COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS	**BOARD NO. 035209-13 033108-13 037228-13**
Jeffrey Burke	Employee
Ranco Tranportation, LLC Workers Compensation Trust Fund	Employer Insurer
Randy A. Coffin d/b/a Ranco Trucking[1] Travelers Indemnity of America	Employer Insurer
Mercer Transportation American Zurich Insurance Co.	Employer Insurer

REVIEWING BOARD DECISION
(Judges Harpin, Fabricant, Calliotte)

The case was heard by Administrative Judge Benoit.

APPEARANCES
David J. Kneeland, Jr., Esq., for the employee
Timothy J. Foley, Esq., for the Workers Compensation Trust Fund
Israel Sanchez, Esq., for Ranco Transportation and Randy A. Coffin d/b/a Ranco Trucking
Thomas D. Daniels, Esq., for Travelers Indemnity Co. of America at hearing
Garrett Harris, Esq., for Travelers Indemnity Co. of America on appeal
Joseph M. Spinale, Esq., for American Zurich Insurance Co. at hearing
Michael T. Henry, Esq. for American Zurich Insurance Co. on appeal

[1] There is some inconsistency in the name of the employer insured by Travelers. Although the employee's claim listed "Randy A. Coffin d/b/a Ranco Trucking," the correct name of the company appears to be "Randy A. Coffin, Sr. d/b/a Randy's Truck and Equipment Repair." (Dec. 2, 5 [Ex. 33], 8 and n., 4, 9; Travelers' br. 1.) As the judge explained, "Randy A. Coffin dba Ranco Trucking," or "Ranco Trucking" "was the business name that Mr. Coffin used for the trucking business before the creation of Ranco Transportation, LLC," (Dec. 5, see Ex. 28), in January 2013. (Dec. 9.) Neither Ranco Trucking nor Ranco Transportation, LLC, was insured for workers' compensation. (Dec. 10, 18.) Because the judge has listed the employer as "Randy A. Coffin d/b/a/ Ranco Trucking" in the caption, we leave it as such, with the caveat noted above.

HARPIN, J. American Zurich Insurance Company (Zurich) appeals from a decision finding it liable for compensation benefits to the employee pursuant to G. L. c. 152, § 18. We affirm the decision.[2]

The employee, 58 years old at the time of the hearing, sustained an industrial injury on December 9, 2013. He was in Chicago picking up a load of pipes for his employer, Ranco Transportation LLC (Ranco), that he was then to haul to a company in Taunton, Massachusetts. (Dec. 8, 18; Ex. 40.) He slipped on a set of pipes that had been loaded onto the flatbed trailer he was to haul, sustaining severe injuries of bilateral closed pilon fractures, bilateral anterior subluxation of the ankle joints, and severe soft tissue injuries with blistering. (Dec. 8.) These injuries required four surgeries, from December 2013 to March 2016. Id.

The employee brought claims against the Workers' Compensation Trust Fund (WCTF)(due to the uninsured status of Ranco), Travelers Indemnity Company (Travelers)(the insurer of Randy A. Coffin, Sr. d/b/a Randy's Truck and Equipment Repair)(see supra note 1), and Zurich (the insurer of Mercer Transportation, the alleged general contractor).[3] After a conference on October 6, 2014, the judge ordered Travelers to pay the employee § 34 benefits, and to reimburse the WCTF for benefits it had previously paid the employee under a § 19 Agreement.[4] (Dec. 6, 8-9.) The judge denied the employee's claims against

[2] The hearing took place over four days. The transcripts of those dates are designated as follows: "Tr. I," for April 1 2016; "Tr. II," for June 10, 2016; "Tr. III," for June 17, 2016; and "Tr. IV," for August 12, 2016.

[3] Rizzo v. MBTA, 16 Mass. Workers' Comp. Rep. 160, 161 n.3 (2002)(permissible to take judicial notice of Board file).

[4] The employee and the WCTF entered into a § 19 Agreement on May 5, 2014, in which the WCTF agreed to pay the employee § 34 benefits from the date of approval of the Agreement to the date of the conference, on a without prejudice basis, with the WCTF retaining all rights it had to all defenses to the employee's claim. The Agreement was approved by a conciliator on May 6, 2014. (Section 19 Agreement.) Rizzo, supra.

WCTF and Zurich. (Dec. 6-7.) The employee appealed the two denials, and Travelers appealed the order against it. Id.

The impartial physician appointed pursuant to G. L. c. 152, § 11A, Dr. Charles Kenney, was of the opinion the employee's injuries were causally related to the December 9, 2013, incident, that the employee was totally disabled from his work as a truck driver, had to avoid kneeling, crawling, squatting, climbing, standing or walking more than he could tolerate, and should use crutches or a cane as needed. (Dec. 14-15.) After a hearing, the judge adopted the doctor's opinions and found the employee was totally incapacitated from December 9, 2013, to date and continuing, and awarded medical benefits and weekly compensation, to be paid by Zurich. (Dec. 21, 22-23.)

However, the issue before the judge was not the extent of the employee's injuries and disability, but whether he worked for Ranco, which was uninsured for workers' compensation on the date of injury. Further, if he was found to be an employee of Ranco, whether there was contractor liability, pursuant to G. L. c.152, § 18, that would provide compensation benefits.

The judge found the following facts. In September 2012, the employee discussed with Randy A. Coffin, Sr. coming to work for Coffin's trucking business as a long haul truck driver. (Dec. 9.) Mr. Coffin owned two businesses, Randy A. Coffin, Sr. d/b/a Randy's Truck and Equipment Repair, and Ranco. (Dec. 8-9.) The repair business began in 2000 and employed two or three mechanics, who worked out of a garage facility owned by Mr. Coffin. (Dec. 8.) In 2013, it had a workers' compensation insurance policy with Travelers, covering those mechanics. (Dec. 8-9.)

Ranco first began in 2012, under the name "Ranco Trucking," after Mr. Coffin acquired a truck and several flatbed trailers, and began hauling loads to and from Florida. (Dec. 5 n.3, 9.) On January 14, 2013, Mr. Coffin followed the advice of his accountant and created a limited liability company under Massachusetts law, Ranco Transportation, LLC, for the purpose of trucking and

transportation. Id. Neither Mr. Coffin nor Ranco ever applied for workers' compensation insurance to cover the trucking business before December 9, 2013, nor was there any evidence that the Commonwealth of Massachusetts ever assigned Ranco to any insurance company for that insurance. (Dec. 10, 17.)[5] The judge made an explicit finding of fact that on the date of injury, Ranco was not insured for workers' compensation. (Dec. 18.)

The judge found that in May 2013, the employee began working for Ranco as a long haul truck driver. (Dec. 9.) He received paychecks that were written on an account in Ranco's name, and the door of the truck that he drove had Ranco's name on it. (Dec. 17.) Mr. Coffin filed a tax return specifically for Ranco, separating it from the repair business. Id.

On December 9, 2013, the employee, while working as an employee of Ranco, sustained his severe industrial injury while picking up a load of pipes from a company called Wheatland Tube in Chicago. (Dec. 18.) The judge found that Mercer had contracted with Wheatland Tube to haul the pipes from Chicago to New England. Id. He also found that Mercer had subcontracted that work to Ranco, and that the employee was there to pick up those pipes. Id. The judge concluded that Mercer was therefore responsible for the payment of workers' compensation benefits to the employee, pursuant to G. L. c. 152, § 18,[6] and that on

[5]Although not mentioned by the judge, this is a reference to a designation by the Commissioner of Insurance of an insurance company to issue workers compensation insurance to an employer, whose application for such insurance has been rejected, or not accepted, by two insurers. This is a so-called "assigned risk" policy. See G. L. c. 152, § 65A(1).

[6] General Laws, c. 152, § 18, states, in relevant part:

> If an insured person enters into a contract, written or oral, with an independent contractor to do such person's work, or if such a contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contract with the insured, and the insurer would, if such work were executed by employees immediately employed by the insured, be liable to pay compensation under this chapter to those employees, the insurer shall pay to such employees any

December 9, 2013, Mercer had Massachusetts workers' compensation insurance with Zurich. (Dec. 12, 22-23.) He ordered Zurich to reimburse Travelers for benefits it had paid to or on behalf of the employee pursuant to the conference order, and to pay § 34 and then § 35 benefits to the employee, as well as medical costs under §§ 13 and 30. Zurich appeals.

Zurich raises five issues, three of which concern whether the judge was correct in finding that the employee worked for Ranco on his date of injury. We summarily dismiss those issues as without merit. The other two issues, which are essentially intertwined as one, require discussion.

Zurich argues the judge erred in finding that § 18 applied to the relationship between Mercer and Ranco. It asserts there was no contract between Wheatland Tube and Mercer to pick up the pipes in Chicago that could then be subcontracted to Ranco to do the actual work, because Mercer was only a broker, matching up Wheatland, the shipper, with the carrier, Ranco, for delivery. It argues there was no evidence of any other arrangement, and, therefore, the judge's decision requiring Zurich, as the insurer of Mercer, to pay the compensation under § 18 was arbitrary and capricious, requiring reversal.

The judge found that Mercer provided long haul trucking services throughout North America for various clients, using its own large fleet of leased vehicles and their drivers,[7] when they were available. (Dec. 11.) Only when Mercer could not perform a new hauling job with those resources did it "seek to engage another company to do that work." (Dec. 12.) It would post the job online for other trucking companies to view and contact Mercer if they wanted to "take on the load." Id.

> compensation which would be payable to them under this chapter if the independent or sub-contractors were insured persons.

[7] The drivers owned the trucks, but leased them permanently to Mercer, and then drove them as independent contractors. (Dec. 11; Tr. IV. 19-20.)

In this case, the Wheatland Tube hauling job could not be done by Mercer's own vehicles, so Mercer posted the job on a website called DAT, for Dial-a-Truck, to which Ranco responded. (Tr. IV, 8.) Mercer's general manager, Richard Reed, testified that in that situation they "will connect the shipper and the carrier as a broker." (Tr. IV. 7.) Mercer entered into a general "Motor Contract Carrier – Broker Contract" with Ranco, part of which was a specific contract with Ranco to pick up the pipes in Chicago. (Dec. 12; Ex. 25.) The judge found that Mercer continued "its direct relationship with the client," meaning Wheatland Tube. (Dec. 12.)

In the contract with Ranco, Mercer referred to itself as a "broker," and the signature on the specific contract to pick up the pipes was written under the words "Mercer Transportation Co., Inc, Broker/Shipper." (Dec. 12; Ex. 25.) The contract included specific instructions from Wheatland Tube to, 1) call each day while in route; 2) use the customer's tarping system; and, 3) wear safety equipment. Mercer required Ranco to adhere to the instructions. (Tr. IV, 13-16, 27.) Mr. Reed acknowledged that Mercer billed the third party acting on behalf of Mercer's customer, Wheatland Tube, for transporting the freight, and that Ranco billed Mercer for its work. (Dec. 12; Tr. IV, 35-36.) Ranco did not bill Wheatland Tube for the work. (Dec. 12; Exs. 40, 41.)

The judge held that Wheatland Tube contracted with Mercer for the hauling of the pipes from Chicago to New England, and that Mercer then subcontracted that work to Ranco. (Dec. 18.) He then found Mercer responsible for the employee's compensation benefits under § 18. Id.

Zurich contends the evidence presented did not demonstrate the existence of a contract between Mercer and Wheatland Tube to transport the pipes, and that there was no evidence that Mercer "became legally bound to deliver the load," (Zurich br., 8), in contravention of the judge's finding that there was such a contract. Without such a contract, it argues, § 18 cannot apply.

We are generally required to accept facts found by the judge. Martinez v. Georges Renovations, LLC, 33 Mass. Workers' Comp. Rep. ___ (April 9, 2019)(reviewing board limited to facts found by judge unless they are infected with error or wholly lacking in evidentiary support). In this case, while no contract between Mercer and Wheatland Tube was presented, General Manager Richard Reed referred to Wheatland as Mercer's customer.

> Ques.: So, Mercer Transportation Company contracts with a customer to get his load from point A to point B, correct?
>
> Reed: Yes.
>
> Ques.: And that is what occurred in this particular instance?
>
> Reed: Yes.

(Tr. IV, 45.)

Given the facts found by the judge that Ranco and Wheatland never had a direct relationship (by contract or otherwise), that Ranco contracted with Mercer to pick up and transport the pipes, that Ranco billed Mercer for that work, that Mercer then billed Wheatland (through its third party) for the work, and that Mr. Reed acknowledged contracting with Wheatland to move the pipes, the adopted evidence supports the judge's finding of a contract between Mercer and Wheatland Tube. We will therefore not disturb that finding.

The question remains whether the fact of the contract and subcontract supports the application of § 18. The judge provided no analysis, merely finding that under that section, Mercer's insurer was responsible for payment of compensation. Section 18 requires a showing that Mercer entered into a contract with Ranco to do work that was not ancillary and incidental to Mercer's trade or business, but was part of that business, and that the employee was injured on or about premises on which Ranco had undertaken to execute the work. G. L. c. 152, § 18; Caton v. Winslow Brothers & Smith Co., 309 Mass. 150, 153 (1941). The

contract between Ranco and Mercer is a fact found by the judge that is fully supported by the record. (Dec. 12; Ex. 25.) The work of hauling materials over long distances by truck, for which Ranco was contracted, was clearly part of Mercer's core business, as the judge found Mercer provided long haul trucking services throughout North America for various clients, using its own fleet of leased vehicles and drivers. Thus, the work for which Ranco was contracted was not ancillary to it. (Dec. 11; Tr. IV. 6-7).[8] Ranco was doing the work that Mercer had contracted with Wheatland Tube to perform, (Dec. 12), and the employee was injured at the Chicago premises of Wheatland Tube where the pipes were to be picked up. (Dec. 8, 21.) Thus, as a matter of law, the elements of § 18 were met by the evidence adopted by the judge. We therefore affirm the judge's decision.

Pursuant to G. L. c. 152, § 13A(6), Zurich is directed to pay the employee's counsel a fee of $1,680.52.

So ordered.

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William C. Harpin
Administrative Law Judge

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Bernard W. Fabricant
Administrative Law Judge

_____
Carol Calliotte
Administrative Law Judge

Filed: **May 30, 2019**

[8] Mr. Reed testified:

> Mercer transportation is a motor carrier, It runs approximately 2,200 permanently leased owner-operator trucks around the country. We've got 90 offices. We provide the service of freight solicitation plus safety, insurance, all those various needs of the owner-operator, and Mercer Transportation is also a brokerage.

(Tr. IV, 6-7.)