

IN THE COURT OF APPEALS OF IOWA

FILED

FEB 23 1983

CLERK SUPREME COURT

GEORGE H. WENTZ, INC., d/b/a)
WENTZ PLUMBING AND HEATING CO.,)
 Employer, and the **ST. PAUL**)
INSURANCE CO., Insurance Carrier,)

Petitioners-Appellants,)

Filed February 23, 1983

vs.)

STEVEN W. SABASTA, Claimant, and)
ROBERT C. LANDESS, Iowa Industrial)
 Commissioner,)

Respondents-Appellees.)

2-272
2-67605

Appeal from Woodbury District Court - James P. Kelley, Judge.

Petitioners appeal from the court's ruling on their petition for judicial review affirming the Industrial Commissioner's order overruling petitioners' special appearance and awarding workers' compensation to claimant. On appeal, petitioners assert that they were denied their constitutional right to due process because a job referral by an Iowa Union was not a sufficient contact to give respondent agency or the Iowa courts jurisdiction to award benefits to an Iowa domiciliary when the nonresident employer did not do business in Iowa.

AFFIRMED.

James E. Thorn and John M. French of Stuart, Tinley, Peters, Thorn, Smits & Sens, Council Bluffs, for petitioners-appellants.

Harry H. Smith, MacDonald Smith, and LeRoy J. Sturgeon of Smith & Smith, Sioux City, for respondent-appellee Steven W. Sabasta.

Considered en banc.

OXBERGER, C.J.

The sole issue in this case is whether Iowa has jurisdiction to determine whether the claimant, an Iowa resident, is entitled to the benefits of the Iowa Workers Compensation Act for injuries sustained while working in South Dakota. The industrial commissioner and the trial court awarded the claimant Iowa workers compensation. We affirm.

Since the facts are undisputed, our review, pursuant to Iowa Code § 17A.20 (1981), is limited to a determination of whether the district court correctly applied the law. Iowa Civil Rights Commission v. Woodbury County Community Action - Agency, 304 N.W.2d 443, 446 (Iowa Ct. App. 1981).

Claimant, Steven W. Sabasta, is a lifelong resident of Sioux City, Iowa. Respondent, George H. Wentz, Inc., is a Nebraska corporation and has its principal place of business in Lincoln, Nebraska. The Wentz company has never conducted business in Iowa.

Wentz signed a collective bargaining agreement with Local #39 of the International Association of Heat and Frost Insulators and Asbestos Workers in Lincoln, Nebraska. The contract provided that Wentz would be bound also by the local collective bargaining agreement in any other jurisdiction he performed such work. Sabasta was a member of Local 57 of International Association of Heat and Frost Insulators and Asbestos Workers. The jurisdiction of Local 57 covered parts of Iowa, Minnesota, Nebraska, and South Dakota. Sabasta was referred by the bargaining agent of Local 57 to work for Wentz in Sioux Falls, South Dakota, where he was injured.

In Haverly v. Union Construction Co., 236 Iowa 278, 18 N.W.2d 629 (1945), the Iowa Supreme Court held that where a contract of employment is entered into in Iowa, the workers compensation benefits of Iowa apply even though all of the services to be performed under the contract are to be performed in a foreign state.

In this case, the employer contends the contract was not finalized in Iowa.

In Haverly, the employer maintained that the final terms of employment were entered into in Texas. The court, 236 Iowa at 283, 18 N.W.2d at 633, said: "The argument that a man would leave his fixed place of residence, taking his family with him, travel hundreds of miles and immediately enter upon a job the terms of which were not fixed and definite, would be contrary to our knowledge and experience."

In this case, we do not need to adopt an inference from the circumstantial evidence to find where the terms of the contract were fixed. The collective bargaining agreement of Local 57 adopted by Wentz in his agreement with Local 39 set the terms of employment.

Wentz argues that the last act in the contract of hire occurred in South Dakota since the contract gives the employer the right to reject a person referred by the union.

In Houle v. Stearns-Rogers Manufacturing Co., 157 N.W.2d 362, 368 (Minn. 1968), the court said:

Although the contract speaks of a right of the employer to reject an employee, it does not provide when that right shall be exercised. The fact that the employee was on the payroll when he left Minnesota would indicate that the right of the employer thereafter would be to discharge the employee rather than reject his services.

Louisiana and California courts reached a similar conclusion in Reynolds Elec. & Eng. Co. v. Workmen's Comp. App. Bd., 421 P.2d 96 (Calif. 1967) and Mattel v. Pittman Const. Co., 180 So.2d 696 (La. 1965).

Larson, in his treatise on Workmen's Compensation Law section 87.32, says:

The contract was deemed made in New Jersey both on the theory that the hiring hall became the employer's agent and alternatively, on the ground that the acceptance took place in New Jersey and it is the place of acceptance that governs.

In this case, in Articles VI, VII, and XIV of the agreement with Local 39 and by adoption of Articles V, VI, and XII of the agreement with Local 57, Wentz

agreed to use the union hiring hall as its hiring agent. Additionally, Article VIII of the agreement with Local 57 provides: "...he shall be reimbursed for his expenses in traveling to the job, one time at the commencement of his employment...." Article XIII of the agreement with Local 39 agreement provides: "The Union agrees that employees shall be considered 'at work' for a shop from the time they accept employment and that they shall proceed to execute said work in a faithful workmanlike manner."

Sabasta testified that he is always hired out of the union hall and that he has been an asbestos worker through the union for six years. He said that in this instance he called the business agent for work and was told to report for work in Sioux Falls, South Dakota. Upon arrival at the job site, Sabasta said he told the foreman who he was, and the local with which he was affiliated, and the foreman said, "All right, we will put you to work then."

We agree with the Minnesota court in Houle, supra, that the collective bargaining agreement made the business agent of the Local union the employer's hiring agent. We also agree with the conclusion reached in Houle that the employee was on the payroll when he left his home state and that the employer's right of rejection amounted to the right to discharge the employee rather than to reject his services. Therefore, we conclude that Sabasta was hired in Iowa.

Iowa Code § 85.71 (1981), provides:

If an employee, while working outside the territorial limits of this state suffers an injury...[he] shall be entitled to the benefits provided in this chapter provided that at the time of such injury: (2) He is working under a contract of...hire made in this state in employment not principally localized in any state....

Wentz, a Nebraska corporation, also operated at least in Nebraska and South Dakota. We do not decide whether Wentz is "localized in a state" pursuant to section 85.71(2), The Code. In Haverly, 236 Iowa at 289, 18 N.W.2d at 635, the court said:

In the treatment of Conflict of Laws, in the American Law Institute's Restatement of the Law, the rule is definitely stated. [citation] A workman who enters into a contract or employment in a state in which a workmen's compensation act is in force can recover compensation under the Act in that state for bodily harm arising out of and in the course of the employment, although the harm was suffered in another state, unless the Act provides in specific words or is so interpreted as to apply only to bodily harm occurring within the state.

As we have seen, our court has never so ruled as to come within the exception suggested in the above rule. On the contrary, our decisions have tended from the beginning to liberalize the act so as to make it apply and conform to its intent and purpose.

The question, then, is whether the Iowa law changed from the time of Haverly. An examination of the cases since Haverly reveals no change. In 1973, the General Assembly enacted section 85.71 of the Code. However, neither this provision nor any of the other provisions in the new statute does address the issue decided in Haverly as to whether contracts of hire made by an Iowa resident for work principally localized in another state entitle a worker to protection under Iowa's workmen's compensation laws. The obvious purpose of the new statute is to expand the right of recovery of the Iowa resident. The Iowa Workmen's Compensation Act is to be liberally construed to provide benefits to Iowa workers and their dependents. Caterpillar Tractor Co. v. Shook, 313 N.W.2d 503, 506 (Iowa 1981).

Wentz claims the law granting jurisdiction in this matter is unconstitutional in that it denies it property without due process of law guaranteed by both the state and federal constitutions. In Alaska Packers Assn. v. Industrial Acc. Comm., 294 U.S. 532, 55 S. Ct. 518, 79 L. Ed. 1044 (1935), the Supreme Court held that the place of making the contract may be the proper forum for adjudication of compensability. The employee, a California resident, entered into a contract in California expressly agreeing to be bound by Alaska law. All the work was performed in Alaska and the injury occurred in Alaska. The test established in

Alaska Packers is whether the forum state had a sufficient interest to justify the application of its statutes. The major concern expressed by the court was that claimant after his injury returned to his home state of California where he might well become a public charge since it was unlikely he could return to Alaska at his own expense to seek compensation in Alaska. "A major purpose of compensation legislation is to prevent the throwing of such injured workmen on local charity, and therefore California had a highly relevant interest in forestalling that event by utilizing its own compensation law." 4 Larson on Workmen's Compensation § 86.32.

In Houle, supra, the Minnesota court held that the state had sufficient legitimate governmental interest to entertain jurisdiction. There, as in this case, the nature of the employment was transitory. Neither the employer nor the employee were residents of South Dakota, where the injury occurred. The employer's principal place of business was in Colorado, while in the instant case it was in Nebraska; and both employees were engaged in interstate projects. The employees in both situations were temporarily stationed in South Dakota while being paid subsistence pay by the employer and travel expenses to and from their homes. There, as here, the employer contacted the labor union business agent in the forum state to convey the employer's offer of work to individuals. In both instances, the employee knew the terms of employment, since the governing conditions of employment were set forth in the union contract. Thus, the basis for finding that the contract of employment was made in the forum state is identical in Houle, supra, and in the instant case. The only factual difference between these two cases is the fact in Houle, although the employer was not presently engaged in business in Minnesota, he had done business in the past and had a registered agent in Minnesota, while that is not the case here.

We conclude that this difference does not diminish the state's legitimate

governmental interest. Wentz, a Nebraska employer, contacted the Iowa business agent and secured an Iowa employee. The contract of employment was made with Local 57 of Sioux City, Iowa. The contract was entered into in Iowa. Therefore, the terms of the employment contract are to be interpreted according to Iowa law. Sabasta is a lifetime resident of Iowa. Iowa has a significant interest to see that its injured citizens do not become public charges if they have a lawful remedy.

We find the action of the employer in designating the Iowa business agent as his employment representative to be sufficient "conduct in this state" to meet the test established in Norton v. Local Loan, 251 N.W.2d 520 (Iowa 1977).

AFFIRMED.

All judges concur except Donielson, J., who dissents.

DONIELSON, J. (dissenting)

I respectfully dissent.

The key to the result reached by the majority is the conclusion that claimant Sabasta was hired in Iowa. Having made this conclusion, the majority relied on section 85.71(2) in awarding benefits. In all earlier proceedings, Sabasta relied on section 85.71(1) to secure benefits. The Commission and the Appeals Board awarded benefits pursuant to section 85.71(1), apparently concluding that the contract was made in South Dakota and Sabasta was, therefore, hired in South Dakota. Indeed, in the appeal decision, the board recited in the statement of the case that Sabasta was injured "while working in the course of his employment in Sioux Falls, South Dakota. He had been hired on the job site." This fact was not challenged on appeal as the trial addressed only the issue of personal jurisdiction. Accordingly, I believe we must accept the finding that Sabasta was hired in South Dakota. Moreover, there is substantial evidence to support that finding.

However, even if we were to assume that Sabasta was hired in Iowa, I must disagree with the majority that he is entitled to the benefits under 85.71(2). The majority notes that "[w]e do not decide whether Wentz is 'localized in a state' pursuant to section 85.71(2), The Code [sic]." However, the language of section 85.71(2) provides for compensation provided the claimant is "working under a contract of hire made in this state in employment not principally located in any state (emphasis added)." In refusing to address the question of where the employment is principally located, the majority avoids the clear intent of the legislative scheme.

As the Iowa Supreme Court noted in Iowa Beef Processors, Inc. v. Miller, 312 N.W.2d 530, 533 (Iowa 1981), "[t]he principles of statutory construction . . . require us to consider all parts of a statute together." Subsections 2, 3 and 4 all refer to situations in which the contract for hire was made in this state, but differ

depending upon where the employment is principally located and whether or not benefits may be received from the state in which the employment is principally located:

2. He is working under a contract of hire made in this state in employment not principally localized in any state, or

3. He is working under a contract of hire made in this state in employment principally localized in another state, whose workers' compensation law is not applicable to his employer, or

4. He is working under a contract of hire made in this state for employment outside the United States.

(emphasis added.)

Reading these provisions together, it is clear that the intent of subsection 2 is to provide benefits to those workers, hired in Iowa, who perform work which is not principally located in any specific state and who, therefore, cannot recover under the workers' compensation law of any specific state. This meaning is even more apparent when read in light of subsection 3. In that situation, the worker, who was hired in Iowa, will not recover under the Iowa Act unless the workers' compensation law of the state in which his employment is principally located does not apply to his employer. Obviously, under subsection 3, if the worker recovers workers' compensation under the laws of the other state, he will not recover in Iowa. I believe this is the situation with which we are presented in the instant case.

Here, Wentz has, as its principal place of business, Lincoln, Nebraska. We do not know to which states Wentz sends its workers for employment. However, it appears that the work in which Wentz was engaged in the instant case was in South Dakota, a short distance from the Iowa and Nebraska borders. When Sabasta was injured he received workers' compensation under the Nebraska law, the law which was applicable to Sabasta's employer. Under these circumstances, it is subsection 3 which more appropriately applies to the instant case. Further, since Sabasta has recovered under the Nebraska law, he is not entitled to benefits under 85.71(3).

This interpretation of section 85.71 avoids the absurd result reached under the majority's opinion; namely, that a worker who recovers workers' compensation under the laws of the state in which his employer is principally located may force additional payments under the laws of the state in which his contract for hire was made. I do not believe that we should engage in a strained construction of section 85.71 to allow for double compensation for claimant's injuries. If a contract for hire was indeed made in Iowa, then subsection 3, and not 2, applies to the instant case to deny benefits. Because the majority relies on subsection 2 to award such benefits, I dissent.