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State of New York Court of Appeals

In the Matter of the Claim of FRANKI M. EVANS Claimant,

v.

NORTHEAST LOGISTICS, INC. et al., Appellants,
and

ANY PART AUTO PARTS OF MEDFORD et al., Respondents,

WORKERS' COMPENSATION BOARD, Respondent.

May 16, 2024

Facts: Claimant was injured in the course of her employment as a delivery driver. She identified her employer as Any Part Auto Parts of Medford ("APA"). APA denied employer/employee relationship, and a compliance investigation showed Claimant was employed by Northeast Logistics, Inc. Northeast contended Claimant was independent contractor. The Workers' Compensation Law Judge ("WCLJ") found Claimant was employed by both entities and each was 50% liable for Claimant's injuries. Additionally, various other parties were placed on notice at that time, including the Uninsured Employers' Fund ("UEF"). However, UEF was later mysteriously taken off the notice of decision without any written decision deeming so. APA and its carrier filed requests for review. UEF filed a rebuttal based on lack of service of the application for review. The Workers' Compensation Board ("WCB") denied review of the appeal based on APA's lack of service to UEF. Carrier appealed.

Holding: *Reversed and remitted.*

Discussion: The court recognized that the Carrier's failure to serve UEF with the application for review seems to have been occasioned by the inexplicable omission of UEF from the list of parties contained the WCLJ's decision. Accordingly, penalizing the carrier for failure to serve an entity that did not appear on the face of the WCLJ's decision constituted an abuse of discretion.