing of all required

governmental reports. LLM invoiced Georgia-Pacific weekly for operator leasing fees set by LLM. The Agreement stated LLM would bill Georgia-Pacific a minimum eight hour charge for vacation days, personal days, and holidays. LLM maintained ultimate control over the financial arrangements for the leased operators' employment.

However, Georgia-Pacific retained exclusive control over the day-to-day direction and supervision of the operators. The Agreement provided:

At all times, [Georgia-Pacific] solely and exclusively is responsible for maintaining operational control, direction and supervision over motor vehicle carriage operations, including but not limited to scheduling and dispatching of the Operators and Laborers, routing directions, delivery instructions and all matters relating to day to day operation of the motor vehicles and transportation services.

Georgia-Pacific reserved the right to request substitute operators and laborers at any time it was dissatisfied with the services of those provided.

LLM retained significant control over the daily activities of operators such as Poyner. LLM controlled whether Poyner worked at Georgia-Pacific's facility or another LLM customer's facility. At any time, Poyner or Georgia-Pacific could request Poyner's transfer from Georgia-Pacific, but only LLM had the authority to remove Poyner from the Georgia-Pacific job or to send him to

another location. If Poyner had a problem with Georgia-Pacific, LLM required him to address the problem through LLM, not directly with Georgia-Pacific. Georgia-Pacific could not stop LLM from removing Poyner from the Georgia-Pacific account.

Georgia-Pacific was solely and exclusively responsible for scheduling and dispatching Poyner. Each day that he was assigned to work for Georgia-Pacific, Poyner reported directly to the Kuebler facility. At that hour, no Georgia-Pacific supervisors and/or employees were yet on duty (except for a guard with whom he had limited communication); Poyner received his daily job assignments by way of a scribble board or memos that were placed on his desk; and he knew which trucks were to be moved in the morning because he moved the same trucks all the time. The trucks driven by Poyner all had a Georgia-Pacific logo, but Poyner chose his own routes and was responsible for reporting the hours he worked.

II. Discussion

A. Standard of Review

A party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is

entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); Celotex Corp. V. Catrett, 477 U.S. 317, 323, 325 (1986). The moving party may meet its initial burden simply by "pointing out to the district court that there is a lack of evidence to support the non-moving party's case." Id. at 323, 325. Once the moving party has met its initial burden, summary judgment is appropriate where the non-moving party fails to rebut with a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id., at 325.

"The issue of whether an employer is a 'statutory employer' for purposes of the Worker's Compensation Act is properly the subject of a motion for summary judgment, as 'whether the facts as they are determined to exist constitute an employment relationship is strictly a question of law.'" Virtue v. Square D Company, 887 F. Supp. 98, 100 (M.D. Pa. 1995).

B. Borrowed Servant Doctrine

Georgia-Pacific alleges Poyner's claims are barred by the Pennsylvania Worker's Compensation Act, 77 P.S. §481. It is well-established under Pennsylvania law that an employee's claim for damages against an employer arising from a personal injury is

generally barred. Worker's Compensation Act, 77 P.S. §481.² The Act is "the exclusive method for securing compensation for injuries incurred in the course of employment if the person from whom compensation is sought is the claimant's employer." Id.; Virtue, 887 F. Supp. at 100.

In addition to the traditional "employer-employee" relationship, a non-traditional employee is barred from recovery for personal injury against his de facto employer. Mature v. Angelo, 97 A.2d 59, 60 (1953) One who is in the general employ of one employer may be transferred to the service of another in such a manner that the employee becomes an employee of the second employer. Virtue, 887 F. Supp. at 100-01, quoting Red Line Express Co., Inc. v. Worker's Compensation Appeal Board (Price), 588 A.2d 90, 93 (1981).

The means of determining whether an employee is a "borrowed servant" is set forth in Mature v. Angelo:

the crucial test in determining whether a servant furnished by one person to another becomes the employee of the person to whom he is loaned is whether he passes under the latter's right of control with regard not only to the work to be done but also to the manner of performing it...A servant is the employee of the person who has the right of controlling the manner of his

²The laws of the Commonwealth of Pennsylvania govern this action; the Agreement between Georgia-Pacific and LLM, by which Poyner was working at the Kuebler Facility in Pennsylvania at the time of his injury, was prepared, executed, and performed in Pennsylvania.

performance of the work, irrespective of whether he actually exercises that control or not.

97 A.2d at 60. Under Mature and its progeny, Pennsylvania courts have generally found that leasing equipment with an operator does not make the operator a "borrowed servant" under the Workmen's Compensation Act. See Id.; Wilkinson v. K-Mart, 603 A.2d 659 (Pa. Super. 1992). There is a factual presumption that the operator remains in the employ of his original master, and unless that presumption is overcome by evidence that the borrowing employer *in fact assumes control of the employee's manner of performing the work*, the servant remains in the service of the original employer. Mature, 97 A.2d at 58. Thus, in Mature, where an owner who was in the business of renting dirt loader machines with operators, had the right to send any operator he desired, and wages, federal and city wage taxes, and social security contributions were paid by the owner, the Supreme Court of Pennsylvania held the operator remained the employee of the owner, even though the lessee gave directions as to work to be done, but not as to the manner of performing it. Id.

But the Pennsylvania courts have distinguished cases where, as here, the operator is leased without the equipment. Wilkinson, 603 A.2d at 662. The crucial test remains the issue of control:

The right to instruct a driver as to the route to take indicates the presence of the right to control the manner of performing the driver's work. Moreover...the presence of the lessee's logo on the side of the tractor raise[s] a rebuttable presumption that the one to whom the logo refers is the employer of the operator.

Id.

In Wilkinson, the plaintiff was injured while operating a K-mart truck under a contract renting truck operators between the plaintiff's employer and K-mart. Id. The appellate court upheld the grant of summary judgment, because the plaintiff was K-mart's borrowed servant. Id. The critical factors were the actual conduct of the parties and the fact that the lessee had the power to control the operator's work and manner of performance. Id., citing Red Line Express, 588 A.2d at 94. By contract, and practice, K-mart: reserved the right to manage day-to-day operations of the vehicles; owned the vehicles which were marked with its logo; and paid the wages, insurance, and taxes of the plaintiff. The plaintiff reported to work each day at K-mart. Accordingly, although he remained the contractual employee of the lessor company, for the purposes of the Workmen's Compensation Act, K-mart was the plaintiff's statutory employer and as a "borrowed servant," his negligence claims were barred.

The undisputed facts here support the conclusion that Georgia-Pacific was Poyner's "statutory employer," and that

Poyner was Georgia-Pacific's "borrowed servant," under the Worker's Compensation Act. Although not dispositive, the Agreement between LLM and Georgia-Pacific expressly provided that Georgia-Pacific retained exclusive control over the day-to-day direction and supervision of the leased operators such as Poyner. Poyner reported to work every day at Georgia-Pacific's Kuebler facility. To the extent he received instruction about where to drive the trucks, the instruction came from Georgia-Pacific, not LLM. The trucks he drove carried Georgia-Pacific's logo, not LLM's. The fact that he received relatively minimal supervision and worked independently does not rebut the presumption that he was the "borrowed servant" of Georgia-Pacific.

Poyner correctly asserts that at all times he remained an employee of LLM. LLM determined where Poyner would be sent to work, set his rate of pay, and maintained his worker's compensation insurance coverage. However, the expense of his wages, taxes and insurance were reimbursed by Georgia-Pacific. As a result of the accident, Poyner received worker's compensation benefits from a worker's compensation insurance policy issued to LLM but paid for by Georgia-Pacific.

A "borrowed servant" is not a contractual employee but a statutory employee. For the purposes of the Worker's Compensation Act, the crucial fact is which entity had the right

to control not only Poyner's work but the manner in which it was performed. Wilkinson, 603 A.2d at 662. The undisputed facts conclusively establish that at the time Poyner was injured, Georgia-Pacific controlled both the nature of Poyner's work, and the manner in which he performed it.

Because we conclude Poyner was under the control of Georgia-Pacific at the time of his accident, it was his statutory employer under the Pennsylvania Workmen's Compensation Act, 77 P.S. §481. Accordingly, Poyner may not recover against Georgia-Pacific and summary judgment will be granted in its favor.

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and	:	
FORT JAMES OPERATING CO.	:	
Defendants	:	

Order

AND NOW, this 18th day of March, 2004, upon consideration of Defendant's Motion for Summary Judgment (Paper #17) and response thereto, and after a hearing at which counsel for all parties were heard, it is hereby **ORDERED** that:

1. Defendant Fort James Operating Co. is **DISMISSED** as a party in this action.
2. Summary judgment is **GRANTED** in favor of defendant Georgia Pacific Corporation and against plaintiff John A. Poyner.

Norma L. Shapiro, S.J.