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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of

JAVIER RESTREPO, Respondent,

v.

PLAZA MOTORS OF BROOKLYN INC., Appellants,

WORKERS' COMPENSATION BOARD, Respondent.

March 16, 2020

Facts: The claimant, a truck driver, was injured in a motor vehicle accident. The claim was established and indemnity benefits were directed. Later, the carrier then alleged that the claimant had violated Workers' Compensation Law Section 114-a because he failed to disclose that he was operating one or more businesses while receiving indemnity benefits. After litigation, the Law Judge found a violation of 114-a noting that the claimant had been operating two businesses while receiving benefits. As opposed to imposing the less severe mandatory penalty, the Law Judge opted to direct a discretionary penalty finding no compensable lost time from the date the violation of 114-a was alleged and barring the claimant from any future indemnity benefits. The claimant appealed and the Board held that imposition of the maximum discretionary penalty barring the claimant from any future indemnity benefits was improper. Rather the Board imposed the mandatory penalty of disqualifying the claimant from benefits only for the closed period of time in which he failed to disclose that he was operating a business while simultaneously receiving benefits. There was a question about whether the claimant was in fact operating the second business that he was alleged to have been operating while receiving indemnity benefits. The Board also imposed a discretionary penalty against future indemnity benefits but only equal to the amount of money imposed by the mandatory penalty.

Holding: Affirmed.

Discussion: The parties all agree that a 114-a violation occurred which would result in at least the mandatory penalty. The carrier's reason for appealing was that the Board abused its discretion in rescinding the maximum discretionary penalty. However, the Court noted that the Board Panel found a violation of Section 114-a based on narrower grounds than did the WCLJ and that the lesser penalty imposed as a result was not an abuse of its discretion and supported by the record.

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