

SUPREME COURT OF OHIO

State ex rel. U.S. Tubular Prods., Inc. v. Indus. Comm.

2021-Ohio-1174 (Ohio 2021) · No. 2020-0883 · Decided April 8, 2021

SUMMARY

The Supreme Court of Ohio affirmed the Tenth District Court of Appeals' denial of a writ of mandamus challenging a workers' compensation violation-of-specific-safety-requirement award. The court held that evidence supported the Industrial Commission's findings that the safety requirement applied to the injured worker, that the employer violated it, and that the violation proximately caused the injury.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Maureen O'Connor, Chief Justice; Fischer, J.; Donnelly, J.; Stewart, J.; Kennedy, J.; DeWine, J.; Brunner, J. (not participating)
JURISDICTION	Ohio
DECIDED	April 8, 2021
DOCKET	2020-0883
DISPOSITION	affirmed
PROCEDURAL POSTURE	Employer appealed the Tenth District Court of Appeals' denial of its complaint for a writ of mandamus seeking to compel the Industrial Commission to vacate a violation-of-specific-safety-requirement award.
STANDARD OF REVIEW	A mandamus challenge to a VSSR award is reviewed for abuse of discretion. The commission's decision must be upheld if some evidence supports it, even if the record contains contrary evidence. The commission has final jurisdiction to interpret a specific safety requirement, subject to correction in mandamus only upon an abuse of discretion.
PRECEDENTIAL VALUE	published
PARTIES	U.S. Tubular Products, Inc., d.b.a. Benmit Hydro-Testers Division v. Industrial Commission of Ohio, John R. Roush

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Industrial Commission abused its discretion by finding that Roush was an operator of the hydro-test machine under Ohio Adm.Code 4123:1-5-01(B)(92).
2. Whether Ohio Adm.Code 4123:1-5-05(D)(1) required U.S. Tubular to provide Roush, at his work area, with a means within easy reach to disengage the hydro-test machine from its power supply.
3. Whether the commission abused its discretion by finding that U.S. Tubular's violation of the specific safety requirement proximately caused Roush's injuries.

HOLDINGS

1. The commission did not abuse its discretion in finding that Roush was an operator because evidence supported the conclusion that he was assigned or authorized to work at the specific hydro-test equipment and that his work was integral to the machine's operation.
2. The commission did not abuse its discretion in finding that U.S. Tubular violated Ohio Adm.Code 4123:1-5-05(D)(1) by failing to provide a means within easy reach of Roush to disengage the hydro-test machine from its power supply.
3. The commission did not abuse its discretion in finding that U.S. Tubular's violation proximately caused Roush's injuries.

KEY QUOTATIONS

“To be entitled to an additional award for a VSSR, a claimant must show that (1) a specific safety requirement applied, (2) the employer violated that requirement, and (3) the employer’s violation caused the injury.” (§ 22)

“So long as some evidence supports the commission’s order, there was no abuse of discretion, and the court must uphold the decision.” (§ 23)

“because a VSSR award is a penalty imposed on an employer, specific safety requirements must be strictly construed and all reasonable doubts concerning the interpretation of a particular safety regulation must be resolved in favor of the employer.” (§ 24)

FACTUAL BACKGROUND

U.S. Tubular used a hydro-testing operation in which two employees worked at opposite ends of a pipe, attaching swages and pressurizing the pipe with diesel-powered pumps. The south-end employee, John R. Roush, had no controls, gauge, or other means to disengage the machine, while the north-end employee

controlled pressurization. During a test, the north-end employee approached a leaking swage while the pipe remained pressurized, and Roush also left his safety zone after apparently believing it was safe; the swage then blew off and the pipe struck Roush, causing severe injuries.

PROCEDURAL HISTORY

John R. Roush sought an additional workers' compensation award based on an alleged violation of specific safety requirements. The Industrial Commission granted a 25 percent VSSR award after finding that U.S. Tubular violated Ohio Adm.Code 4123:1-5-05(D)(1) and that the violation proximately caused Roush's injuries. U.S. Tubular filed a mandamus action in the Tenth District; although a magistrate recommended granting the writ, the appellate court sustained the commission's objections and denied the writ. The Supreme Court of Ohio affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Precision Steel Servs., Inc. v. Indus. Comm., 145 Ohio St.3d 76, 2015-Ohio-4798, 47 N.E.3d 109
- State ex rel. Newman v. Indus. Comm., 77 Ohio St.3d 271, 673 N.E.2d 1301 (1997)
- State ex rel. Armstrong Steel Erectors, Inc. v. Indus. Comm., 144 Ohio St.3d 243, 2015-Ohio-4525, 41 N.E.3d 1233
- State ex rel. Nicholls v. Indus. Comm., 81 Ohio St.3d 454, 459, 692 N.E.2d 188 (1998)
- State ex rel. Lange v. Indus. Comm., 111 Ohio St.3d 563, 2006-Ohio-6211, 857 N.E.2d 593
- State ex rel. Vonderheide v. Multi-Color Corp., 156 Ohio St.3d 403, 2019-Ohio-1270, 128 N.E.3d 188
- State ex rel. Scott Fetzer Co., Halex Div. v. Indus. Comm., 81 Ohio St.3d 462, 692 N.E.2d 195 (1998)
- State ex rel. Owens-Corning Fiberglas Corp. v. Indus. Comm., 62 Ohio St.2d 145, 404 N.E.2d 140 (1980)
- State ex rel. Platt v. Diamond Internatl. Corp., 10th Dist. Franklin No. 85AP-979, 1987 WL 5893
- State ex rel. Frank Brown & Sons, Inc. v. Indus. Comm., 37 Ohio St.3d 162, 524 N.E.2d 482 (1988)
- State ex rel. Byington Builders, Ltd. v. Indus. Comm., 156 Ohio St.3d 35, 2018-Ohio-5086, 123 N.E.3d 908
- State ex rel. Glunt Industries, Inc. v. Indus. Comm., 132 Ohio St.3d 78, 2012-Ohio-2125, 969 N.E.2d 252
- State ex rel. Trydle v. Indus. Comm., 32 Ohio St.2d 257, 291 N.E.2d 748 (1972)
- State ex rel. 31, Inc. v. Indus. Comm., 152 Ohio St.3d 350, 2017-Ohio-9112, 96 N.E.3d 246
- State ex rel. Oliver v. Southeastern Erectors, Inc., 76 Ohio St.3d 26, 665 N.E.2d 1108 (1996)