

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHCV2011/0453

BETWEEN:

ULRIC MORGAN

CLAIMANT

-AND-

RUDY’S ELECTRICAL CONTRACTING COMPANY LIMITED

DEFENDANT

Appearances: Ms Shirlan Barnwell, Counsel for the Claimant, Mr Ronald Marks, Counsel for the Defendant.

2015: Oct. 29
Dec. 3

JUDGMENT

[1] **Henry, J.:** Mr Ulric Morgan is a former employee of Rudy’s Electrical Contracting Company Limited (“RECCL”). Mr Morgan alleges that he got injured on the job, in an accident involving RECCL’s truck. He is seeking damages for pain and suffering, loss of income and future medical care. RECCL contends that Mr Morgan was not injured while he was at work and he is therefore not entitled to recover damages.

ISSUE

[2] The issue is whether Mr Morgan was injured during the course of his employment with RECCL and is thereby entitled to recover damages?

ANALYSIS

Issue – Was Mr Morgan injured during the course of his employment with RECCL and is thereby entitled to recover damages?

- [3] The determination of this issue requires consideration firstly of what Mr Morgan was employed to do. Ulric Morgan gave testimony. He called no witnesses. RECCL's manager and CEO Mr Rudolph Daize and Mr Kamani Thompson testified on RECCL's behalf. Mr Morgan testified that at the time of the accident, he was employed with RECCL for over 30 months as a labourer. He indicated that he was not given an agreement setting out his duties but during the period of his employment he was assigned anything concerning "labouring and handiwork". He said that his duties included trimming Rudolph Daize's yard. Mr Daize denied this. Mr Daize indicated that he never gave Mr Morgan a job description. He stated that Mr Morgan was employed as a labourer to do mainly manual labour. He explained that labourers do not have a specific task *per se*, but are expected to complete assignments given to them. This suggests that their duties encompass a range of activities, depending on RECCL's needs.
- [4] Although, Mr Morgan was not given a statement outlining his duties, there is very little dispute between the parties that he was employed as a labourer to perform such manual labour as assigned by the Manager or supervisors. I therefore find as a fact that Mr Morgan was employed as a labourer which entailed performing manual labour of a varied nature. His work included packing and unpacking containers and such other *ad hoc* labour intensive duties assigned daily.
- [5] Mr Morgan explained that his duties on July 28, 2011, were to work in the top yard at Campden Park packing a container. He testified that his co-worker, a Mr Thompson passed those instructions on to him from Mr Daize. He stated that sometime after 12 noon that day, supervisor Russell came into the yard and informed the mechanics about a problem encountered with an excavator by other workers out in the field. Mr Morgan testified further that the mechanics began protesting that they were not going to work through their lunch break, whereupon

he suggested to Mr Russell that since he had already taken his lunch he could take the battery for the excavator. Mr Morgan maintains that the Supervisor then instructed him to take the battery to New Montrose and install it in the excavator. As a result he left Campden Park with the driver and Mr Russell in a pickup and went to New Montrose, Monkey Hill where he installed the battery in the excavator.

[6] Mr Daize and Mr Thompson both testified that earlier that day, Mr Daize told Mr Morgan not to leave the compound at Campden Park without permission. Mr Daize explained that he warned Mr Morgan verbally because he had received complaints on three previous occasions that he had left the compound without permission. Mr Morgan denied that Mr Daize had earlier that day instructed him not to leave the yard at Campden Park. He also denied leaving the yard of his free volition and embarking on a frolic of his own. He insisted that when he got injured he was engaged in the course of his employment. Mr Daize's and Mr Thompson's evidence is credible and I believe that Mr Morgan was warned not to leave that compound that day without permission.

[7] Mr Daize did not say who in general was authorized to instruct the workers and in particular Mr Morgan. However, it appears from his and Mr Thompson's testimony that Mr Daize and the supervisors were responsible for issuing instructions on RECCL's behalf. I accept Mr Morgan's testimony that Mr Russell instructed him to install the battery in the excavator and that he in fact did so. I find therefore that Mr Morgan left the compound on Mr Russell's instructions to install the battery in the excavator at New Montrose. I find too that Mr Morgan was therefore engaged in his duties as labourer at New Montrose when he installed the battery.

[8] In deciding whether an employee was engaged in the course of his employment at the time he is injured, the court must analyze the relevant facts and assess at the factual picture as a whole, and "assign appropriate weight to the relevant

factors”.¹ An employee will be found to be acting in the course of his employment if what he is doing at the material time “...constitutes the discharge of one of those duties or is reasonably incidental thereto.”² Similarly, an employee who is injured while he is a passenger in a vehicle may or may not be acting in the course of his employment, depending on the particular facts.

[9] An accepted principle of law is that:

*“... an employee travelling on the highway will be acting in the course of his employment if, and only if, he is at the material time going about his employer’s business. One must not confuse the duty to turn up for one’s work with the concept of already being “on duty” while travelling to it.”*³

Similarly,

*“a deviation from or interruption of a journey undertaken in the course of employment (unless the deviation or interruption is merely incidental to the journey) will for the time being ... take the employee out of the course of his employment;”*³

and finally,

*“Return journeys are to be treated on the same footing as outward journeys.”*⁴

[10] Was Mr Morgan acting in the course of his employment when he got injured? He testified that after installing the battery, he got into the excavator’s cab for the journey from New Montrose to Gorse. He explained that the excavator was

¹ Per Sir John Donaldson in *Nancollas v Insurance Officer* [1985] 1 All ER 833 cited with approval in *Francis James v National Insurance Board* GDAHCVAP2013/0016, by Bennett JA (AG.) at para. 10.

² Per Hoffman LJ in *Faulkner v. Chief Adjudication Officer* [1994] PIQR 244, cited with approval by Bennett JA (AG.) in *Francis James v National Insurance Board* GDAHCVAP2013/0016 at para. 9.

³ *Smith v Stages* [1989] ICR 272 at p. 299 per Lord Lowry.

⁴ *Ibid.* *Smith v Stages* at p. 299 - 300 per Lord Lowry.

positioned on a flat bed truck and as it attempted to negotiate a corner at Peruvian Vale it overturned, he fell out of the cab and sustained injuries. He provided no explanation for his presence in the excavator cab at Peruvian Vale when the accident happened.

- [11] Mr Morgan did not allege that he travelled to Peruvian Vale on instructions from the manager Mr Rudolph Daize or any of the supervisors. The extent of his evidence on that matter is that:

“...during the course of employment, (he) was on a flatbed truck TQ560 owned and operated by and on behalf of the Defendant employer, which was transporting an excavator from Kingstown to Gorse... It is untrue that I was not working when I went on the truck. I deny that I went on a joy ride. I deny that when I sustained those injuries that I was not acting in the course of my employment.”

- [12] Mr Morgan does not say whether he was charged with carrying out any duties during that journey or on arrival at Peruvian Vale or Gorse. His evidence is that he was instructed to do certain work at the site at Campden Park and then to install a battery in the excavator at New Montrose. There is no evidence that he was engaged in any duties as a labourer for RECCL after he left New Montrose that day. The court takes judicial notice that Peruvian Vale and Gorse are located on the Windward side of the island while Campden Park is located on the Leeward side. The court notes too that Mr Morgan admittedly left the Campden Park site for New Montrose in a pickup truck yet he travelled to Peruvian Vale in the cab of the excavator which was being transported on the back of a flatbed truck. He explained:

“I was seated in the cab of the excavator. The excavator was on the flatbed. I went and sat in the excavator where the operator normally sits. I sat there because the front of the truck was occupied with the 2 drivers. The truck only has space for 2.”

He provides no reason for changing transportation or for travelling to Peruvian Vale, a destination in the opposite direction from his work site at Campden Park. None of the other witnesses shed any light on this.

[13] Taking the evidence in its totality, it is apparent that Mr Morgan had completed the assignment to install the battery when he boarded the excavator to travel to Gorse. Further, there is no credible evidence that Mr Morgan was engaged in duties as a labourer for RECCL during the journey to Peruvian Vale, or that he had duties to perform at Peruvian Vale or Gorse. It is settled law that he who asserts must prove. Mr Morgan has failed to prove on a balance of probabilities that at the time he was injured he was engaged in the course of his employment. His trip to Peruvian Vale did not constitute a return trip to Campden Park. In fact, it appears and I find that it was a deviation from the trip taken to New Montrose to install the battery.

[14] I am satisfied that when he left in the excavator cab towards Gorse, Mr Morgan had completed the task he was assigned at New Montrose. There is no evidence before the court that he had further duties to perform that day either at Peruvian Vale or Gorse. There is no good explanation therefore why he found himself on the excavator at that time and in that area. I therefore find that at the time he was involved in the accident on July 28, 2011, Mr Morgan was not engaged in the course of his employment but rather he was on a frolic of his own. Accordingly, I find as a fact that Mr Morgan was not acting in the course of his employment when he got injured. RECCL is therefore not liable to pay Mr Morgan damages and I so hold.

ORDER

[15] It is accordingly ordered that:

(1) Ulric Morgan's claim is dismissed.

(2) Ulric Morgan shall pay agreed costs of \$5000.00 to Rudy's Electrical Contracting Company Limited.⁵

.....
Esco L. Henry
HIGH COURT JUDGE

⁵ See clause 17 of Case Management Order dated May 24th, 2012.