

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON

FILED

December 1, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

JAYME BUSSELL,)

Plaintiff/Appellant,)

VS.)

PROMUS HOTEL CORPORATION,)
d/b/a HARRAH'S CASINO and)
HARRAH'S ENTERTAINMENT, INC.,)
d/b/a HARRAH'S TUNICA CASINO,)

Defendants/Appellees.)

SHELBY COUNTY

HON. WYETH CHANDLER
JUDGE

No. 02-S-01-9705-CV-00041

FOR APPELLANT:

Howard B. Hayden
Post Office Box 3060
Memphis, TN 38173-0060

FOR APPELLEE:

Martin W. Zummach
Post Office Box 3543
Memphis, TN 38173-0543

MEMORANDUM OPINION

MEMBERS OF PANEL:

JANICE M. HOLDER, JUSTICE
HEWLITT P. TOMLIN, JR., SENIOR JUDGE
CORNELIA A. CLARK, SPECIAL JUDGE

AFFIRMED

CLARK, SPECIAL JUDGE

This worker's compensation appeal has been referred to the special worker's compensation appeals panel of the Supreme Court in accordance with Tenn. Code Ann. §50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. Plaintiff appeals the trial court's grant of summary judgment to defendant and its finding that her contract of hire with the defendant was made in the State of Mississippi rather than the State of Tennessee.

Plaintiff was employed by defendant ("Harrah's") in November 1993. Her work location was the Harrah's Casino in Tunica, Mississippi. On December 29, 1993, she suffered a work-related injury at the workplace in Tunica. Plaintiff subsequently filed a workers' compensation action in Shelby County, Tennessee, alleging that her contract for hire was actually entered into in Tennessee and that T.C.A. §50-6-115(2) entitled her to receive benefits under Tennessee law.

Defendants filed a motion to dismiss. After affidavits were filed on behalf of both parties, the court treated the matter as a motion for summary judgment. The trial court granted the motion, finding as a matter of law that plaintiff's employment was entered into in Mississippi and that she was not eligible for compensation under the Tennessee Workers' Compensation Act. We affirm the holding of the trial court.

Plaintiff Jayme Bussell submitted her application for employment with Harrah's on September 22, 1993. She was interviewed for this position during a job fair held at the State Technical Institute in Memphis, Shelby County, Tennessee, by a representative of Harrah's. During that interview she was required to watch a video and undergo testing to make sure she could do simple arithmetic and other similar skills. At the conclusion of the interview plaintiff understood that she had been offered a job at the Harrah's Casino in Tunica, Mississippi.

It is the policy of Harrah's that any employment offers are contingent upon

first passing a pre-employment drug screening and obtaining a Mississippi gaming license. Such a license is required in the State of Mississippi in order for any individual to work in a casino there. On November 4, 1993, plaintiff appeared as directed in Southaven, Mississippi, where she submitted to the drug screening and completed several forms, including Internal Revenue Service form W-4. On November 8, 1993, plaintiff again visited the Mississippi office and was fingerprinted for the purpose of applying for a Mississippi gaming license. Plaintiff's employment officially began on November 8, 1993, in Mississippi. On December 29, 1993, plaintiff suffered the on-the-job injury that is the subject of this action.

Plaintiff concedes that her work site was in Mississippi and that her injury occurred in Mississippi. The only event that happened in Tennessee was her interview, which led to her being sent to Mississippi to take a drug test and complete the employment papers necessary to receive a Mississippi gaming license. Plaintiff asserts, however, that the initial offer of employment made in Memphis was unconditional, and it was never explained to her that the drug screen and gaming license were prerequisites to employment.

Gail Gonzales, Director of Human Resources Operations at Harrah's, stated unequivocally that drug testing was performed and pre-application employment and license application forms always were completed for the defendant in DeSoto County, Mississippi, and that plaintiff could not be hired until such time as the tests had been taken and the forms had been completed in Mississippi.

The trial court found as a matter of law that, while there was a fact dispute between the parties as to what the employee was told while still in Tennessee regarding her employment, it was a prerequisite of employment at a Mississippi casino that employees be given a drug test and apply for a gaming license. He therefore further found as a matter of law that actual employment occurred in Mississippi only after plaintiff appeared there and completed Mississippi's

requirements for such employment.

The trial court correctly found as a matter of law that the employment contract was not made in Tennessee. The affidavits filed by plaintiff are insufficient to change this conclusion. Plaintiff makes only the bare assertion that she understood the offer of employment made to her in Memphis to be unconditional and that she was not advised of the additional testing and license requirements until several days later. However, this expression of opinion is not adequate to refute the affidavit testimony of Harrah's representative that no one can be employed by Harrah's to work at a casino in Mississippi until he or she has received a Mississippi gaming license. See Gann v. Key, 758 S.W.2d 538, 548-49 (Tenn. App. 1988). Therefore, plaintiff is not entitled to workers' compensation benefits under Tennessee law. See Perkins v. B.E. & K., Inc., 802 S.W.2d 215, 216 (Tenn. 1990).

The judgment of the trial court is affirmed. Costs on appeal are taxed to appellant.

CORNELIA A. CLARK, SPECIAL JUDGE

CONCUR:

JANICE M. HOLDER, JUSTICE

HEWLITT P. TOMLIN, JR., SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

JAYME BUSSELL,) SHELBY CIRCUIT
) NO. 77655 T.D.
Plaintiff/Appellant,)
) Hon. Wyeth Chandler,
vs.) Judge
)
PROMUS HOTEL CORPORATION,) NO. 02S01-9705-CV-00041
d/b/a HARRAH'S CASINO and)
HARRAH'S ENTERTAINMENT, INC.,)
d/b/a HARRAH'S TUNICA CASINO,)
)
Defendants/Appellees.) AFFIRMED.

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JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Appellant, and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 1st day of December, 1997.

PER CURIAM

(Reid, J., not participating)