

TGS CASE SUMMARIES FOR 1/10/20 ATTORNEY MEETING

2. *Pittsburgh Steelers Sports, Inc. v. WCAB (Trucks)* No. 1257 C.D. 2018 January 3, 2020

A player injured in the NFL urged the Commonwealth Court of Pennsylvania to re-visit a precedent holding that professional football players are seasonal employees under a Workers' Compensation law, arguing off-season obligations made his contract year round for purposes of determining how his Workers' Compensation payments should be calculated.

Section 309(e) of the Act relates to the calculation of the average weekly wage for exclusively-seasonal employees and provides in relevant part:

In occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the average weekly wage shall be taken to be 1/50 of the total wages which the employee has earned from all occupations during the 12 calendar months immediately preceding the injury, unless it be shown that during such year, by reason of exceptional causes, such method of computation does not ascertain fairly the earnings of the employee, in which case the period for calculation shall be extended so far as to give a basis for the fair ascertainment of his average weekly wage.

If an individual is not a seasonal employee their wages are calculated for purposes of determining compensation based on the 52-week period prior to the date of injury.

In this case, the claimant was injured during a 2008 preseason game for the Pittsburgh Steelers. He argued that the year-round obligations of his contract contradicted the Court's 1992 ruling in the case of a fellow Steeler, Larry Station, given the additional mini-camps, team meetings and photo-ops players are required to attend, along with a bar on playing football during the off-season. The argument was that he was required to be available during the entire year, based on his contract. As a year-round employee, the claimant should have received his Workers' Compensation payments for his career-ending injury based on the full-year \$200,000 salary his contract said he would have received had he remained on the team. That would result in payments of about \$800.00 per week, compared to about \$490.00 per week if he was deemed to be a seasonal worker. The Workers' Compensation Judge in this case found that he was not a seasonal employee and awarded him the higher compensation rate. That decision was issued by the esteemed Workers' Compensation Judge John McTiernan.

The claimant signed a two-year contract for 2008 that would have paid him \$295,000.00 for the year if he made the team, or \$200,000.00 if he was injured. He was injured and never played for the Steelers but was put on injured reserve.

He attended mini-camps and training camp and was cut soon after suffering a shoulder injury in the pre-season game against the Philadelphia Eagles. He filed a grievance and received \$170,000.00 from the team that he would pay back if he got Workers' Compensation.

The Commonwealth Court Judges seem skeptical of claims the contract was seasonal, given the camps and meetings that start in June, a post-season that can last into February, and at least 10 personal appearances on behalf of the team and a ban on playing for any other professional football league, even during the off-season. The Court said that part of his yearly salary is not playing in the off-season.

The Court went on to say that the contract the claimant signed makes it clear that employer will pay claimant a yearly salary in exchange for performances of all obligations under the contract, which includes media appearances, performance of which is not limited to the regular football season. They indicated that the fact that compensation is received only throughout the regular season, players are paid 16 installments of their contract and it does not limit players' obligations to the regular season especially where, as in this case, players are explicitly paid for performance of all obligations under the contract. Accordingly, the terms of the contract indicate the claimant is not a seasonal employee but an employee whose wages are fixed by the year. Therefore, the entire year should be utilized to determine the claimant's salary.

This was a deviation from the original decision of the previous cases where it was determined that the player was a seasonal employee but, because of the nature of the new contracts, it appears that the law is now going to be changed.

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