

STATE OF MICHIGAN
COURT OF APPEALS

JOHN NICHOL and LISA NICHOL,

Plaintiffs-Appellants,

v

MOHAWK MOTORS OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED

July 29, 1997

No. 194373

Wayne Circuit Court

LC No. 95-513551 NO

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

Plaintiffs appeal by right summary disposition granted on the basis of the exclusive remedy provision of the Worker's Disability Compensation Act. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff John Nichol was employed as a truck driver by Diversified Contract Services, which leased plaintiff to defendant Mohawk Motors of Michigan, Inc., a trucking company which supplied the trucks to be driven and the cargo to be delivered, as well as the company which established the routes to be driven. Although a Diversified employee was in charge of assigning drivers to trucks and routes on a day-to-day basis, contrary to plaintiff's argument, that is not tantamount to saying that defendant Mohawk lacked the necessary control of plaintiff's activities to be deemed plaintiff's employer under the economic realities test. *Amerisure Ins Companies v Time Auto Transportation, Inc*, 196 Mich App 569, 576; 493 NW2d 482 (1992). Depositions and affidavits in the record establish without contradiction that defendant Mohawk, as well as Diversified, by following the procedures established in a collective bargaining agreement with the union representing plaintiff and other truck drivers, had the right to institute disciplinary action against truck drivers.

Michigan jurisprudence is clear that, in these labor broker situations, both the labor broker and the labor broker's customer, here, Diversified and Mohawk, respectively, are dual employers, both have equal liability under the Worker's Disability Compensation Act for any injuries to their employees arising out of and in the course of employment, and both are equally protected by the

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

exclusive remedy provision of the Worker's Disability Compensation Act. *Farrell v Dearborn Mfg Co*, 416 Mich 267; 330 NW2d 397 (1982); *Renfroe v Higgins Rack Coating & Mfg Co*, 17 Mich App 259; 169 NW2d 326 (1969). Summary disposition was therefore properly granted by the circuit court.

Affirmed.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn