

Case Name: Gary Jackson v. Total E & P USA, INC.

Date Decided: August 13th, 2009

Originally Filed in: ()

Decided by: (State)

Court: United States Court of Appeals, Fifth Circuit

Judge: Judge Jones

Citation: 2009 WL 2474070

Background:

Plaintiff, Jackson, sued Total for negligence. The lower court granted Total's motion for summary judgment finding that Jackson was a borrowed employee and did not have tort remedies. Jackson appealed

Issue:

Did the lower court err in granting Total's motion for summary judgment?

Overall Issues Discussed or Touched Upon in this Case:

-

Held:

Worker's compensation, under the Longshore Harbor Workers' Compensation Act ("LHWCA") is the exclusive remedy for an employee against his employer because the Act bars all common law tort actions against employers. Total asserted that Jackson was a borrowed employee and therefore is not liable for negligence. To determine "borrowed employee" status, the court focus's on the lending employer's relationship with the employee. The Court found Jackson to be a "borrowed employee" due to many favors. Total provided Jackson with work assignments. Jackson was aware of his work conditions and chose to continue working in them. Total also provided Jackson with food, sleeping quarters, bathing facilities, petty cash for shoe purchases, and a Total uniform with his name on it. Finally, taking into consideration this work arrangement continued for eight months, the Court held that Jackson was a borrowed employee under the LHWCA.

Comments:

This Opinion was unpublished meaning that it is only precedent to its law, LHWCA. The plaintiff had previously brought a workers' compensation action against his direct employer, Producers Assistance Corporation, pursuant to the LHWCA and was awarded judgment. This If an employer is working as a "borrowed employee" then LHWCA provides the sole remedy.