STATE OF MICHIGAN

COURT OF APPEALS

DAVID G. PRESNELL

Plaintiff-Appellant,

v

OAKLAND COUNTY,

Defendant-Appellee.

UNPUBLISHED
February 4, 1997

No. 192249
LC No. 92-0835

Before: Smolenski, P.J., and Michael J. Kelly and J.R. Weber,* JJ.

PER CURIAM.

This is a worker's compensation case on remand from the Supreme Court to this Court for consideration as on leave granted. We affirm.

On these stipulated facts the worker's compensation appellate commission did not fail to apply the proper legal standard when it determined that plaintiff could not be considered to have been on a "special mission" since he was in the process of reporting to a work station for the performance of an ordinary duty for a deputy sheriff, i.e. testifying in court.

The evidence relied on by the WCAC included a provision in the collective bargaining agreement governing the employment relationship between the parties, particularly the "call-out pay provision" in the agreement which provides:

> "The County will guarantee a minimum of two (2) hours' pay at the employee's applicable rate to an employee who has checked out, gone home and is then called out for additional work. Call-out pay shall be calculated beginning upon arrival at the work site and shall end upon the employee leaving the work site. If an employee is called out and once on the road the call-out is canceled, the 2 hour minimum shall apply."

The provision supports the conclusion that defendant did not derive a special benefit from plaintiff's trip to district court since that was part of the normal course of plaintiff's duties as a deputy sheriff.

* Circuit judge, sitting on the Court of Appeals by assignment.

Contrary to plaintiff's assertions, plaintiff was not paid for or furnished transportation. The collective bargaining agreement clearly states that plaintiff would be paid from the time he arrived at the job site until the time he left. The fact that plaintiff was entitled to a minimum of 2 hours pay even if he was not in court for 2 hours does not mean that the excess payment became payment for plaintiff's travel time. We distinguish this case from, *Botke v Chippewa County*, 210 Mich App 66 (1995) in that the deputy in *Botke* was in a patrol car wearing his uniform and was expected to respond to calls. In the instant case, there is no dual purpose involved as plaintiff was operating his own motorcycle and plaintiff concedes the dual purpose exception need not be considered. Plaintiff was simply traveling to his job site which he was called to do on his day off. There is no evidence that plaintiff was paid for his travel time. Plaintiff was simply on his way to report to a work station when he was injured. The general rule of noncompensability for travel to and from work must apply.

Affirmed.

/s/ Michael J. Kelly
/s/ Michael R. Smolenski
/s/ John R. Weber