

SUPREME COURT OF NORTH DAKOTA

Industrial Contractors, Inc. v. Taylor

2017 ND 183 (2017) · No. 20160322 · Decided July 31, 2017

SUMMARY

The North Dakota Supreme Court reversed and remanded a judgment affirming an administrative law judge's determination that Leonard Taylor's employment with Industrial Contractors, Inc. was not seasonal employment. The Court held that the ALJ misapplied N.D.C.C. § 65-01-02(27), which includes nonpermanent occupations and requires consideration of the employer's customary practices at the time of injury. The dissent would have affirmed, concluding that the occupation of electrician was not seasonal because Industrial Contractors customarily employed electricians throughout the year.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Kapsner, Justice; Carol Ronning Kapsner; Lisa Fair McEvers; Jerod E. Tufte; Gerald W. VandeWalle, Chief Justice; Daniel J. Crothers
JURISDICTION	North Dakota
DECIDED	July 31, 2017
DOCKET	20160322
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Industrial Contractors appealed from a Mercer County District Court judgment affirming an independent administrative law judge's determination that Taylor's employment was not seasonal employment for purposes of calculating workers' compensation disability benefits. Workforce Safety and Insurance supported and adopted Industrial Contractors' arguments on appeal.
STANDARD OF REVIEW	Under the Administrative Agencies Practice Act, the Court reviews the agency order under N.D.C.C. § 28-32-46 and may not substitute its judgment for the ALJ's factual findings. Factual findings are upheld if a reasoning mind reasonably could determine they were proven by the weight of the evidence. Legal conclusions, including statutory interpretation, receive no similar deference and are fully reviewable.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.

PARTIES

Industrial Contractors, Inc. v. Leonard Taylor, claimant, Workforce Safety and Insurance

TOPICS

workers compensation agency adjudication judicial review of agency action administrative law
statutory interpretation

PRACTICE AREAS

workers compensation administrative law statutory interpretation appellate procedure construction law

QUESTIONS PRESENTED

1. Whether the ALJ misinterpreted and misapplied N.D.C.C. § 65-01-02(27) in determining that Taylor's employment was not seasonal employment.
2. Whether the ALJ's determination that Taylor's employment was not seasonal was supported by a preponderance of the evidence.
3. Whether Taylor's disability benefits should be calculated under the seasonal-employment methodology in N.D.C.C. § 65-01-02(5).

HOLDINGS

1. The statutory definition of seasonal employment is expansive and includes occupations that are not permanent or that do not customarily operate throughout the entire year. The alternatives are disjunctive, and seasonal employment is determined by what is customary with respect to the employer at the time of injury.
2. Taylor's employment was seasonal under N.D.C.C. § 65-01-02(27) because the evidence showed that Industrial Contractors customarily hired electricians for nonpermanent project work and generally laid them off when projects ended; the transfer of nine electricians did not establish that year-round employment was customary.
3. The Court must independently review the ALJ's legal conclusions and statutory interpretation, while deferring to factual findings supported by the weight of the evidence.

KEY QUOTATIONS

“Under our rules of construction the use of the phrase “includes occupations” in N.D.C.C. § 65-01-02(27) enlarges the plain and ordinary meaning of “seasonal employment” to include occupations (1) that are not permanent or (2) that do not customarily operate throughout the year.” (¶ 18)

“Under that language, “seasonal employment” is not a generic term, but can vary depending upon what is customary with the employer.” (¶ 20)

“The decision of the ALJ is not in accordance with the law. We reverse the district court judgment and direct that the matter be remanded to the agency for calculation of Taylor’s disability benefits under N.D.C.C. § 65-

01-02(5), in accordance with WSI's original order." (§ 28)

FACTUAL BACKGROUND

Industrial Contractors provides contract construction services and hires electricians through union referrals for industrial projects, including scheduled power-plant maintenance shutdowns. Taylor was referred and hired as a journeyman electrician on March 6, 2014, and was injured on March 11 while working at a power plant shutdown scheduled to end on May 16, 2014. Industrial Contractors had hired hundreds of electricians over several years, most of whom were laid off when projects ended, although some were transferred to other projects. WSI initially classified Taylor's employment as seasonal, while the ALJ found that regular-referral electricians worked for an indefinite duration and were not seasonal employees.

PROCEDURAL HISTORY

WSI initially classified Taylor's employment as seasonal and calculated his disability benefits accordingly. After Taylor requested a formal hearing, the independent ALJ determined the employment was not seasonal; the ALJ denied reconsideration. The district court affirmed, and Industrial Contractors appealed to the North Dakota Supreme Court.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the agency for calculation of Taylor's disability benefits under N.D.C.C. § 65-01-02(5), in accordance with WSI's original order.

CASES CITED

- Workforce Safety & Insurance v. Auck, 2010 ND 126, ¶¶ 8-9, 785 N.W.2d 186
- Power Fuels, Inc. v. Elkin, 283 N.W.2d 214, 220 (N.D. 1979)
- In re Estate of Elken, 2007 ND 107, ¶¶ 7-8, 735 N.W.2d 842
- Western Gas Resources, Inc. v. Heitkamp, 489 N.W.2d 869, 872 (N.D. 1992)
- Pettis v. Industrial Commission of Arizona, 372 P.2d 72, 74-75 (Ariz. 1962)
- Wozniak v. Industrial Commission of Arizona, 359 P.3d 1014, 1018-20 (Ariz. Ct. App. 2015)
- Rogers v. Cedar Van Lines, Inc., 281 N.W.2d 669, 671-72 (Minn. 1979)
- In re Application of Land O'Lakes Creameries, Inc., 68 N.W.2d 256, 259-61 (Minn. 1955)
- Hogsett v. Cinek Coal & Feed Co., 255 N.W. 546, 547-48 (Neb. 1934)
- Murillo v. Payroll Express, 901 P.2d 751, 759-60 (N.M. Ct. App. 1995)
- Froehly v. T.M. Harton Co., 139 A. 727, 729-30 (Pa. 1927)
- Nilson v. Clay County, 534 N.W.2d 598, 601-02 (S.D. 1995)
- Meyer v. Roettele, 264 N.W. 191, 195 (S.D. 1935)

- Amerada Hess Corp. v. State, 2005 ND 155, ¶ 13, 704 N.W.2d 8
- Hilton v. North Dakota Education Association, 2002 ND 209, ¶ 12, 655 N.W.2d 60
- Estate of Leier, 524 N.W.2d 106, 110 (N.D. 1994)
- Americana Healthcare Centers v. North Dakota Department of Human Services, 510 N.W.2d 592, 594 (N.D. 1994)
- State v. Vermilya, 423 N.W.2d 153, 154-55 (N.D. 1988)
- Lucke v. Lucke, 300 N.W.2d 231, 234 (N.D. 1980)
- State ex rel. Stenehjem v. FreeEats.com, Inc., 2006 ND 84, ¶ 14, 712 N.W.2d 828
- Turnbow v. Job Service of North Dakota, 479 N.W.2d 827, 830 (N.D. 1992)
- Cass County Electric Cooperative, Inc. v. Northern States Power Co., 518 N.W.2d 216, 220 (N.D. 1994)
- In re Juran and Moody, Inc., 2000 ND 136, ¶¶ 1, 25-27, 613 N.W.2d 503