

SUPREME COURT OF TENNESSEE

Phillip Goodman, Sr. v. HBD Industries, Inc., et al.

Phillip Goodman, Sr. v. HBD Industries, Inc., 208 S.W.3d 373 (Tenn. 2006) · Decided November 6, 2006

SUMMARY

The Supreme Court of Tennessee held that the twenty-eight weeks the employee spent participating in a strike must be included when calculating his average weekly wage for workers' compensation benefits. Applying *Hartley v. Liberty Mutual Insurance Co.*, the court determined that the strike was a voluntary absence and that Tennessee Code Annotated section 50-6-102(3)(A), rather than subsection (B), governed the calculation. The court affirmed the award of 264 weeks of benefits but reduced the weekly compensation rate from \$388.77 to \$149.38.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	William M. Barker, C.J.; Janice M. Holder, J.; Cornelia A. Clark, J.; Gary R. Wade, J.; E. Riley Anderson, Sp. J.
JURISDICTION	Tennessee
DECIDED	November 6, 2006
DISPOSITION	affirmed
PROCEDURAL POSTURE	Workers' compensation appeal concerning the calculation of the employee's average weekly wage. The Tennessee Supreme Court accepted review before consideration by the Special Workers' Compensation Appeals Panel.
STANDARD OF REVIEW	Factual issues in workers' compensation cases are reviewed de novo on the record with a presumption of correctness unless the preponderance of the evidence is otherwise. Conclusions of law are reviewed de novo without a presumption of correctness.
PRECEDENTIAL VALUE	Published and precedential Tennessee Supreme Court opinion.
PARTIES	HBD Industries, Inc. v. Phillip Goodman, Sr.

TOPICS

[workers compensation](#)[labor law](#)[statutory interpretation](#)[standard of review](#)[appellate procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether weeks during which an employee voluntarily participated in a strike must be included when calculating the employee's average weekly wage under Tennessee workers' compensation law.
2. Whether Tennessee Code Annotated section 50-6-102(3)(B), governing employment of less than fifty-two weeks, applied because the employee was absent from work during the strike.
3. Whether federal labor law preempted or otherwise displaced the Tennessee rule requiring strike-related absences to be included in the average weekly wage calculation.

HOLDINGS

1. Weeks during which an employee voluntarily participates in a strike are included in the fifty-two-week average weekly wage calculation and are not deducted as lost time.
2. Section 50-6-102(3)(B) does not apply when the employee maintained a continuous employment relationship despite a period of inactivity caused by a strike.
3. Federal labor law does not require strike-related days to be excluded from the Tennessee average weekly wage calculation and does not preempt application of the Hartley rule.

FACTUAL BACKGROUND

Phillip Goodman had worked for HBD Industries, Inc. or its predecessor for approximately twenty-six years before suffering a neck injury on January 31, 2002, when a hose jerked him down while he was working. Before the injury, Goodman participated in a twenty-eight-week strike against HBD and returned to work for less than a month before the accident. The trial court found a compensable injury and sixty-six percent permanent partial disability but excluded the strike period when calculating his average weekly wage, producing a weekly compensation rate of \$388.77.

PROCEDURAL HISTORY

Goodman filed a workers' compensation complaint in the Chancery Court for Scott County after sustaining a workplace neck injury. The trial court found a compensable injury and sixty-six percent permanent partial disability, awarding a lump-sum judgment based on an average weekly wage calculated by excluding the twenty-eight weeks Goodman spent on strike. HBD appealed only the wage calculation, and the Tennessee Supreme Court accepted direct review.

DISPOSITION

affirmed

CASES CITED

- Hartley v. Liberty Mut. Ins. Co., 197 Tenn. 504, 276 S.W.2d 1 (1954)
- Rhodes v. Capital City Ins. Co., 154 S.W.3d 43 (Tenn. 2004)

- Perrin v. Gaylord Entm't Co., 120 S.W.3d 823 (Tenn. 2003)
- Cantrell v. Carrier Corp., 193 S.W.3d 467 (Tenn. 2006)
- Bryant v. McAllister, 202 Tenn. 654, 308 S.W.2d 412 (1957)
- Russell v. Genesco, Inc., 651 S.W.2d 206 (Tenn. 1983)
- Hamby v. McDaniel, 559 S.W.2d 774 (Tenn. 1977)
- Biscan v. Brown, 160 S.W.3d 462 (Tenn. 2005)

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