

SUPREME COURT OF NEBRASKA

Glantz v. City of Lincoln, 140 Neb. 515

300 N.W. 572 (1941) · Decided October 24, 1941

SUMMARY

The Nebraska Supreme Court held that a Works Progress Administration worker injured while performing a city-sponsored project was not an employee of the City of Lincoln under Nebraska’s workers’ compensation law. Because the WPA controlled the worker’s employment, compensation, hours, supervision, and discharge, the city was not liable for workers’ compensation benefits.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Yeager; Carter; Eberly; Messmore; Paine; Rose; Simmons
JURISDICTION	Nebraska
DECIDED	October 24, 1941
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court judgment denying a workers' compensation claim against the City of Lincoln and its workers' compensation carrier.
PRECEDENTIAL VALUE	Published opinion
PARTIES	William W. Glantz v. City of Lincoln, Travelers Insurance Company

TOPICS

- workers compensation
- municipal law
- employment law
- federal spending

PRACTICE AREAS

- workers compensation
- municipal law
- employment law

QUESTIONS PRESENTED

1. Whether Glantz was an employee of the City of Lincoln for purposes of Nebraska's workers' compensation law when he worked on a city-sponsored WPA project but was employed, paid, and controlled by the WPA.

2. Whether the city's limited involvement in directing the manner of work made it liable for workers' compensation benefits.

HOLDINGS

1. Glantz was not an employee of the City of Lincoln because the Works Progress Administration employed him, fixed his hours, wages, and labor classification, controlled his work, and had the authority to discharge him.
2. The court did not reach the accident-and-injury issue because Glantz was not an employee of the City of Lincoln.

KEY QUOTATIONS

“When a city, pursuant to agreement, furnished certain equipment, material, supplies, superintendence and other items for use on a Works Progress Administration project, but had no authority to control the details of the work, or to direct the mode and manner of doing it, the city is not liable for the payment of benefits under the workmen’s compensation law for injuries suffered by an employee on the project.” (518)

FACTUAL BACKGROUND

Glantz worked on a Works Progress Administration street-marking project sponsored by the City of Lincoln. The WPA employed, assigned, paid, supervised, and controlled his employment, while the city supplied some materials and engineering or supervision-related assistance. Glantz claimed that he injured his back on December 14, 1939, while lifting a 60- to 75-pound bucket of tar and sought workers' compensation benefits from the city and its carrier.

PROCEDURAL HISTORY

A single judge of the compensation court dismissed Glantz's claim. The full compensation court found the claim compensable, but the district court reversed, concluding that Glantz was not an employee of the City of Lincoln and had not sustained a compensable accident and injury. Glantz appealed to the Nebraska Supreme Court.

DISPOSITION

affirmed

CASES CITED

- Williams v. City of Wymore, 138 Neb. 256, 292 N.W. 726

OPINION

YEAGER, J.

Yeager, j. This is an action under the workmen’s compensation law of-the state of Nebraska. The action is by William W. Glantz, plaintiff and appellant, against the city of Lincoln, Lancaster

county, Nebraska, alleged employer of plaintiff, and the Travelers Insurance Company, a corporation, the workmen's compensation carrier for the city of Lincoln, defendants and appellees.

The plaintiff was, from August 29, 1939, to and including December 14, 1939, a Works Progress Administration employee and was engaged in projects which were in and for the benefit of the city of Lincoln. From some time in September he was engaged with other employees in street marking.

The particular duty of plaintiff was the spreading of tar. To do this work he carried in his left hand a bucket weighing from 60 to 75 pounds, and with his right hand he brushed or spread the tar. On December 14, 1939, while he was spreading tar on M street, between Eleventh and Thirteenth streets, he claims that he picked up the bucket and "snapped" his back, felt pain therein and could not straighten up, and that he has been completely disabled from performance of any work since that date, although in his testimony he admits that he was employed on W. P. A. as late as February, 1940.

He claims that this was a compensable injury under the workmen's compensation law of Nebraska. *517 There is no question that plaintiff was at the time working on a Works Progress Administration project of which the city of Lincoln was the sponsor. He was employed, assigned and paid by the Works Progress Administration.

The project which was being carried out was one wherein the Works Progress Administration was to expend federal funds under its rules and regulations in the amount of \$8,901.85, Superintendence at a cost of \$720 was also to be furnished by the Works Progress Administration.

The city of Lincoln furnished some material and the sum of \$250 for engineering, supervision and inspection. The case was first tried by a single judge of the compensation court where the claim of plaintiff was dismissed. Thereafter it was tried to the full court where the claim was held to be compensable. An appeal was taken to the district court, and there it was held that the claim was not compensable on the grounds that the plaintiff was not an employee of the city of Lincoln, and that he did not sustain an accident and injuries within the meaning of the workmen's compensation law.

From the judgment of the district court the plaintiff has appealed. The only evidence to support the contention of the plaintiff that he was at the time of the occurrence in question an employee of the city of Lincoln is that this was a Works Progress Administration project which was for the benefit of the city of Lincoln, and that the city of Lincoln exercised some control over the performance of the work involved.

On the question of employment, it is sufficient to say that the record discloses that the Works Progress Administration employed the plaintiff; that he was under its direction and control; that it fixed his hours of employment, his wages and labor classification, and had the sole right to supervise his work and to discharge him, if necessary; and that after August 1, 1985, the federal

government assumed the role of sole employer of relief workers on Works Progress Administration projects.

On the question of exercise of control by the city of Lin-*518coin, the record discloses that one Henry Prosser was an employee of the city of Lincoln, and was in charge of equipment maintenance for the city. During the progress of the work on this project he was frequently on hand and gave directions, either directly or through the project foreman, to plaintiff as to the manner of performance of the work by plaintiff, and that for a portion of one day when the regular foreman was away Prosser acted as foreman.

The record discloses no other supervision of work and no control of any kind over employment. On these facts and under the decision in *Williams v. City of Wymore*, 138 Neb. 256, 292 N. W. 726, which is a case directly in point on the facts as well as the law, it becomes necessary to hold that plaintiff, at the time and place in question, was not an employee of the city of Lincoln.

In that case it was held: "When a city, pursuant to agreement, furnished certain equipment, material, supplies, superintendence and other items for use on a Works Progress Administration project, but had no authority to control the details of the work, or to direct the mode and manner of doing it, the city is not liable for the payment of benefits under the workmen's compensation law for injuries suffered by an employee on the project." In the light of the view taken of the question of employment of plaintiff by the defendant, city of Lincoln, it is not necessary to discuss the other assignments of error.

The judgment of the district court is Affirmed.