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Supreme Court, Appellate Division, Third Department, New York

In the Matter of JAMES MITCHELL, Appellant

v.

EATON'S TRUCKING SERVICE INC, et al., Respondent

and

QUALITY CARRIER'S, INC., et al., Appellants

WORKERS' COMPENSATION BOARD, Respondent.

Decided October 11, 2018

Facts: The claimant was hired as a truck driver to haul and deliver goods for Eaton's Trucking Service., Inc. Eaton contracted with Quality Carrier's, Inc. to transport products for Quality's customers. The claimant filed a workers' compensation claim which was established as an occupational disease for carpal tunnel syndrome and found Eaton 50% liable and Quality 50% liable. The Board Panel affirmed on appeal.

Holding: *Affirmed.*

Discussion: A special employee is one who is transferred for a limited time of whatever duration to the service of another. The question of whether a general employee of one employer is also a special employee of another is an issue for the Board to resolve and will be upheld if the record contains substantial evidence. The factors to be considered are who controls and directs the manner, details and ultimate result of the claimant's work, the method of payment, the furnishing of equipment, the right to discharge and the nature of the work.

The evidence in this case shows that Eaton was an affiliate of Quality since 2003, Eaton switched all of its customers over to Quality, took over Quality's employees, and exclusively provided trucking services for Quality's customers. Eaton interviewed the claimant, conducted his road test and hired him but he was required to fill out an employment application bearing Quality's logo and sign a release for Quality to run a background check. Quality's department of transportation operating license permit number was posted on all the Eaton trucks. Quality provided and paid for a week of safety training. Eaton paid the claimant for the balance of his work and set his schedule. The Court noted that Eaton's and Quality's arrangement was the type in which the employee and equipment of the general employer were necessarily used and temporarily assigned to work for the business of the special employer, which has been recognized as creating a special employment.

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