



07/01/85 JAMES B. BROWN v. MIDDLE TENNESSEE

1985 | Cited 0 times | Tennessee Supreme Court | July 1, 1985

PER CURIAM

The single issue presented in this workers' compensation appeal is whether there is material evidence to sustain the finding of the Chancellor that appellant, James B. Brown, Jr., was an independent contractor rather than an employee of appellee Middle Tennessee Acoustics, Inc.

The issue is an extremely close one and there is evidence which would support a finding of either relationship. It is uncontradicted that Brown was in the general employment of Middle Tennessee Acoustics, Inc., in his work of installing acoustical ceiling and vinyl floor covering material. The method of payment to Brown varied from one job to another, but he seems to have been regarded by Middle Tennessee Acoustics, Inc., as a general employee. He usually hired his own helpers, but both he and his helpers were provided worker's compensation insurance by the employer.

However, at the time appellant sustained an injury to his knee on September 8, 1982, he was engaged in performing some special work which he himself had bid from another company. J.H. Shankle Company was the general contractor on a school construction project in Robertson County, Tennessee. Middle Tennessee Acoustics, Inc., had subcontracted to lay a new vinyl floor covering. The subcontract, however, did not include the cost of removing the old flooring which was in place. Appellant made a bid to the general contractor to remove the old flooring, and he was injured while engaged in that work. He was sharpening a tool on a grinder owned by the general contractor when a grinding disc disintegrated. A portion of the disc struck and injured appellant's right knee and inflicted an injury which left him with some permanent partial disability.

There is no verbatim transcript of the evidence adduced at trial. Apparently, however, no representative of Shankle testified, nor were any contract documents or insurance policies filed as exhibits. Appellant testified that Shankle had persuaded Middle Tennessee Acoustics, Inc., that it should share in one-half of the cost of removing the old floor, and appellant testified that his check for this work actually came from Middle Tennessee Acoustics, Inc., rather than from Shankle. Appellant gave a discovery deposition which was filed in the record, a portion of which is as follows:

"Q. Now did you work, when you went out to the job did the general contractor tell you what he wanted you to do?

A. Right.



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Q. And things like that?

A. Uh huh. And this item that we was doing that I got hurt on, really was for the general contractor. It was a removal of an old vinyl tile.

Part of the building was old and we had to tear this old tile up, and I was removing this, scraping it off the floor with scrapers.

Q. Let me ask you this. You say you were doing this for the general contractor. Was that part of his contract or part of Middle Tennessee's contract?

A. Well, really, it was his, but he more or less put it on Wallace Harris. [Mr. Harris was the owner of the stock of Middle Tennessee Acoustics, Inc.]

He told him, he said, 'I'll pay half of Jimmy's work price and you pay the other half,' and in fact it was his machine that I was using to sharpen my scrapers on.

Q. Who was the general contractor?

A. J. H. Shankle, my old boss.

Q. Did you get a paycheck on Shankle's check?

A. No. It went back through Middle Tennessee.

Q. In other words, he was going to pay Middle Tennessee--

A. Right.

Q. -- for your work and then they were going to pay you?

A. Right.

Q. And how did they figure out how much you were going to get paid for whatever you did for Shankle?

A. I told them the figure of so much a square foot for the tile removal.

Q. You gave Shankle that price?

A. Yes.



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Q. Why didn't Shankle pay you directly rather than paying Middle Tennessee Acoustics and then over to you, do you know?

A. Well, he wanted really to push Wallace into paying for half of it. He really stuck Wallace, really, with half of the money, you know, where it didn't amount to a lot of money but still, you know, it wasn't in our contract to start with to do this item."

Appellant employed two persons to assist him in performing this special work which he had bid. He paid these employees out of the funds which he received from performing this job.

While part of the work of Middle Tennessee Acoustics, Inc., was to prepare the surface for the new floor, appellant testified that this was not what he was doing when injured. He testified:

"Q. This scraper you were using, was that to grind the old adhesive off the concrete floor?

A. No, sir. It was just about a four inch wide scraper, piece of steel metal with a hole on it to, just for scraping, knocking tile up, running it up under the tile." ¹

Material evidence in the record supports the finding of the Chancellor that at the time and under the circumstances of the injury appellant was performing work on a job which he had specially bid from the general contractor and which was not part of his general employment with Middle Tennessee Acoustics, Inc. Many factors, of course, go into a determination of the legal relationship between persons, and divergent results are found in the reported cases, based upon the facts in each. Our review is limited to determining whether there is material evidence to support the factual Conclusions reached by the trial Judge. T.C.A. § 50-6-225(e). There is such evidence in the present case.

The fact that the case was originally treated as being compensable and that some benefits were initially paid to appellant does not prevent the employer or the insurance company from denying liability upon full development of the facts. See T.C.A. § 50-6-205(d).

The judgment of the Chancellor is affirmed at the cost of appellant. The cause will be remanded to the trial court for any further proceedings which may be necessary.

1. Appellant testified that he bid the removal job with Shankle before any of the work began. This removal work was covered in the general specifications for the entire job but was not in the specifications for Middle Tennessee's subcontract. Mr. Brown testified that Middle Tennessee Acoustics, Inc., "had told them at the time, you know, they wasn't bidding the removal of the old tile." Appellant said, "I just bid this extra." He and his two helpers worked in the removal for about four or five days including a weekend, and they coordinated this work with Shankle's job superintendent.

