

Bahr v. Cal-Ark Trucking (March 7, 1996)

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

David Bahr) *File #: E-20279*
) *By: Barbara H. Alsop*
v.) *Hearing Officer*
) *For: Mary S. Hooper*
Cal-Ark Trucking) *Commissioner*
)
) *Opinion #: 14-96WC*

Ruling on Defendant s Motion to Dismiss

APPEARANCES

Jesse M. Corum IV, Esq., for the claimant
John W. Valente, Esq., for the defendant

BACKGROUND

The claimant David Bahr signed, in North or South Carolina, on October 21, 1991, a contract of hire with the defendant Cal-Ark Trucking, which inter alia committed the parties to be bound by the laws of Arkansas in the event of an accident or injury arising out of and in the course of the claimant s employment with the defendant. On or about December 30, 1991, the claimant alleges an injury that occurred while he was making a delivery to a warehouse in Brattleboro, Vermont. The employer contests that an injury was suffered at that date and time. The claimant is, and has been at all relevant times, a resident of Georgia. All of his treatment for this claim has been received in Georgia. The claimant was hired either in North or South Carolina, and the employer is located in Arkansas. All of the employer s agents contacted by the claimant, and hence all of the employer s witnesses, are in Arkansas. The claimant denies any other contact with the state of Vermont, other than the delivery and injury here in question.

DISCUSSION

The employer argues that this Department ought not to accept jurisdiction, founded in 21 V.S.A. §620, because the factual witnesses are without the state and because the applicable law, by agreement, is that of Arkansas. The claimant

alleges that the Commissioner, by action of that same statute and other sections within the statute, has jurisdiction, and additionally ought to exercise that jurisdiction because the injury occurred within the state.

The issue as framed by virtually all of the decisions cited by the parties is whether jurisdiction is properly accepted in a state, not whether, as the defendant wishes us to rule, jurisdiction may be declined. The concept of forum non conveniens has not been specifically addressed by any decision that has been brought to the attention of the Department in this case. However, Larson has indicated the rule as:

Any state having a more-than-casual interest in a compensable injury may apply its compensation act to that injury without violating its constitutional duty to give full faith and credit to the compensation statutes of other states also having an interest in the injury. Among the factors which, if occurring within the state, will give rise to such a legitimate interest are: The making of the contract, the occurrence of the injury, the existence of the employment relation, and possibly also the residence of the employee and the localization of the employer's business.

Larson, Workmen's Compensation Law, §86.00. He goes on to state that ...it is clear that the state which was the locus of any one of the first three items contract, injury or employment and probably also of the next two employee residence and business localization can constitutionally apply its statute if it wants to. Larson, at §86.10.

What is clear in this case is that the only nexus between the claim and this state is the alleged occurrence of the injury here. There is no allegation that there is any witness to the event that gives rise to the claim, and hence there is no witness, either for the claimant or for the defendant, currently under the jurisdiction of this Department. The Vermont Supreme Court has acknowledged that the Commissioner is not required to exercise jurisdiction in all situations over which jurisdiction is possible. See, e.g., DeGray v. Miller Brothers Construction Co., Inc., et al., 106 Vt.259, 276 (1934).

Based on the particular facts in this case, that the

parties had agreed to be bound by Arkansas law in this case, that the claimant was hired outside of this state, that the claimant's foray into Vermont was transitory at best, that he cannot state with any definition precisely where he was injured, that all of the treatment of the claimant occurred in Georgia and therefore all of the medical practitioners are in Georgia, that all of the contacts with the employer occurred outside of this state and with individuals who are in Arkansas, that there are no witnesses in this state to be called to testify, and that there is a bona fide dispute as to the compensability of this claim, it is appropriate to decline jurisdiction over the claim.

ORDER

THEREFORE, based on the foregoing discussion, it is hereby ORDERED that David Bahr's claim against Cal-Ark Trucking be and hereby is DISMISSED, because of declination of jurisdiction.

DATED at Montpelier, Vermont, this 7th day of March 1996.

*Mary S. Hooper
Commissioner*