IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 25, 2012 Session

RON W. ROBINSON v. BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC

Appeal from the Circuit Court for Rutherford County
No. 60930 Robert E. Corlew, III, Chancellor

No. M2011-02238-WC-R3-WC - Mailed August 30, 2012
FILED NOVEMBER 21, 2012

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law pursuant to Tenn. Sup. Ct. R. 51. The employee injured his neck in the course of his employment in 2005. He returned to work for his pre-injury employer and settled his claim subject to the one and one-half times impairment cap. In 2009, the employer entered into a new collective bargaining agreement in which the hourly wages of all production workers were reduced. Thereafter, the employee sought reconsideration on his earlier settlement pursuant to Tenn. Code Ann. § 50-6-241(d)(1)(B) (2008). The trial court held that the across-the-board wage reduction did not trigger the right to reconsideration and denied the employee's claim. We affirm the judgment.

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Circuit Court Affirmed

WILLIAM C. KOCH, JR., J., delivered the opinion of the Court, in which DONALD P. HARRIS and WALTER C. KURTZ, SR. JJ., joined.

Neal Agee, Jr., Lebanon, Tennessee, for the appellant, Ron W. Robinson.

Kitty Boyte and Catherine C. Dugan, Nashville, Tennessee, for the appellee, Bridgestone Americas Tire Operations, LLC.

MEMORANDUM OPINION

I.

Ron Robinson has been employed by Bridgestone/Firestone Americas Tire Operations ("Bridgestone") in Smyrna since 1988. On October 27, 2005, he sustained a compensable injury to his neck. Mr. Robinson's treating physician assigned 10% permanent anatomical impairment to the body as a whole due to the injury. Mr. Robinson was able to return to work at his pre-injury job at a wage equal to or greater than his pre-injury wage. Mr. Robinson and Bridgestone settled his claim for permanent disability benefits based upon 14.5% permanent partial disability to the body as a whole. The trial court approved the settlement on July 7, 2006.

In October 2009, Bridgestone and the union representing its employees at the Smyrna facility adopted a new collective bargaining agreement. This agreement included a $2.50 per hour across-the-board reduction of the hourly wages of all the represented employees. Mr. Robinson was earning $23.91 per hour when he was injured in 2005. As a result of the new collective bargaining agreement, his wages were reduced to $22.93 per hour. Accordingly, Mr. Robinson's hourly wage in October 2009 was $0.98 per hour less than his hourly wage in 2005. Both Mr. Robinson and corporate officials of Bridgestone testified that the wage reductions were negotiated and agreed to in an effort to keep the facility open.

On June 14, 2010, Mr. Robinson filed a complaint in the Chancery Court for Rutherford County, asserting that the across-the-board reduction in wages in 2009 triggered his right to a reconsideration of his 2006 settlement under Tenn. Code Ann. § 50-6-241 (2008). Bridgestone denied that Mr. Robinson was entitled to seek or receive reconsideration of the 2006 settlement. On September 15, 2011, following a hearing on August 16, 2011, the trial court entered a final order denying Mr. Robinson's request for additional permanent disability benefits stemming from his 2005 injury. On this appeal, Mr. Robinson takes issue with the trial court's interpretation of Tenn. Code Ann. § 50-6-241.

II.

This appeal does not involve any disputed issues of fact. Rather, Mr. Robinson challenges the trial court's interpretation and application of Tenn. Code Ann. § 50-6-241(d)(1). This is a question of law. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009). Accordingly, we will review the trial court's conclusions de novo upon the record with no presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d at 298; *Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996).

III.

When Mr. Robinson was injured in 2005, Tenn. Code Ann. § 50-6-241(d)(1)(B)(i) provided:

> If an injured employee receives benefits for body as a whole injuries pursuant to subdivision (d)(1)(A) and the employee is subsequently no longer employed by the pre-injury employer at the wage specified in subdivision (d)(1)(A) within four hundred (400) weeks of the day the employee returned to work for the pre-injury employer, the employee may seek reconsideration of the permanent partial disability benefits.[1]

The "wage specified in subdivision (d)(1)(A)" is "a wage equal to or greater than the wage the employee was receiving at the time of the injury." In accordance with the stipulated facts set out above, although Mr. Robinson continued to work for Bridgestone after the 2009 collective bargaining agreement took effect, his wage was $0.98 per hour less than it had been on the date of his compensable injury. In light of that fact, Mr. Robinson argues that the plain wording of the statute authorizes him to seek reconsideration of his settlement.

However, the cases cited by the trial court lead to the opposite conclusion. In *Edwards v. Saturn Corp.*, No. M2007-01955-WC-R3-WC, 2008 WL 4378188 (Tenn. Workers' Comp. Panel Sept. 25, 2008), the employee sustained a compensable injury to his shoulder. He returned to work at a qualifying wage. *Edwards v. Saturn Corp.*, 2008 WL 4378188, at *2. While his lawsuit for permanent disability benefits was pending, he was laid off for an extended period of time while the plant was re-tooled to produce a new product. *Edwards v. Saturn Corp.*, 2008 WL 4378188, at *2. The evidence showed that, while on layoff, the employee continued to receive benefits such as health insurance and seniority credits. He also received a combination of payments approximating 95% of his normal wages. *Edwards v. Saturn Corp.*, 2008 WL 4378188, at *2. At trial, the employee argued

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[1]The General Assembly amended this subsection in 2010 by adding the following language applicable to claims approved or adjudicated on or after July 1, 2010:

> Employees who continue in their employment after a reduction in pay or a reduction in hours due to economic conditions shall not be entitled to reconsideration of their claims under this section if the reduction in pay or reduction in hours affected at least fifty percent (50%) of all hourly employees operating at or out of the same location. This provision does not apply to or include employees involved in layoffs, closures or a termination of business operations.

Act of June 3, 2010, ch. 1034, § 1, 2010 Tenn. Pub. Acts. 617, 617 (codified at Tenn. Code Ann. § 50-6-241(d)(1)(B)(i) (Supp. 2011)).

that his award should not be subjected to the lower "cap."[2] *Edwards v. Saturn Corp.*, 2008 WL 4378188, at *2. His argument was based upon both his laid-off status and the 5% reduction in his wage during the layoff period. *Edwards v. Saturn Corp.*, 2008 WL 4378188, at *2. The trial court rejected those arguments, and awarded benefits in accordance with the lower cap in Tenn. Code Ann. § 50-6-241(d)(1)(A). *Edwards v. Saturn Corp.*, 2008 WL 4378188, at *2-3. On appeal, the Special Workers' Compensation Appeals Panel affirmed the trial court's ruling. *Edwards v. Saturn Corp.*, 2008 WL 4378188, at *9, 11.

Addressing Mr. Edwards's contention that the 5% reduction in his wage caused by his layoff triggered a right of reconsideration, the Panel stated:

> Having determined that Mr. Edwards received a "wage" during his lay-off period, we now turn to Mr. Edwards' second argument that he was not receiving a "wage equal to or greater than the wage [he] was receiving at the time of the injury." Tenn. Code Ann. §§ 50-6-241(b) & -241(d)(2)(A). This argument stems from the fact that during his lay-off, Mr. Edwards is only receiving 95% of the wage he received before lay-off.
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> Upon review of the Workers' Compensation Act and previous case law interpreting the Act, we do not find that the Legislature intended for the statutory minimums to be removed in this situation. Instead, we find that the reduction in Mr. Edwards' and the other 2,600 Saturn employees' take-home pay is analogous to an employer deciding to reduce the wages of its entire workforce by five percent because of economic hardship. It does not appear to this Panel that this is the type of situation that the General Assembly envisioned when it drafted the workers' compensation laws. *See W.S. Dickey Mfg. Co. v. Moore*, 208 Tenn. 576, 581, 347 S.W.2d 493, 495 (1961) (stating that one of the purposes of the workers' compensation system is to increase the right of employees to be *compensated for injuries* growing out of their employment); *Mathis v. J.L. Forrest & Sons*, 188 Tenn. 128, 130, 216 S.W.2d 967, 967

[2]Employees who return to employment at a wage equal to or greater than the wage they were receiving at the time of the injury are subject to a cap on permanent partial disability benefits of one and one-half times the medical impairment rating. Tenn. Code Ann. § 50-6-241(d)(1)(A). Employees who do not so return to employment are subject to a cap of six times the medical impairment rating. Tenn. Code Ann. § 50-6-241(d)(2)(A).

> (1949) (stating that the general purpose of the workers' compensation statutes is to provide compensation for loss of earning power or capacity sustained by workers through injuries in industry); *see also* Tenn. Code Ann. § 50-6-116 (stating "[t]he rule of common law requiring strict construction of statutes on derogation of common law shall not be applicable to the provisions of the Workers' Compensation Law, compiled in this chapter but the same is declared to be a remedial statute, which shall be given an equitable construction by the courts, to the end that the objects and purposes of this chapter may be realized and attained"). The plant-wide reduction in pay imposed on all employees as a result of the shutdown does not result in a finding that the employer failed to meet the requirements of Tennessee Code Annotated sections 50-6-241(a) or -241(d)(1)(A). Accordingly, under the particular circumstances of this case, this Panel finds that Mr. Edwards is subject to the statutory minimums of either Tennessee Code Annotated section 50-6-241(a)(1) or -241(d)(1)(A).

Edwards v. Saturn Corp., 2008 WL 4378188, at *9. (emphasis in original)

While the present case is not on all fours with *Edwards v. Saturn Corp*., there are significant parallels. In both cases, the injured workers continued to be employed by their pre-injury employers and were not placed into the open job market to compete against unimpaired applicants. The wage reductions at issue were caused by economic factors unrelated to the work injuries and affected substantial numbers of uninjured workers. In *Edwards v. Saturn Corp.*, the reduction amounted to 5% of the pre-injury wage; in this case the reduction was roughly 4% from the pre-injury wage.

In *Blake v. Nissan North America*, *Inc*., No. M2009-02173-WC-R3-WC, 2010 WL 4513390, at *1 (Tenn. Workers' Comp. Panel Nov. 10, 2010), the employee sustained a compensable injury to his arm in February 2006. Like Mr. Edwards and Mr. Robinson in this case, he was able to successfully return to his pre-injury job. *Blake v. Nissan North America, Inc.*, 2010 WL 4513390, at *1. Eighteen months after his return to work, but before his workers' compensation lawsuit was heard, his employer, in response to economic conditions, announced a plant-wide reduction in scheduled hours of work from forty per week to thirty-two per week. *Blake v. Nissan North America, Inc.*, 2010 WL 4513390, at *1. The stated purpose of this action was to avoid layoffs. *Blake v. Nissan North America, Inc.*, 2010 WL 4513390, at *1. Shortly thereafter, Mr. Blake accepted a voluntary buyout offer, resigned his employment, and went on active duty with the National Guard. *Blake v. Nissan North America, Inc.*, 2010 WL 4513390, at *1. At trial, he asserted that his award of benefits

should not be subject to the lower cap because of the loss of income resulting from the plant-wide workweek reduction. *Blake v. Nissan North America, Inc.*, 2010 WL 4513390, at *2. The trial court agreed with this assertion and awarded permanent disability benefits based upon three times the anatomical impairment. *Blake v. Nissan North America, Inc.*, 2010 WL 4513390, at *2. On appeal, the Special Workers' Compensation Appeals Panel concluded that the trial court had not correctly applied Tenn. Code Ann. § 50-6-241(d). *Blake v. Nissan North America, Inc.*, 2010 WL 4513390, at *5. The Panel, relying upon *Edwards v. Saturn Corp.*, noted that the language of the 2010 amendment to Tenn. Code Ann. § 50-6-241(d)(1)(B), which became effective after the appeal was heard, was consistent with the reasoning of *Edwards v. Saturn Corp*. *Blake v. Nissan North American, Inc.*, 2010 WL 4513390, at *5.

We agree with that analysis. In our view, the purpose of the two-tiered benefit system created in Tenn. Code Ann. § 50-6-241 is to protect the interests of several categories of employees, including (1) those who are unable to return to work for their employer because of the effects of their work injuries, (2) those who are able to return, but at a lesser wage because of the effects of their work injuries, and (3) those who, for reasons outside their control, are placed into the job market to compete against unimpaired applicants.

The Tennessee Supreme Court has held that the two-tiered system should not benefit workers who are able to return to work, but voluntarily resign or are terminated for misconduct. *Lay v. Scott Cnty. Sheriff's Dep't*, 109 S.W.3d 293, 299 (Tenn. 2003); *Carter v. First Source Furniture Grp.*, 92 S.W.3d 367, 371 (Tenn. 2002). We do not find any basis in the language of the statute, or of the cases interpreting it, to conclude that the General Assembly intended to grant a windfall to employees who returned to work at their pre-injury wage and continued to work for their pre-injury employer, but who, at some later time, are affected by an across-the-board reduction of pay as part of the employer's even-handed attempts to address deteriorating market conditions such as those that affected the automotive industry beginning in 2008.

IV.

We affirm the trial court's judgment and tax the costs of this appeal to Ron W. Robinson and his surety for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., JUSTICE

IN THE SUPREME COURT OF TENNESSEE
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RON W. ROBINSON
v.
BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC

Circuit Court for Rutherford County
No. 60930

No. M2011-02238-SC-WCM-WC - FILED NOVEMBER 21, 2012

JUDGMENT

This case is before the Court upon the motion for review filed by Ron W. Robinson pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Ron W. Robinson, for which execution may issue if necessary.

KOCH, J., not participating