

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK

In re Automotive Service Systems, Inc.

56 A.D.2d 854 · Decided November 6, 2008

SUMMARY

The New York Appellate Division considered whether drivers dispatched by Automotive Service Systems, Inc. were employees for unemployment insurance purposes. The court held that substantial evidence supported the Unemployment Insurance Appeal Board's finding of an employment relationship, based on Automotive's control over compensation, trip requirements, attire, vehicles, signage, insurance, and customer complaints, and affirmed the assessment of additional contributions.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York
WRITING FOR THE COURT	Cardona, E.J.; Peters, J.; Carpinello, J.; Lahtinen, J.; Kavanagh, J.
JURISDICTION	New York
DECIDED	November 6, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Automotive Service Systems, Inc. appealed from a decision of the Unemployment Insurance Appeal Board assessing it for additional unemployment insurance contributions based on an employment relationship with drivers it dispatched to transportation-service clients.
STANDARD OF REVIEW	The existence of an employment relationship is a factual issue for the Board, and its determination will be upheld if supported by substantial evidence.
PRECEDENTIAL VALUE	published
PARTIES	Automotive Service Systems, Inc. v. Unemployment Insurance Appeal Board

TOPICS

unemployment benefits

administrative law

judicial review of agency action

standard of review

appellate procedure

PRACTICE AREAS

employment law

administrative law

unemployment benefits

QUESTIONS PRESENTED

1. Whether substantial evidence supported the Unemployment Insurance Appeal Board's determination that Automotive Service Systems, Inc. had an employment relationship with the drivers.
2. Whether Automotive was properly assessed additional unemployment insurance contributions based on that employment relationship.

HOLDINGS

1. The Board's determination that an employment relationship existed was supported by substantial evidence because Automotive exercised sufficient control over important aspects of the drivers' work.
2. The assessment of \$19,754.76 in additional unemployment insurance contributions was affirmed because substantial evidence supported the Board's employment-relationship determination.

KEY QUOTATIONS

"While no single factor is determinative, control over the results produced or the means used to achieve those results are pertinent considerations, with the latter being more important" (855)

"Notwithstanding the existence of evidence that would support a contrary conclusion, the foregoing indicates that Automotive exercised sufficient control over important aspects of the drivers' work to be considered their employer" (855)

FACTUAL BACKGROUND

Automotive dispatched drivers to clients needing transportation services and maintained a referral-based list of approximately 30 to 50 drivers. It paid drivers a set percentage of the client fee, plus gratuities and expenses, regardless of whether clients paid Automotive. Automotive supplied trip sheets and specific pickup and drop-off information, required drivers to arrive early, wear dark business attire, drive luxury sedans, and display identifying signs. It also provided workers' compensation coverage and handled customer complaints.

PROCEDURAL HISTORY

The Unemployment Insurance Appeal Board found that the drivers were employees of Automotive and assessed \$19,754.76 in additional unemployment insurance contributions. Automotive appealed to the Appellate Division, which affirmed the Board's decision without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Concourse Ophthalmology Assoc. [Roberts], 60 N.Y.2d 734, 736 (1983)

- Matter of Parisi [Commissioner of Labor], 54 A.D.3d 456, 457 (2008)
- Matter of Ted Is Back Corp. [Roberts], 64 N.Y.2d 725, 726 (1984)
- Matter of Booth [Eagle Intl., Inc.—Commissioner of Labor], 26 A.D.3d 692, 692-693 (2006)
- Matter of Human Performance, Inc. [Commissioner of Labor], 28 A.D.3d 971, 972 (2006)
- Matter of De Paiva [Olympic Limousine—Commissioner of Labor], 270 A.D.2d 534 (2000)
- Matter of Freidenberg [Limousine Resources Mgt. Corp.—Sweeney], 235 A.D.2d 866 (1997)
- Matter of Pavan [UTOG 2-Way Radio Assn.—Hartnett], 173 A.D.2d 1036 (1991)
- Matter of Pavan [UTOG 2-Way Radio Assn.—Hartnett], 173 A.D.2d 1036 (1991), lv. denied, 78 N.Y.2d 857 (1991)

OPINION

PER CURIAM.

*855Appeal from a decision of the Unemployment Insurance Appeal Board, filed June 8, 2007, which assessed Automotive Service Systems, Inc. for additional unemployment insurance contributions. Automotive Service Systems, Inc. is in the business of dispatching drivers to clients in need of transportation services. It maintains a list of between 30 and 50 drivers compiled through referrals from drivers it has previously used.

The Unemployment Insurance Appeal Board found that an employment relationship existed between Automotive and the drivers and assessed it additional unemployment insurance contributions in the amount of \$19,754.76. Automotive appeals. Initially, we note that the existence of an employment relationship is a factual issue for the Board to decide and its determination will be upheld if supported by substantial evidence (see Matter of Concourse Ophthalmology Assoc.

[Roberts], 60 NY2d 734, 736 [1983]; Matter of Parisi [Commissioner of Labor], 54 AD3d 456, 457 [2008]). While no single factor is determinative, control over the results produced or the means used to achieve those results are pertinent considerations, with the latter being more important (see Matter of Ted Is Back Corp. [Roberts], 64 NY2d 725, 726 [1984]; Matter of Booth [Eagle Intl., Inc.—Commissioner of Labor], 26 AD3d 692, 692-693 [2006]).

In the case at hand, evidence was adduced that Automotive paid the drivers a set percentage of the fee it charged, plus gratuities and expenses, without regard to whether it received payment from its clients, and it tendered payment after the drivers completed the trip sheets it supplied.

In addition, it provided the drivers with specific pickup and drop-off information and required them to arrive 10 minutes in advance, wear dark-colored business attire, drive a luxury sedan and hold up a sign with either Automotive's name or the name of the client's company. Automotive also provided workers' compensation coverage and fielded all customer complaints.

Notwithstanding the existence of evidence that would support a contrary conclusion, the foregoing indicates that Automotive exercised sufficient control over important aspects of the drivers' work to be considered their employer (see *Matter of Human Performance, Inc.* [Commissioner of Labor], 28 AD3d 971, 972 [2006]). Inasmuch as substantial evidence supports the Board's decision, we decline to disturb it (see e.g. *Matter of De Paiva* [Olympic *856Limousine—Commissioner of Labor], 270 AD2d 534 [2000]; *Matter of Freidenberg* [Limousine Resources Mgt.

Corp.—Sweeney], 235 AD2d 866 [1997]; cf. *Matter of Pavan* [UTOG 2-Way Radio Assn.—Hartnett], 173 AD2d 1036 [1991], lv denied 78 NY2d 857 [1991]). Cardona, EJ., Peters, Carpinello, Lahtinen and Kavanagh, JJ., concur. Ordered that the decision is affirmed, without costs.