STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

WILLIAM MCKENNA	)	
	)	
VS.	)	W.C.C. 99-02231
	)	
ECONOMY CAB COMPANY	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division pursuant to the petitioner/employee's appeal of the trial judge's denial of his original petition for workers' compensation benefits based on the finding that he was an independent contractor. After reviewing the record and the arguments of the parties, we deny the appeal and affirm the decision and decree of the trial judge.

William McKenna (hereinafter "petitioner" or "McKenna") was briefly engaged as a taxicab driver with Economy Cab Company (hereinafter "respondent" or "Economy") from March 16, 1999 to March 20, 1999. Prior to his engagement with Economy, McKenna had telephoned Economy about possible engagement as a taxi driver in response to an advertisement in the Providence Journal. On March 16, 1999, he was interviewed by Alvin G. Brewer III (hereinafter "Brewer"), the day dispatcher who was in charge of the business while its owner, John Petrarca (hereinafter "Petrarca"), was on vacation. After determining that McKenna held all the appropriate licenses and permits to drive a taxicab, Brewer engaged McKenna as a driver and discussed the hours of engagement, as well as how McKenna would be compensated. The

parties, however, did not execute a lease agreement in conformance with R.I.G.L. § 39-14-9 as Brewer did not have access to the file cabinet where they were stored. Brewer subsequently testified that he was not authorized to hire drivers in the owner's absence. However, he also stated that McKenna was aware that he would have to sign a lease and would not have taxes taken out of his pay.

McKenna drove an Economy cab from 6:00 p.m. on March 16 to 6:00 a.m. on March 17. When he returned the cab, Brewer went through his log of fares and told McKenna what his share would be for the shift. McKenna worked as a laborer at the Rhode Island Convention Center from midnight that night until noon on March 18 after receiving a call from his union hall.

On March 18, 1999, Economy called McKenna and asked him to work that night. He ended up picking up a cab at 8:00 p.m. to drive that night. In the early morning hours of March 19, 1999, the cab he was driving was struck by another vehicle. He was taken to the hospital by rescue for treatment of the injuries he sustained in the collision.

William Maloney, the associate administrator for motor carriers from the Rhode Island Division of Public Utilities and Carriers, testified that there were no valid lease agreements for Economy Cab on file until June 28, 1999.

The trial judge found that McKenna was an independent contractor and not an employee of Economy. Accordingly, the judge denied and dismissed McKenna's original petition for workers' compensation benefits. In his timely appeal to this panel, McKenna contends that the trial justice erred in finding that he (McKenna) was not an employee of Economy. Specifically, McKenna argues that R.I.G.L. § 39-14-9 requires that the class of lawful taxicab operators is limited to the owner of the taxicab, employees of the owner, and state approved lessees. He,

therefore, contends that since he did not enter into a lease agreement with Economy, he is, by operation of law, statutorily presumed to be Economy's employee.

Section 28-35-28(b) of the Rhode Island General Laws governs this panel's review of a decision of a trial justice of the Workers' Compensation Court. That section states, in relevant part, that:

> "(b) The findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous."

The appellate division may only undertake a *de novo* review of the evidence after finding that the trial judge was clearly wrong or overlooked or misconceived material evidence.

During oral argument, counsel for the petitioner conceded that based strictly upon the particular facts of this case, McKenna is not an employee under the Workers' Compensation Act. He relies solely on the lack of an approved lease agreement as required by R.I.G.L. § 39-14-9 to convert his status to that of an employee of Economy, thereby entitling him to workers' compensation benefits as a result of his injuries. We must, therefore, decide whether the General Assembly, in drafting R.I.G.L. § 39-14-9, intended that a driver of a taxicab, absent a state approved lease agreement with the cab owner, should, by operation of law, be deemed an employee of the owner for workers' compensation purposes.

The Division of Public Utilities and Carriers has jurisdiction over all owners and operators of taxicabs. R.I.G.L. § 39-14-2. The division is authorized to make rules and regulations to

> ". . . assure adequate, economical, safe, and efficient service at reasonable charges without unjust discrimination, undue preference or advantages, or unfair or destructive competitive practices." Id.

Rhode Island General Laws § 39-14-9 states in pertinent part as follows:

> "No taxicab . . . subject to the provisions of this chapter shall be operated except by the owner or an employee of the owner, and it shall be unlawful for the owner of any taxicab . . . to enter into any contract, agreement, arrangement, or understanding, express or implied, with an operator thereof, by the terms of which the operator pays to or for the account of the owner a fixed or determinable sum for the use of the taxicab . . . unless the contract, agreement, arrangement, or understanding, express or implied, has been approved by the division.
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> * * * *
>
> "The lease agreement shall be approved by the administrator if, after investigation, the applicant operator is found to be fit, willing, and able to perform the authorized service and to conform to the provisions of this chapter and the requirements, orders, rules, and regulations of the administrator thereunder; . . . ."

Failure to comply with this provision is punishable by a fine of not more than One Hundred and 00/100 ($100.00) Dollars, or imprisonment for not more than sixty (60) days, or both. R.I.G.L. § 39-14-11. Owners of taxicabs may also have their certificates to operate revoked. Id.

The underlying purpose of the statutory scheme set out in R.I.G.L. § 39-14-1 et seq., is the regulation of the taxicab industry by a state agency in order to ensure safe and efficient service at a reasonable charge. The lease agreement and the approval process set out in R.I.G.L. § 39-14-9 is an exercise of control over who is driving the taxicabs. There is no expressed purpose to attempt to protect these drivers for purposes of workers' compensation or to attempt to automatically confer the status of an employee on a driver for any reason. As stated in the statute, the consequence of non-compliance with R.I.G.L. § 39-14-9 is the imposition of a fine, a prison sentence, loss of one's certificate of operation, or some combination of all three (3) penalties. There is no mention that a driver operating a cab without an approved lease agreement shall be considered an employee of the owner of the cab. We do not believe that such an

inference is warranted based upon the language and overall purpose of the statutory scheme set forth in R.I.G.L. § 39-14-1 et seq.

The Workers' Compensation Act, as set forth in Title 28, Chapters 29 through 38, sets forth a comprehensive statutory scheme, including procedure, jurisdiction, and benefit structure, regarding the entire workers' compensation system in Rhode Island. A definition of a covered "employee" is provided in R.I.G.L. § 28-29-2(4). In special circumstances, the Legislature has specifically designated that individuals may be considered employees of an entity other than their direct employer in order to protect employees when a subcontractor or general employer fails to carry workers' compensation insurance. See R.I.G.L. §§ 28-29-2(6)(iv) and 28-29-6.1. In addition, the Act has specific provisions regarding employees in certain occupations. See §§ 28-29-2(4) (city and town employees, casual employees, etc.); 28-29-7.1 (real estate persons); 28-29-7.2 (farm laborers); and 28-29-15 (professional hockey personnel). If the Legislature saw fit to provide workers' compensation benefits to a taxicab driver operating a cab without an approved lease agreement, we believe it would have specifically stated that intention.

In determining whether an individual is an employee or an independent contractor under the Workers' Compensation Act, we concur with the trial judge's conclusion that ". . . this Court's jurisdiction in this area may not be circumscribed by the legislature except by express enactment." (Trial Dec. p. 6.) Accordingly, this panel finds that the trial justice's determination that R.I.G.L. § 39-14-9 did not, by operation of law, confer upon McKenna the status of an employee of Economy, was not clearly erroneous and did not constitute an abuse of discretion. Consequently, the petitioner/employee's appeal is denied and dismissed, and the decision and decree of the trial judge are affirmed.

In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a copy of which is enclosed, shall be entered on

Connor and Salem, JJ. concur.

ENTER:

_____
Olsson, J.

_____
Connor, J.

_____
Salem, J.

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the petitioner/employee and upon consideration thereof, the appeal is denied and dismissed, and it is:

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on March 22, 2001 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

_____

ENTER:

_____
Olsson, J.

_____
Connor, J.

_____
Salem, J.

I hereby certify that copies were mailed to Lawrence L. Goldberg, Esq., and Berndt W. Anderson, Esq., on

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