

APPEAL NO. 013163
FILED JANUARY 29, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 5, 2001. With respect to the issues before her, the hearing officer determined that the respondent (claimant) was injured in the course and scope of his employment on _____, and that he had disability, as a result of his compensable injury, from _____, through the date of the hearing. In its appeal, the appellant (carrier) contends that the hearing officer erred in determining that the claimant was in the course and scope of his employment at the time of his injury, arguing that his violation of a company policy of using his company truck on Sundays removed him from the course and scope of his employment. In his response, the claimant urges affirmance.

DECISION

Affirmed.

The facts in this case are largely undisputed. The claimant injured his low back, when he slipped and fell in the bed of his company truck while washing it on Sunday, _____. The carrier does not contend that the claimant was not furthering the business affairs of the employer at the time of the accident; rather, it contends that the claimant's violation of the company policy prohibiting use of the company truck on Sundays removed him from the course and scope of his employment. We find no merit in this assertion. In Liberty Mut. Ins. Co. v. Boggs, 66 S.W.2d 787 (Tex. Civ. App. -Eastland 1933, writ *dism'd*), the court determined that a pilot killed in an accident while giving flying lessons was in the course and scope of his employment at the time of the accident, despite having "disobeyed instructions to return the plane at the time he was directed to do so." In so holding, the Boggs court stated:

The authorities establish as correct, we think, the proposition that it is only when an employee in violating instructions thereby does an act which is itself outside the course of employment that the violation of instructions become material. [Citation omitted.] It is probably true that only in cases where the course of employment is determinable only from, and is dependent upon, instructions, that the violation of instructions can have controlling effect. If giving flying lessons to students was in the course of Boggs' employment, then it was none the less so simply because he violated an instruction to return with the plane to the airport on the day previous.

To state this proposition another way, violation of an employer's policy or instruction will not, as a general rule, remove an employee from the right to compensation where the rule relates to the manner of doing work, as opposed to a rule intended to limit the scope of employment. Brown v. Forum Ins. Co., 507 S.W.2d 576 (Tex. App.-Dallas 1974, no writ); see *a/so* Port Neches Indep. Sch. Dist. v. Soignier, 702 S.W.2d 757 (Tex. App.-Beaumont

1986, no writ). In this instance, there is no dispute that the act of washing the company truck was an act in furtherance of the employer's affairs. Under the reasoning of Boggs, *supra*, it was no less so because it happened on a Sunday, as opposed to another day of the week. Accordingly, the hearing officer did not err in determining that the claimant was in the course and scope of his employment at the time of his injury on _____.

The success of the carrier's challenge to the disability determination is dependent upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the hearing officer's determination that the claimant sustained a compensable injury, we likewise affirm her determination that the claimant had disability from _____, through the date of the hearing.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge