



STATE OF MICHIGAN
COURT OF APPEALS

EDWARD C. LEVY CO.,
A MICHIGAN CORPORATION

PLAINTIFF-APPELLANT,

v.

MICHIGAN EMPLOYMENT SECURITY
COMMISSION AND WILLIE DUBOSE,

DEFENDANTS-APPELLEES.

No. 78-1550

Jan. 22, 1979

WEISBERG & MEISNER
BY: CLIFFORD B. WALKON - (P27733)
ATTORNEYS FOR PLAINTIFF-APPELLANT

FRANK J. KELLEY, ATTORNEY GENERAL
ROBERT DERENGOSKI, SOLICITOR GENERAL
BY: DAVID A. VOGES - (P25143)
ASSISTANT ATTORNEY GENERAL
ATTORNEYS FOR APPELLEE, MICHIGAN
EMPLOYMENT SECURITY COMMISSION

GITTLEMAN, PASKEL, ET AL, P.C.
BY: STEPHEN LINDEN
ATTORNEYS FOR APPELLEE, WILLIE DUBOSE

BEFORE: BEASLEY, P. J., AND BRONSON AND KAUFMAN, JJ.

PER CURIAM

PLAINTIFF APPEALS AN ORDER ENTERED BY THE CIRCUIT COURT AFFIRMING THE MICHIGAN EMPLOYMENT SECURITY APPEAL BOARD'S DECISION TO GRANT DEFENDANT DUBOSE UNEMPLOYMENT COMPENSATION BENEFITS. THE QUESTION PRESENTED IN THIS CASE IS WHETHER DEFENDANT DUBOSE, A TRUCK OWNER-OPERATOR, WAS PLAINTIFF'S EMPLOYEE OR AN INDEPENDENT CONTRACTOR FOR PURPOSES OF THE MICHIGAN EMPLOYMENT SECURITY ACT.

IN ALL CANDOR WE MUST ADMIT THAT THE QUESTION IS CLOSE, BUT ON BALANCE, WE FEEL THE APPEAL BOARD AND CIRCUIT COURT WERE CORRECT IN DECIDING

THAT DEFENDANT DUBOSE WAS PLAINTIFF'S EMPLOYEE. THERE IS LITTLE DOUBT THAT MR. DUBOSE CONSIDERED HIMSELF AN INDEPENDENT CONTRACTOR. HOWEVER, HIS BELIEF AS TO HIS STATUS IS NOT DETERMINATIVE. THE MICHIGAN EMPLOYMENT SECURITY ACT DEFINES EMPLOYEE, IN PART, AS:

" * * * * [A]N INDIVIDUAL WHO BY LEASE, CONTRACT, OR ARRANGEMENT PLACES AT THE DISPOSAL OF A PERSON, FIRM, OR CORPORATION A PIECE OF MOTOR VEHICLE EQUIPMENT AND UNDER A CONTRACT OF HIRE, WHICH PROVIDES FOR THE INDIVIDUAL'S CONTROL AND DIRECTION, IS ENGAGED BY THE PERSON, FIRM, OR CORPORATION TO OPERATE THE MOTOR VEHICLE EQUIPMENT SHALL BE DEEMED TO BE EMPLOYMENT SUBJECT TO THIS ACT." MCL 421.42; MSA 17.545. MR. DUBOSE CERTAINLY PLACED HIS TRUCKS AT PLAINTIFF'S DISPOSAL AND THEN OPERATED THEM UNDER THE DIRECTION AND CONTROL OF PLAINTIFF. IT IS TRUE THAT PLAINTIFF DID NOT EXERCISE DIRECT DAY-TO-DAY CONTROL OVER MR. DUBOSE'S OPERATION, BUT IT DID CONTROL THE OVERALL DIRECTION OF MR. DUBOSE'S EMPLOYMENT SITUATION.

FINALLY, THE RECORD INDICATES THAT MR. DUBOSE WORKED ALMOST EXCLUSIVELY FOR PLAINTIFF FROM 1962 TO 1974. THE ONLY TIME HE TOOK WORK FROM OTHER INDIVIDUALS WAS DURING PLAINTIFF'S SLACK PERIODS MUCH AS ANY OTHER EMPLOYEE WOULD SEEK ALTERNATE SOURCES OF INCOME WHEN HE WAS LAID OFF OR HIS HOURS OF EMPLOYMENT WERE REDUCED.

UPON EXAMINING ALL THE VARIOUS FACTORS INVOLVED, WE CONCLUDE THAT THE MESC WAS NOT IN ERROR IN DETERMINING THAT PLAINTIFF WAS MR. DUBOSE'S EMPLOYER FOR PURPOSES OF THE MICHIGAN EMPLOYMENT SECURITY ACT. SEE CONST 1963, ART 6, § 28, AND MCL 471.38; MSA 17.450. COMPARE TATA V MUSKOVITZ, 354 MICH 695; 94 NW2D 71 (1959), WITH McKISSIC V BODINE, 42 MICH APP 203; 201 NW2D 333 (1972).

AFFIRMED.