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SUPREME COURT OF NEW JERSEY
DOCKET NO. 090133

GIUSEPPE AMATO,	:	On Certification from Judgment of
	:	Superior Court of New Jersey
Petitioner/Respondent,	:	Appellate Division
	:	Docket No. A-2542-23
vs.	:	A-2543-23
	:	
TOWNSHIP OF OCEAN SCHOOL	:	<i>Civil Action</i>
DISTRICT,	:	
	:	Sat Below:
Respondent/Petitioner.	:	Hon. Lisa A. Pugliaci, J.A.D.
	:	Hon. Lisa Rose, J.A.D.
	:	Hon. Patrick DeAlmedia, J.A.D.

BRIEF OF *AMICUS CURIAE* COUNCIL ON SAFETY AND HEALTH

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BACKGROUND/LEGISLATIVE HISTORY

In March of 2020, the United States was in the early stages of what was to become a pandemic that would eventually kill over 1 million Americans. In New Jersey, there were over one million (1,000,000.00) reported cases of COVID-19 and over twenty-six thousand (26,000.00) COVID-19 related deaths. While the State grappled with trying to reduce the spread of the virus, it had to continue to encourage the flow of essential goods and services despite the risk to workers who would be compelled to leave their homes in order to go to work and risk exposure to the general public and the COVID-19 virus. In order to protect workers who had to work outside the safety of their homes, the Legislature passed Senate Bill 2380 and sent it to the Governor's desk. Governor Murphy promptly signed the bill into law. In less than six (6) months, a Bill was drafted, passed both the Assembly and Senate and was signed by the Governor. The Bill became *N.J.S.A. 34:15-31.11* and *N.J.S.A. 34:15-31.12*, the Essential Worker Presumption Law.

The intent of the Essential Worker Presumption Law was to cover workers who were working outside of their homes with workers compensation benefits if they contracted COVID-19. The language of the statute is so broad it includes any worker whose employment covers the public health, safety, and welfare. As if this definition was not broad enough, the statute includes a catch-all provision

covering workers who are deemed essential by the public authority declaring the State of Emergency. This appeal presents issues of first impression concerning the Essential Worker Presumption Law. It also presents issues of due process, motion practice and the disposition of legal issues that affect every New Jersey worker who has filed or may file a Compensation case.

LEGAL ISSUES TO BE ADDRESSED BY THE COUNCIL ON SAFETY AND HEALTH

The Council on Safety and Health (hereinafter “COSH”) is a statewide association of attorneys, physicians, and unions. One of the goals of COSH is to ensure that the workers’ compensation system is being administered in accordance with its statutory scheme and legislative intent. COSH has appeared as amicus curiae in numerous matters before the Court regarding issues of public interest as well as issues of special interest to COSH members. *See: Kocanowski v. Tp. of Bridgewater*, 237 N.J. 3 (2019); see also; *Jumpp v. City of Ventor*, 177 N.J. 470 (2003); see also; *Zive v. Stanley Roberts, Inc.*, 182 N.J. 436 (2005); see also; *Kibble v. Weeks Dredging & Construc. Co.*, 161 N.J. 178 (1999). COSH will address the effects this appeal will have on all New Jersey Compensation cases. COSH will focus its arguments on whether a Judge of Compensation may utilize a summary proceeding in order to determine whether Petitioner was an essential worker pursuant to *N.J.S.A. 34:15-31.11* and *N.J.S.A. 34.15-31.12*. COSH will also address the motion practice within the Division of Worker’s Compensation.

LEGAL ARGUMENT

POINT I

THE WORKER'S COMPENSATION COURT HAD A LEGAL DUTY TO SCHEDULE A HEARING AND DECIDE PETITIONER'S MOTION TO DETERMINE WHETHER PETITIONER WAS AN ESSENTIAL WORKER AND NEITHER PARTIES' FUNDAMENTAL DUE PROCESS RIGHTS WERE VIOLATED BY THE COURT RULING IN A SUMMARY FASHION.

The rules of the Division of Workers Compensation are set forth in *N.J.A.C.* 12:235-1.1, *et seq.* They set forth a complete set of guidelines as to how the court functions. Every aspect of Compensation cases is addressed by the rules. For example, the chronology of witnesses during trial is detailed in the rules. A motion showing good cause must be filed in order to proceed with witness testimony out of the order set by the rules. The system has been designed, and rules promulgated in order to move and handle cases in a summary proceeding. There is very limited discovery. Interrogatories are limited in only two (2) types of cases and only by motion stating good cause in all others. Depositions are only allowed after a motion showing good cause. The system was established to deliver unfettered benefits in a timely fashion. The whole system of delivering benefits is jeopardized if a Court were to direct the division to handle cases in any matter other than in a summary proceeding fashion.

The respondent concedes that Worker's Compensation cases are handled by summary proceedings with a limited right to discovery and a limited right to depositions. Respondent fails to acknowledge that both parties could be prejudiced by the limited discovery and summary proceedings. Both sides have had their rights curtailed by the Worker's Compensation Act. Respondent argues that its basic fundamental right of the opportunity to be heard at a full hearing to present witnesses and evidence, to cross-examine Petitioner's witnesses and to refute Petitioner's evidence were violated. In this case, a review of the record below reveals that the Respondent has had every opportunity to present its defenses. Instead, it produced no documenting evidence, no affidavits, no certifications, and no witnesses to either oppose Petitioner's motion or in support of its position that Petitioner was not an essential worker. Instead, the Respondent focused its opposition to petitioner's motion by arguing that the Court should rescue itself from hearing the case. When that failed, the Respondent produced no evidence to rebut Petitioner's motion to determine whether Petitioner was an essential worker.

When a worker files a motion seeking relief, ruling or determination that worker has a right to compel the Court to address the motion, make a finding and rule on the motion in a timely fashion. Whether defined as a motion for summary judgement pursuant to *Rule 4:46-2*, a motion pursuant to *N.J.A.C.*

12:235-3.5, or a Declaration of Rights pursuant to the Declaration Judgement Act *N.J.S.A.* 2A:16-50 the Workers' Compensation Act has to be authorized to address motions in a summary proceeding fashion. The Court is a Summary Procedure Court by definition and function. The Court cannot carry out its Legislative intent without handling its case load in a summary fashion.

Every workers' rights under the Act are violated when the Compensation Court cannot carry out its Legislative intent to order the delivery of benefits. Workers, not insurance companies, are denied due process when it takes three (3) to four (4) years to decide a motion on whether a worker is an essential worker pursuant to a statute that was enacted to deliver benefits during a pandemic that is now five (5) years old.

On November 4, 2021, Petitioner filed a motion to determine whether Petitioner was an essential worker under *N.J.S.A.* 34:15-31:11 and *N.J.S.A.* 34:15-31:12. That motion would not be heard until March 14, 2024. For two and a half years, Petitioner's motion remained undecided.

During the two and a half years Petitioner's motion for a determination was pending, someone lost sight of the policies underpinning the Worker's Compensation Act. It has long been recognized that the Worker's Compensation Act is important social legislation. *Pazino v. Cont'l Can Co.*, 71 N.J. 298, 303 (1976). Further, it has long been axiomatic that the Act is to be liberally

construed. *Id.* Furthermore, the Legislative intent and public policy will be furthered by a liberal construction of the Act in order to reach a statutory and remedial result favorable to the injured workman, rather than one necessarily dictated by the coldly literal import of the Legislation. *Camp v. Lockheed Elec., Inc.*, 178 N.J. Super. 535, 546 (App Div. 1981), *certif. denied*, 87 N.J. 415 (1981). Courts have noted the need for expeditious handling of Worker's Compensation Cases to be in the public interest and that long delays create an appearance of injustice as well as real injustice many times. *Id.* at 543.

After two and a half years, a new Judge was assigned to the case and scheduled a hearing to address Petitioner's motion. On March 14, 2024, the motion was scheduled for a hearing. Arguments were placed on the record. Neither party was precluded from producing documentary evidence, witnesses and/or any other relevant evidence. Instead, the Respondent position to the motion was reduced to the following;

Mr. Brause: Because we basically have everything, we have my position, my client's position as indicated by me in terms of a legal agreement. I'm telling the court I'm arguing in a respectful way, what am I going to say? At this stage my position is teachers are not essential workers. They're not enumerated in the statute... (March 14, 2024 Transcript at 44:24-45:5).

So how was the Respondent's due process rights violated? Due process requires the following:

- 1) Notice

2) Opportunity to be heard

3) An impartial tribunal

By complaining about the summary proceeding, the Respondent seeks to place additional burden on the Workers Compensation Court and Petitioner in order to address what can be boiled down to four (4) words: are teachers essential workers. That's it. That's the issue. This Court should not condone the Respondent's tactics to turn every motion into a Scopes Monkey trial over every issue. Workers forfeit their due process rights and the fundamental right to a trial by a jury against their employers, in exchange for the delivery of unfettered timely swift benefits. It was called the "Grand Bargain" in 1911, and it has tilted and continues to further tilt into a system bogged down discovery and due process delays. This Court should not contribute to the delay on the delivery of benefits by turning every motion into a discovery expedition.

The hallmark of the Grand Bargain was a compromise between workers and their employers. Workers gave up their rights to sue employers in exchange for a system that was to deliver prompt and timely benefits. Instead, the system has deteriorated into a quasi-civil practice that has resulted in delays in the delivery of benefits to workers.

The Court will recall this very issue was addressed by the Legislative just last year. Petitioner Compensation lawyers called upon the Legislature to enact

Legislation increasing fees from 20% to 25%. Petitioners' lawyers and their clients testified how the system has become more and more difficult to navigate. Respondents due process arguments contributed to the additional workload necessary to handle a claim. Compensation cases have become more and more like a Civil Court filing. More motions, more hearings, more opposition and more due process has hampered the Court's ability to oversee the delivery of timely benefits. The Legislative and the hearings resulted in an amendment to *N.J.S.A.* 34:15-64 raising the fee to 25% from 20%. This was in recognition of the increased workload necessary to prosecute a Compensation Claim. It took two (2) years to get the Bill passed into law, even though the Bill didn't change a single word in the Statute, only the number twenty (20) to a twenty-five (25).

In order to keep some semblance of a Summary Court, the Court should affirm the Appellate Division decision. It should affirm the Court's disposition of the matter in a summary fashion. This Court should affirm the Appellate Division decision by declaring that summary proceedings should be utilized by the Compensation Court to carry out the Legislative intent of the Statute.

POINT II

**THE COURT SHOULD RECOGNIZE THE LEGAL ARGUMENTS
ADVANCED BY THE RESPONDENT ARE DESIGNED TO
FURTHER IT'S DENY, DELAY AND OBSTRUCTION TACTICS
IN COMPENSENATION CASES.**

“Such a finding would also encourage motion practice in a field that is
designed for summary
hearings with little to no discovery.”

The above quote reads like something a Petitioner would advance in support of summary proceedings. This is what the Respondent argues would have this Court believe is the risk of affirming the Appellate Ruling. Quite the opposite will happen. Affirming the Appellate Division will empower the Court to decide issues in a summary fashion so as to ensure the prompt unfettered delivery of benefits.

The Respondent also uses the Rules of Evidence to argue its denial of due process. *N.J.S.A.* 34:15-56 clearly states the hearing officer shall not be bound by the Rules of Evidence. Lastly, the Respondent's goal here could not be more clear. More discovery and more delay. According to the Respondent, Petitioner's motion required the following consideration by the Court:

- 1) Specific facts and circumstances pertaining to her employment
- 2) Her duties
- 3) Working in person or remote

4) Position of the employer as to Petitioner's status as an essential worker

Additionally, the Respondent should have been given the opportunity to engage in a full discovery. And maybe in another four (4) years, all the discovery hearings and testimony might be finished. Not bad, eight (8) years to determine whether a teacher is entitled to compensation benefits pursuant to a Statute enacted to protect workers who contracted COVID on the job. Sounds like an exaggeration? We are already four (4) years since Petitioner passed away from COVID.

No matter what this Court decides, the case still has to be remanded to the Division of Compensation for more proceedings. The only decision the Judge of Compensation made was that the Petitioner was an essential worker. The Judge of Compensation still has to hold further hearings to address the Respondents right to rebut the presumption.

If this Court decides to send the matter back after disturbing the Appellate Courts' decision, it should be mindful that in sending a case back to the Compensation Court that has been pending in the Division for four (4) years to start from square one. Delays in the delivery of benefits due to due process considerations, seeking more discovery, more hearings, more testimony, has undermined the purpose, intent and spirit of the Grand Bargain. This Court should not contribute to its further demise.

CONCLUSION AND RELIEF SOUGHT

COSH and all New Jersey workers ask this Court to affirm the summary proceeding process used in this case, no matter how defined. The label does not matter. What matters is this Court reiterates and rules that the New Jersey Worker's Compensation Court is a summary proceeding Court, charged with the oversight and enforcement of the New Jersey Worker's Compensation Act. The Act that for over one hundred (100) years has been relied on by workers injured at work. In order to carry out legal authority and discretion to carry out its duties in a summary fashion.

Here, both sides were provided notice, and an opportunity to be heard by an impartial tribunal. There is no reason to disturb the Appellate Court Ruling. Workers who rely on our Compensation Court system cannot afford more delays, prolonged hearings, or protracted litigation. Workers need this Court to rule that the hearing process was fundamentally fair to both parties and in accordance with the statutory intent, due process protection and summary proceeding provided Worker's Compensation Act and as presided over by the Judge of Compensation.

Respectfully submitted,

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Dated: April 17, 2025