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Summary of Sierra Nevada Administrators v. Negriev, 128 Nev. Adv. Op. 45

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Sierra Nevada Administrators v. Negriev, 128 Nev. Adv. Op. 45 (September 13, 2012)[1]

EMPLOYMENT LAW — WORKERS' COMPENSATION

Summary

The Court considered an appeal from a district court order denying a petition for judicial review in a workers' compensation action.

Disposition/Outcome

NRS 616B.227 requires an average monthly wage calculation to include untaxed tip income when an injured employee reported the tip income to his or her employer.

Factual and Procedural History

Respondent Negriev, a bartender at Big Inning Sports Pub, sustained a compensable injury during his work shift. Negriev received both an hourly wage from Big Inning and tip income from customers. Negriev consistently reported any tip income to Big Inning at the end of each shift. Despite Negriev's reports, Big Inning failed to include Negriev's tip income on his paycheck for tax purposes, and Negriev did not declare his tips as income to the Internal Revenue Service when completing his taxes. Consequently, Negriev did not pay taxes on his tip income.

Post-injury, Negriev filed a workers' compensation claim with Big Inning's workers' compensation carrier Sierra Nevada Administrators ("Sierra"). While Sierra accepted Negriev's claim, Sierra refused to include Negriev's tip income in his average monthly wage calculation because Negriev had not paid taxes on the tips. This resulted in a lesser amount of workers' compensation benefits for Negriev. Negriev appealed Sierra's decision to an administrative hearing officer, who found in favor of Sierra. The administrative hearing officer reasoned that Negriev's average monthly wage calculation should not include his tip income because Negriev's wage history and paychecks did not indicate that he had declared his tips to Big Inning in accordance with NRS 616B.227's requirements.

Upon further appeal to the Nevada Department of Administration, the decision was reversed. The appeals officer found that Negriev had faithfully reported his to tips to Big Inning, and that Big Inning was responsible for not including the tips on his paychecks or declaring them to the IRS. Therefore, the appeals officer ordered Sierra to recalculate Negriev's average monthly wage to include his tip income. This resulted in an increase in Negriev's woekers' compensation benefits, including Negriev's permanent partial disability award.

Sierra then filed a petition for judicial review in the district court which was denied. This appeal followed.

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[1] By Drew Wheaton.

Discussion

Justice Gibbons wrote the unanimous en banc opinion. The Court considered whether NRS 616B.227 allows an average monthly wage calculation for workers' compensation benefits to include untaxed tip income that an employee reports to his or her employer. Workers' compensation benefits are typically calculated based on a percentage of the injured employee's average monthly wage.

Sierra argued that under NRS 616B.227 average monthly wages may include tip income only when the IRS has taxed the tips. Additionally, Sierra claimed that any other interpretation of NRS 616B.227 would entitle Negriev to a windfall because he did not pay taxes on the tip income.

The Court began by pointing out that statutory construction, when dealing with the administrative matters, is a question of law subject to de novo review.[6] Beginning with the statute's text,[7] the Court interprets a plain and unambiguous statute according to its ordinary meaning.[8]

The text of NRS 616B.227(4) states in pertinent part that a "private carrier…shall calculate compensation for an employee on the basis of wages paid by the employer plus the amount of tips reported by the employee."[9] Under a plain reading, the Court concluded that the statute requires the workers' compensation carrier to include tip income in the employee's average monthly wage calculation if the employee reported the tip income to his or her employer. Thus, whether an employee actually paid taxes on the tip income is irrelevant to the average monthly wage calculation, as long as the employee reported the tips to his or her employer.

Applying this rule to the case at bar, the Court finds that Sierra must calculate Negriev's average monthly wage calculation using his hourly wage and his tip income.

Furthermore, the Court was unconvinced by Sierra's "windfall" argument because Negriev's tax liability to the federal government (i.e. the relationship between Negriev and the IRS) remains the same, regardless of Negriev's failure to declare his tip income to the IRS.[12]

Conclusion

The Court affirmed the district court's order denying appellant Sierra Nevada Administrators' petition for judicial review. The district court properly interpreted NRS 616B.227 as requiring Sierra to calculate Negriev's average monlthy wage to include his

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[6] *SIIS v. Engel*, 114 Nev. 1372, 1374, 971 P.2d 793, 795 (1998).
[7] *In re State Engineer Ruling 5823*, 128 Nev. ___, ___, 277 P. 3d 449, 453 (2012).
[8] *McGrath v. State, Dep't of Pub. Safety*, 123 Nev. 120, 123, 159 P. 3d 239, 241 (2007).
[9] NEV. REV. STAT. § 616B.227(4) (2007).
[12] *See Pizza Hut Delivery v. Blackwell*, 418 S.E.2d 639, 640 (Ga. Ct. App. 1992).

reported tip income, and Negriev is entitled to workers' compensation benefits based upon this amount.