1975 WL 28989 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
July 7, 1975

***1** Pilots in the proposed South Carolina Aircraft Operators Contract attached hereto would be employees for purposes of the Workmen's Compensation Act.

Duane A. Earles
Compliance Officer
South Carolina Industrial Commission

QUESTION PRESENTED:

Whether the pilots in the proposed Aircraft Operators Contract attached hereto would be considered employees or independent contractors for purposes of the Workmen's Compensation Act?

LIST OF AUTHORITIES:

Section 72-131, South Carolina Code of Laws (1962)

Section 72-132, South Carolina Code of Laws (1962)

Chavis v. Watkins, 256 S.C. 30, 180 S.E.2d 648 (1971)

Young v. Warr, 252 S.C. 179, 165 S.E.2d 797 (1969)

Larson's Workmen's Compensation Law

S.C. Industrial Commission v. Progressive Life Insurance Company, 242 S.C. 547, 131 S.E.2d 694 (1963)

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DISCUSSION OF ISSUE:

The 1962 Code of Laws of South Carolina, Sec. 72-131 and Sec. 72-132 provides:
'No contract or agreement, written or implied, and no rule, regulation or other device shall in any manner operate to relieve any employer, in whole or in part of any obligation created by this title except as otherwise expressly provided in this Title . . . No agreement by an employee to waive his rights to compensation under this title shall be valid.'

Thus it is the underlying relationship between the parties involved and not the mere existence of a contract which determines whether an employer/employee or employer/independent contractor relationship has been created.

Under South Carolina law the test of whether an employer/employee or employer/independent contractor relationship has been created is the 'right to control test'. This test is applied by evaluating the facts of a particular case in light of

the following factors: (a) direct evidence of the right to, or exercise of, control, (b) method of payment (c) furnishing of equipment and (d) right to fire. See Chavis v. Watkins, 256 S.C. 30, 180 S.E.2d 648 (1971) and Young v. Warr, 252 S.C. 30, 180 S.E.2d 648 (1969).

In analyzing these factors, it is noteworthy that 'for the most part, any single factor is not merely indicative of, but, in practice, virtually proof of the employment relation; while in the opposite direction, contrary evidence is as to any one factor at best only mildly persuasive evidence of contractorship and some times is of almost no such force at all.' Larson's Workmen's Compensation Law, Section 44.31.

As there are no other facts available to us, our analysis of the first factor—direct evidence of the right to or exercise of control—must be limited to an examination of the terms of the contract herein. Section 1 of the contract seems to grant some form of control to the employer in that it seems to provide that a pilot is required to accept an assignment by his employer unless there are 'reasons of safety' or 'his own physical condition' prevents him from flying. Moreover, Section 2 seems to place specific requirements on the pilot by requiring him to test the airworthiness of the aircraft assigned to him and further requiring him to supervise the loading of such aircraft.

***2** The method of payment herein is the commission method. It is considered consistent with either employee or independent contractor status. (Larson's, supra Section 44.33(b)). However, to the extent that this method indicates continuing employment it has been viewed as an indication of employee status. (Larson's, supra Section 44.33(b)).

The power to fire has been viewed by our court as the power to control. See S.C. Industrial Commission v. Progressive Life Insurance Company, 242 S.C. 547, 1315 S.E.2d 694 (1963). This contract seems to give the employer the power to fire the operator if he does not 'perform his work to the satisfaction of the operator and its customers.' (See Clause 4 of the contract). If on the other hand, this were an independent contractor relationship the fliers would have the legal right to complete the project contracted for and to treat any attempt to prevent completion as a breach of contract. (Larson's supra Section 44.35). It is my view that the availability of this power in the employer provides an additional basis for implying that the employer/employee relationship exists herein.

Finally, as to the furnishing of equipment, it has been noted that 'when one is found in possession of the property of another, using it in the service of such other, he is presumed to be the servant of the owner and this presumption follows throughout the entire case and requires rebuttable evidence.' 4 S.C.L.Q. at 174. Also see Larson, supra at Section 44.34. The contract herein provides: 'The Pilot subcontractor agrees to fly . . . using aircraft furnished by the operator'. In light of this language there seems to be little doubt that the equipment used pursuant to this contract will be furnished by the employer which again suggests that the employer/employee relationship exists.

CONCLUSION:

Since the employer, appears to have the power to fire, furnishes the equipment used by the pilots, and appears to have some powers of control, it is my opinion that the pilots would be considered employees for purposes of the Workmen's Compensation Act.

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