

CASE NO. 5552 CRB-7-10-5  
CLAIM NO. 700153604

: COMPENSATION REVIEW BOARD

VIDAL GAMEZ-REYES  
CLAIMANT-APPELLEE

: WORKERS' COMPENSATION  
COMMISSION

v.

: OCTOBER 27, 2014

DONALD F. BIAGI, JR.  
EMPLOYER  
RESPONDENT-APPELLANT

and

SECOND INJURY FUND  
RESPONDENT-APPELLEE

## **Response to Appellate Court's Order dated September 24, 2014**

JOHN A. MASTROPIETRO, CHAIRMAN. This Board was directed by the Appellate Court to respond to the validity of an order for the respondent to pay an interpreter fee in this matter, see Gamez-Reyes v. Biagi, 136 Conn. App. 258, 277-278 (2012). We remanded this issue to the trial commissioner who issued the initial Finding and Award on April 21, 2010 for an articulation, as the initial Finding and Award did not provide a rationale for this award. The trial commissioner issued an Articulation on Remand on July 16, 2012. On August 29, 2014 the Appellate Court directed this tribunal to review the Articulation on Remand and respond to the Court.<sup>1</sup> We convened a hearing on October 17, 2014 to consider this issue. Counsel for the claimant and the Second

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<sup>1</sup> The Appellate Court issued a superseding Order on September 24, 2014 directing this Board to respond no later than November 6, 2014.

Injury Fund appeared at this hearing and offered their opinions as to the issue before the tribunal; while counsel for the respondent-employer, while properly noticed, advised the tribunal he would not attend the hearing and did not submit a brief.

After considering the positions advanced by the litigants at the October 17, 2014 hearing and reviewing the Articulation on Remand, we are satisfied that the trial commissioner had a legal basis to award an interpreter fee, given the unique and egregious nature of this case. We affirm the award of an interpreter's fee in this matter.

We fully understand that it is the standard practice before our Commission to expect each party to pay for the cost of prosecuting or defending the claim, and this has extended to the cost of interpreters when their services are necessary for witnesses who are not fluent in the English language. However, the circumstances herein are particularly problematic as they involve a non-English speaking migrant to this country who was employed by an uninsured employer. Such circumstances offer an obvious situation where an unscrupulous employer can exploit someone who is unfamiliar with our nation's institutions, and leave an injured worker in a disastrous situation. In the present situation, the cost of the claimant's injuries was eventually borne not by an insurance carrier for the employer, but by the Second Injury Fund. Therefore, our state government also suffered harm as a result of the respondent-employer's course of conduct.

The situation outlined herein certainly is not equitable to the employee or the Second Injury Fund. In the Finding and Award the trial commissioner levied sanctions against the respondent-employer pursuant to § 31-288(b) C.G.S., finding the respondent unreasonably contested liability for this claim. A review of the balance of that statute

enumerates a variety of both criminal and civil penalties which may be levied on uninsured employers. In her Articulation on Remand, the commissioner cited the equitable powers of a commissioner pursuant to § 31-298 C.G.S. which directs a commissioner to act “in a manner that is best calculated to ascertain the substantial rights of the parties and carry out the provisions and intent of this chapter.” See Pietrarroia v. Northeast Utilities, 254 Conn. 60, 71 (2000). As this statute directs the commissioner to follow the “rules of equity”, we must ascertain if based on the facts of this specific case the award of interpreter fees was in accord with the provisions of Chapter 568, considering in part the unambiguous public policy against the unreasonable contest of claims.

We believe that based on the specific facts herein, the trial commissioner had the equitable power to award interpreter fees. The facts as delineated in the Articulation on Remand clearly reached the level where in accordance with the precedent in Rochin v. California, 342 U.S. 165, 172 (1952) a party engaged in “conduct that shocks the conscience.”<sup>2</sup> The commissioner in her Articulation herein described the respondent’s conduct as “clearly dilatory” and “clearly malicious.” She described the respondent’s efforts to defend the claim as deceptive in nature and clearly believes that at no time did the respondent have a legitimate defense to the claim. Since the claimant was forced to hire a certified interpreter to pursue a case in which no legitimate defense existed, this expense would be extremely inequitable to place upon the claimant. When a respondent

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<sup>2</sup> Although the trial commissioner did not cite this conduct in the Articulation, we note that in the Finding and Award the trial commissioner cited uncontested testimony that the respondent-employer took two to two and one-half hours to reach the job site after being notified of the injury, and after being persuaded to transport the injured claimant to a hospital, told the medical authorities that the he did not know the claimant and that he had picked the man up in the street. April 21, 2010 Finding and Award Findings, ¶ 12-13.

fails to advance a legitimate defense before this Commission, it would be inequitable to force a claimant to spend their own money to overcome such a defense. If an interpreter fee was not payable as a sanction similar to attorney's fees, the non-English speaking claimant would be forced to pay out of pocket for a necessary service. Such an outcome is clearly inconsistent with our mission to ensure injured workers receive fair and timely compensation for injuries suffered on the job.

In Casey v. Northeast Utilities, 249 Conn. 365 (1999) the Supreme Court clearly acknowledged the paramount interest this Commission has in ensuring injured workers receive timely compensation under our Act.

The workers' compensation system is also designed to minimize the adverse effects that administrative delays could have on the financial status of an injured employee. See, e.g., General Statutes § 31-301(f). An injured employee who may not be able to earn a living due to temporary or permanent disabilities caused by his injuries faces grim economic hardships that will be aggravated if there is delay in the availability of compensation. Hence, promptness in providing compensation is a key factor in alleviating the severity of an injured employee's financial predicament.

Id., at 379. See also, Pietraroia, supra, at 74 “. . . the act ‘is remedial and must be interpreted liberally to achieve its humanitarian purposes.’”

In the present case, the trial commissioner found the respondent maliciously deprived the claimant of timely compensation. Only the award of interpreter fees could fully and fairly compensate the claimant for the wrongful deprivation of benefits which he was statutorily entitled to receive. The award of interpreter fees by a trial commissioner is not an unprecedented event. We note that in Lema v. Eoanou, 5056 CRB-4-06-2 (January 29, 2007), a non-English speaking claimant was awarded interpreter fees when he prevailed against an uninsured respondent-employer. In the

extraordinary instances presented in this case and in the Lema case, we believe that a trial commissioner has the equitable power to award a claimant interpreter fees.

The employer-respondent had no legitimate defense to the award of benefits to the claimant. His counsel declined to present a defense to this tribunal contesting the award of interpreter fees. While this precedent should not be broadly construed, and is limited to this particularly egregious fact pattern, the award herein was warranted by the respondent-employer's unconscionable conduct. We affirm the award.

Commissioners Nancy E. Salerno and Jack R. Goldberg concur in this opinion.