

DOCKET NO. 174

Number	Term	Year
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741	May	1961
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George Socash

Versus

Charles Gallagher

BAIRD & McCAMLEY
ATTORNEYS AT LAW
PHILIPSBURG, PENNSYLVANIA

DAVID L. BAIRD
JOHN J. McCAMLEY
WILLIAM L. MILLER

TELEPHONE: DICKENS 2-2240

August 11, 1961

William T. Hagerty
Prothonotary
Clearfield, Penna.

Re: Socash vs. Gallagher

Dear Bill:

Would you please file the enclosed Award of record endorsing
the same against Charles Gallagher on your Judgment Index.

Very truly yours,

Baird & McCamley

By *David L. Baird*
David L. Baird *A.*

DLB:DA

Enclosure



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY

HARRISBURG
August 11, 1961

George Socash
R. D. Box 315
Osceola Mills, Pa.
&
Ray Lukens, Justin Kephart
Clarence Kephart
Osceola Mills, Pa.
&
Roy C. Burkhart
Cresson, Pa.
&
New Amsterdam Cas. Co.
Investment Bldg.
Pittsburgh, Pa.

George Socash VS
Ray Lukens, Justin & Clarence Kephart
& Roy C. Burkhart & New Amsterdam
Cas. Co. & Charles Gallaher

Charles Gallagher
Brisbin, Pa.
&
David L. Baird, Esq.
Philipsburg, Pa.
&
Edward T. Kelley, Esq.
Clearfield, Pa.

Gentlemen:

A copy of the decision of Referee Sobol
in the above captioned case is herewith transmitted to you.

The decision of the Referee is final unless an appeal is taken to the Workmen's Compensation Board as provided by law. The requirements for filing an appeal are contained on the back of this notice; which must be taken within 20 days of August 11, 1961.

The total payments and interest due on this award computed to (but not including) April 24, 1961

8 4/7	weeks compensation at \$	25.00	\$	214.29
7 2/7	weeks accrued interest			.87
	days simple interest			25.36
	weeks compensation at \$			
	weeks accrued interest			
	days simple interest			
	TOTAL COMPENSATION AND INTEREST		\$	240.52

The first receipt filed should show payment of accrued compensation and interest. The amount due, with interest as indicated above, applies if payment is made within two weeks of the date named. For each week's delay there is additional interest due of \$ _____.

Yours very truly,

Kelly D Bloom

KELLY D. BLOOM, Secretary
Workmen's Compensation Board

encl.

jr

Edward T. Kelley, Esq.
Clearfield, Pa.

Smith & Smith, Esq.
Clearfield, Pa.

C. Dale Blair, Esq.
2008 Law & Finance Bldg.
Pittsburgh, Pa.

REQUIREMENTS FOR TAKING APPEAL FROM DECISION OF REFEREE

A period of twenty days after notice of a Referee's decision is allowed by Section 423 to take an appeal from the decision of the Referee to the Workmen's Compensation Board. This period of twenty days is computed from, but not including, the date upon which the decision is mailed by the Workmen's Compensation Bureau, properly stamped and addressed (Section 426).

An appeal will be considered as filed within the prescribed time if it is mailed to the Board, properly stamped and addressed, on the twentieth day after such notice. Thus, if a decision is mailed to the parties January 1, the appeal must be mailed to the Board not later than January 21st.

Blanks for appeal may be obtained at the office of the Referee, or by request, from the Workmen's Compensation Board, Harrisburg, Pennsylvania.



Commonwealth of Pennsylvania
DEPARTMENT OF LABOR AND INDUSTRY
WORKMEN'S COMPENSATION BOARD
HARRISBURG

REFEREE'S AWARD OR DISALLOWANCE OF COMPENSATION

GEORGE SOCASE
Claimant
B. D. For 315
Street Address
Osceola Mills, Pennsylvania
City
VS.
RAY LUKINS, JUSTIN KEFHART AND
Defendant **CLARENCE KEFHART**
Osceola Mills, Pennsylvania
Address
(NO INSURANCE CARRIER)

Claim Petition No. **154,254**

Bureau File **#6,982,135**

Compensation Agreement No. _____

AND

ROY C. BUNKHAET
Crescon, Pennsylvania
Defendant

(NEW AMSTERDAM CASUALTY COMPANY)
Investment Building
Pittsburgh, Pennsylvania
Insurance Carrier.

AND

CHARLES O'ALLAGHER
Erie, Pennsylvania
Defendant.

(NO INSURANCE CARRIER)

BEFORE: **LEONARD SOBEL**, Referee, District No. 7.

TIME OF HEARINGS: **Thursday, December 3rd, 1959, at 10:00 A.M.**
Tuesday, October 18th, 1960, at 2:00 P.M.

PLACE OF HEARING: **Coshannon Bank Building, Philipsburg, Pa.**

APPEARANCES: David L. Baird, Attorney at Law, Phillipsburg, Pa.
Counsel for Claimant

Edward T. Kelley, Attorney at Law, Clearfield, Pa.,
representing Ray Lukens, Justin Kephart,
and Clarence Kephart, Osceola Mills, Pa.

C. Dale Blair, Attorney at Law, 2008 Law & Finance Bldg.,
Pittsburgh, Pa., representing New
Amsterdam Casualty Co., Investment Bldg.,
Pittsburgh, Pa.

Smith & Smith, Attorneys at Law, Clearfield, Pa.
representing Charles Gallagher, Erie, Pa.

CLAIMANT'S WITNESSES:

George Secash, R.D., Osceola Mills, Pa.
Robert Secash, R.D., Osceola Mills, Pa.
Fred Secash, - R.D., Osceola Mills, Pa.

WITNESSES FOR RAY LUKENS, et. al.

Ray Lukens, Osceola Mills, Pa.
Frank (Clarence) Kephart, Osceola Mills, Pa.
Justin Kephart, Osceola Mills, Pa.

NO OTHER WITNESSES CALLED.

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FINDINGS OF FACT

From the undenied averments of the petition, the
agreements and stipulations by counsel, and the preponderance of the
testimony taken at the hearing, your Referee finds the following facts:

FIRST:

That this claim petition was filed by George Secash,
claimant, alleging that he sustained an accident on
March 16th, 1959, while at work in the employ of Ray
Lukens, Justin Kephart and Clarence Kephart, defendants,
as a result of which he sustained injuries to his
shoulder; that an answer was filed by the defendants,
signed by Ray Lukens, in which they admit the accident
occurred as alleged, but deny that the claimant was an
employee at the time of the accident.

SECOND:

That at the time of the first hearing in this case held
on December 3rd, 1959, testimony was taken of the
claimant and his witnesses and the testimony of all
three defendants; that the parties agreed and stipulated

as to the accident, length of disability, and cost of medical services; that at the close of that hearing because of the nature of the testimony, counsel for Claimant moved to amend the claim petition to include one Roy C. Burkhardt of Crosson and one Charles Gallagher of Parsonville, as party defendants; that the motion was granted and subsequent to that hearing the record was returned to the Bureau at Harrisburg with the request that the individuals mentioned be made party defendants; that copies of the petition was mailed to the additional defendants by the Bureau of Workmen's Compensation, and subsequently an answer was filed by the New Amsterdam Casualty Company, insurance carrier for Roy C. Burkhardt, this answer denying most of the allegations of the petition; that under date of June 8th, 1960, your Referee received a communication from Frank G. Smith, Attorney at Law, Clearfield, Pa., advising that he represented Charles Gallagher and that he had prepared an answer which he forwarded to Mr. Gallagher for his signature and affidavit, a copy of the answer attached to Mr. Smith's letter; that the signed answer was never received in your Referee's office; that hearing was then scheduled to be held at Philipsburg, Pa., on May 5th, 1960, all the parties being notified, but this hearing had to be postponed; that at the time of the hearing held on October 16th, 1960, all the parties were represented except Charles Gallagher, who did not appear at the hearing, nor was he represented by counsel, although all parties were properly notified; that at that hearing no further testimony was taken and the case was concluded.

THIRD:

That from all the testimony taken in this case your Referee finds that Roy C. Burkhardt, one of the additional defendants, was in no way an employer in this case and the petition filed against him will be dismissed.

FOURTH:

That Charles Gallagher had a contract to furnish paper wood to a certain paper mill, the wood to be cut on a piece of certain timber leased by Gallagher for cutting paper wood; that Gallagher had engaged Ray Lukens to cut the paper wood at a given price per cord loaded on cars at the railroad siding; that Gallagher had informed Lukens he was permitted to hire as many men as possible to assist in the work; that Lukens had started the work with Justin and Clarence Kephart; that on the morning of March 16th, 1959, Ray Lukens contacted the claimant, the claimant's son and claimant's brother, to assist in the cutting of paper wood, and the men started to work that same morning.

FIFTH:

That the claimant had worked about an hour in the woods, when he was struck on his shoulder by a limb of a falling tree, sustaining a cracked fracture; that he was taken immediately to the Philipsturg State Hospital, Philipsturg, Pa., where the shoulder was x-rayed and claimant was then rendered treatment by Dr. Peter E. Guillard of Cecelia Mills, Pa.; that as a result of the fracture the claimant was totally disabled until May 15th, 1959, when he had fully recovered.

SIXTH:

That after the paper wood was loaded on the cars Ray Lukens procured the money for the wood loaded from Charles Gallagher and then distributed it among the other men, according to the number of cords they cut; that from the uncontradicted evidence your Referee finds that Ray Lukens, Justin Kephart and Clarence Kephart, as well as the claimant, his son and his brother, were all employees of Charles Gallagher at the time of this accident; that no pay roll records were kept by any of these men to determine Social Security, Income Withholding Tax, or Unemployment Compensation Deductions, and we have no evidence that this was done by Gallagher.

SEVENTH:

That the cost of medical services rendered the claimant by Dr. Peter E. Guillard of Cecelia Mills, Pa., amounted to \$35.00, and the cost of x-ray taken at the Philipsturg State Hospital, Philipsturg, Pa. amounted to \$15.00; that these services are still unpaid.

EIGHTH:

That the claimant had earned but little pay while in the employ of Charles Gallagher, having worked but one hour; that the claimant had been engaged previously in work of similar character by other individuals or concerns, and his earnings amounted to about \$35.00 per week; that your Referee will, therefore, find that the claimant's average weekly wage would amount to \$35.00.

CONCLUSIONS OF LAW

Upon the facts appearing in this claim, your Referee arrives at the following conclusions of law:

FIRST:

That neither the claimant nor the defendant, Charles Gallagher, had rejected the provisions of the Workmen's Compensation Act, and are therefore bound by the same.

SECOND:

That since the claimant sustained an accidental injury while at work in the course of his employment with Charles Gallagher, he is entitled to recover compensation for the disability that he suffered as a result thereof.

THIRD:

That since it has been shown that Ray Lukens, Justin Kephart and Clarence Kephart, were not the employers of the claimant at the time of this accident, they will be dismissed as party defendants in this case.

FOURTH:

That since it has been shown that Roy G. Burkhart was not an employer of the claimant at the time of this accident, he will be dismissed as a party defendant in this case.

AWARD

In accordance with the findings of fact and the conclusions of law herein stated, compensation is awarded to the claimant, George Gocash, and against Charles Gallagher, defendant, at the rate of 66-2/3rds of thirty-five dollars (\$35.00), or twenty-five dollars (\$25.00) per week, the minimum rate of compensation provided by the Act in force and effect on March 16th, 1959, payments beginning as of March 16th, 1959, and to continue until May 15th, 1959, a period of eight and four-sevenths (8-4/7ths) weeks, in the sum of two hundred fourteen dollars and twenty-nine cents (\$214.29).

The above award is to bear interest in accordance with the provisions of Workmen's Compensation Act, Section 410.

The defendant, Charles Gallagher, is directed to pay the cost of medical and hospital services rendered the claimant for the treatment of his injury as follows:

To: Dr. Peter M. Guillard, Osceola Hills, Pa. \$35.00
To: Philipsburg State Hospital, Philipsburg, Pa. \$15.00

LS:AAH
File #19,320
Dated: March 20th, 1961

LEONARD BOROL, Referee
Seventh District