CASE NO. 5978 CRB-8-14-12 : COMPENSATION REVIEW BOARD
CLAIM NO. 800183615

ANTHONY LAZZARI
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

: JULY 23, 2015

STOP & SHOP SUPERMARKET CO.
EMPLOYER
SELF-INSURED

and

MAC RISK MANAGEMENT, INC.
ADMINISTRATOR
RESPONDENTS-APPELLEES

APPEARANCES: The claimant appeared without legal representation at oral argument.

The respondents were represented by Alyssa Swaniger, Esq., Halloran & Sage, LLP, One Goodwin Square, 225 Asylum Street, Hartford, CT 06103.

This Petition for Review from the December 8, 2014 Ruling on Claimant's Motion For Contempt of the Commissioner acting for the Eighth District was heard April 24, 2015 before a Compensation Review Board panel consisting of the Commissioners Randy L. Cohen, Stephen M. Morelli and Daniel E. Dilzer.

OPINION

RANDY L. COHEN, COMMISSIONER. The claimant had appealed from the trial commissioner's denial of a Motion for Contempt directed at the respondents. He argues as a self-represented party that the trial commissioner's decision herein violates the Constitution and the "Word of God."[1] He also argues that the respondents' alleged noncompliance with prior orders issued by the trial commissioner warrants the relief he is seeking. Upon review of the record, we do not believe the trial commissioner erred in denying the claimant's motion. The claimant will need to employ a different method within the scope of Chapter 568 to resolve the ongoing discovery dispute in this matter. We affirm the trial commissioner's denial.

The genesis of this appeal appears to be a long running discovery dispute between the claimant and the respondents. The claimant has declined to respond to various inquiries posed by the respondents, which are outside the scope of this appeal. The claimant has also demanded that the respondents produce a witness list, a list of special defenses and the evidence that they intend to present at the anticipated formal hearing on the merits of this claim. The claimant had not sought a formal hearing limited to resolving the discovery disputes in this claim. He claims that at a pre-formal hearing on November 10, 2014 the trial commissioner directed the respondents to provide this information to him within two weeks. There is no transcript from this hearing nor a

[1] We decline to address those arguments in this decision. As we pointed out in Butler v. Frito Lay, 5620 CRB-2-11-1 (May 3, 2012), *citing* Giaimo v. New Haven, 257 Conn. 481, 490 (2001), it is settled law this tribunal lacks the legal jurisdiction to rule on the constitutionality of a state statute. In addition, we are limited to reliance on secular legal authorities by the Supreme Court's holding in Everson v. Board of Education, 330 U.S. 1 (1947), which determined "the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'" Id., 16.

formal order issued by the trial commissioner. On November 28, 2014 the claimant filed the instant Motion For Contempt demanding a civil penalty for violation of the prior order, “order workers’ comp. payments” and “any relief deemed just that was caused by the respondents delay.” The trial commissioner who presided over the November 10, 2014 pre-formal hearing denied this motion “w/o prejudice” after an informal hearing held on December 8, 2014. The claimant then appealed the denial of this Motion to our tribunal.

On appeal the claimant argues that the conduct of the respondents in this matter has been in contravention of direction from the trial commissioner, and that the civil remedy of contempt under the common law is justified to compel the respondents to adhere to the commissioner’s directives. The claimant is a self-represented party and we can understand the challenges he may have in navigating through a contested matter before our Commission. One important distinction that he may not fully understand is that all proceedings under Chapter 568 occur within a statutory framework which served to supplant the prior common law rights of injured workers and their employers.

A brief discussion of the differences between the sanctions available under Chapter 568 and the sanctions available under the common law is warranted at this juncture. Prior to 1913 an injured worker in Connecticut, similar to the claimant in this matter, had access to the judicial branch for redress of his injuries. His recourse if he or she were to be injured, in the course of his employment, was to file a common law tort action in the Court of Common Pleas or the Superior Court. Were a judge in such a court to find a defendant had violated an order of the court, or otherwise committed misconduct before the tribunal, the judge would have the power under the common law to impose

sanctions for contempt as defined in Gorham v. New Haven, 82 Conn. 153 (1909). Connecticut tribunals continue to have the common law power to sanction misconduct which occurs during the course of legal proceedings. See Keeney v. Buccino, 92 Conn. App. 496 (2005).

> The court's authority to impose civil contempt penalties arises not from statutory provisions but from the common law…. The penalties which may be imposed, therefore, arise from the inherent power of the court to coerce compliance with its orders. In Connecticut, the court has the authority in civil contempt to impose on the contemnor either incarceration or a fine or both.

Id., 513. See also Daniels v. Alander, 268 Conn. 320, 329 (2004).

The passage of the Workers' Compensation Act in 1913 supplanted the common law rights existing as of that date. See Dodd v. Middlesex Mutual Assurance Company, 242 Conn. 375 (1997) and Powers v. Hotel Bond Co., 89 Conn. 143 (1915). The General Assembly saw fit when enacting the enabling Act for this Commission to vest trial commissioners with the statutory authority to sanction parties for misconduct before the tribunal. This legislation enables trial commissioners to force parties to adhere to orders of the tribunal. These sanctions are enumerated in our statutes pursuant to § 31-288 C.G.S. and § 31-300 C.G.S.

The statutory powers of trial commissioners are set forth in § 31-278 C.G.S. which states, in part, "[h]e shall have power to certify to official acts and shall have all powers necessary to enable him to perform the duties imposed upon him by the provisions of this chapter." We note that pursuant to § 31-300 C.G.S. interest and attorney's fees are specifically included among the remedies the trial commissioner may award to claimants for malfeasance on the part of an employer or insurer. We therefore conclude that the relief the claimant seeks can only be obtained by seeking sanctions against the

respondents which are enumerated within our statute. As the "Motion For Contempt" was not presented as a claim for statutory sanctions, we believe the trial commissioner could reasonably deny this motion.

There are other precedential and prudential reasons which direct us to rule against the claimant's appeal. This appeal is an interlocutory appeal. Generally, unless a decision concludes the rights of the parties in a final manner it is inappropriate to appeal the decision. This general rule was most recently restated in Incardona v. Roer, 309 Conn. 754, 762-763 (2013). This tribunal has further stated its judgment that interlocutory appeals under Chapter 568 are generally disfavored. See Dow v. Lowe's, 5956 CRB-2-14-7 (March 9, 2015), Ferree v. West Hartford, 5834 CRB-2-13-4 (February 20, 2014) and Quinones v. RW Thompson Company, Inc., 5792 CRB-1-12-10 (January 16, 2014). In Quinones, we quoted the following from Richardson v. Bic Corporation, 4953 CRB-3-05-6 (September 7, 2006).

> [I]n Kuba v. Michael's Landscaping & Lawn Service, 4266 CRB-4-00-7 (August 29, 2001), . . . we stated, "Unless the immediate actualization of an interlocutory ruling may result in some form of irreparable harm, such as the disclosure of sensitive and confidential information to opposing counsel; see Vetre v. State/Dept. of Children and Youth Services, 3948 CRB-6-98-12 (February 14, 2000); this board discourages parties from filing appeals before the commissioner has had a chance to rule on the merits of a case."

Id.

The trial commissioner's ruling on the Motion For Contempt was as follows "Denied w/o Prejudice." A motion which is denied without prejudice does not conclude the rights of either party in the case, and therefore was **not** the type of interlocutory ruling which should have been appealed to the Compensation Review Board. We have

previously ruled on a similar situation when a trial commissioner ruled on a motion in an *ex parte* fashion, the decision was appealed, and we ruled the appropriate remedy was not an appeal to this tribunal, but to have the trial commissioner rule on the dispute at a formal hearing. We find the precedent in Mohamed v. Domino's Pizza, 5352 CRB-6-08-6 (April 22, 2009) instructive.

In Mohamed, we relied on the appeal statute, § 31-301(a) C.G.S. to conclude *ex parte* orders are legally akin to decisions of this panel which are not final judgments and since an *ex parte* order is subject to the further consideration of a formal hearing at the trial level, it was premature to appeal the decision to the compensation review board. The decision herein on the Motion For Contempt was not reached as the result of a formal hearing and thus it is legally indistinguishable from the circumstances in Mohamed. We also noted in Mohamed the absence of a record amenable to performing appellate review. "We have consistently refused to hold appellate hearings in the absence of a factual record." Id. Such a record would require the parties to hold a formal hearing so as to generate such a record. If the claimant seeks such sanctions against the respondent, he needs to file a hearing request seeking a formal hearing.

The situation in this case is also akin to the circumstances which caused this tribunal to vacate an order of sanctions in Bass v. AT&T, 5621 CRB-7-11-1 & 5634 CRB-7-11-3 (May 3, 2012). In Bass, the trial commissioner issued what the appellant viewed as a *per se* finding of undue delay prior to holding a hearing. The subsequent hearing failed to add to the record and "[a]s such, because this board 'was presented with no record to substantiate [the trial commissioner's] determination that the tardiness of the plaintiff's counsel was either unreasonable or without good cause, resulting in undue

delay to the completion of the hearings at issue,'" Flamenco v. Independent Refuse Service, Inc., 130 Conn. App. 280, 285 (2011), we vacated the sanction. Were the trial commissioner to sanction the respondent for violating discovery orders in this case, he would need to provide factual findings on the record supportive of the sanctions; Bass, supra, see also McFarland v. Dept. of Developmental Services, 115 Conn. App. 306, 323 (2009). These factual findings could only be arrived at as the result of a formal hearing where an evidentiary record could be created.

In any event, this is essentially a dispute over pre-hearing discovery and we have long held that a trial commissioner, pursuant to § 31-278 C.G.S., is vested with a great deal of discretion to determine what types of discovery are appropriate and necessary in a contested claim before the Commission. See Valiante v. Burns Construction Company. 5393 CRB-4-08-11 (October 15, 2009). In that case we outlined the rationale for this position.

> This Commission's case law has been unequivocal. "Our case law clearly states, 'a trial commissioner has broad discretion to determine the admissibility of evidence, and an evidentiary ruling will not be set aside absent a clear abuse of that discretion.' Lamontagne" [v. F & F Concrete Corp., 5198 CRB-4-07-2 (February 25, 2008)]. Keeney v. Laidlaw Transportation, 5199 CRB-2-07-2 (May 21, 2008). See also Mosman, supra, and Vetre v. State/Dept. of Children and Youth Services, 3443 CRB-6-96-10 (January 16, 1998) which states that "[d]ecisions regarding the relevance and remoteness of evidence in workers' compensation proceedings fall solely within the discretion of the trier of fact."

Id.

After reviewing the totality of the record and arguments presented by the claimant, we are not persuaded the trial commissioner's decision on December 8, 2014 was an abuse of discretion. Obviously, we must reserve judgment on the merits of this case should the issue under dispute be appealed again to this tribunal. However, were we

to proceed to the merits of the claimant's argument, i.e. that he was improperly denied access to evidence, a witness list and a list of defenses the respondents intended to present at a formal hearing, the decision of the trial commissioner would be entitled to substantial deference by this appellate tribunal.[2]

There are various ancillary matters we must address. The claimant has sought in his appeal various forms of relief beyond the scope of his original Motion For Contempt, including matters which had not been filed as of the date of the December 8, 2014 hearing which was the locus of this appeal. We decline to address these issues as they must first be presented to the trial commissioner for adjudication. We note specifically the trial commissioner determined at the December 8, 2014 informal hearing the claimant's "Motion For Increase Of Claimant's Compensation Award" was to be the subject of a future formal hearing. We may not consider this issue for the first time on appeal. The respondents have moved to dismiss the claimant's appeal for allegedly filing his brief in an untimely manner and have sought sanctions against the claimant for filing an allegedly frivolous appeal. For the reasons delineated in Vitoria v. Professional Employment & Temps, 5217 CRB-2-07-4 (April 4, 2008), we decline to dismiss this appeal for alleged procedural lapses. We are also not persuaded the appeal herein was frivolous, therefore we deny the respondent's bid for sanctions.

The decision of the trial commissioner to deny the claimant's Motion For Contempt without prejudice is herein affirmed.

Commissioners Stephen M. Morelli and Daniel E. Dilzer concur in this opinion.

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[2] The claimant has argued that the respondents' failure to provide the information he seeks is a constitutional violation of his right to due process pursuant to Brady v. Maryland, 373 U.S. 83 (1963). The claimant is not a criminal defendant; therefore the precedent in Brady is inapplicable to this matter.