BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE

DREW BAILEY, SR., Claimant,	)	
v.	)	Hearing No. 1535222
RNJ FARMS, LLC, Employer,	)	

This matter came before the Industrial Accident Board ("the Board") on November 2, 2023, on a motion by RNJ Farms, LLC ("Employer") seeking dismissal of a pending Petition to Determine Compensation Due filed by Drew L. Bailey, Sr. ("Claimant") alleging that he was injured in a compensable work accident on October 20, 2021, while working for Employer.

Background: The parties agree that Employer sharecrops, farms and harvests in Delaware, Maryland and North Carolina. Claimant was involved in a motor vehicle accident in Virginia on October 20, 2021, while he was driving a truck belonging to Employer from a Delaware-based location of Employer to North Carolina. Employer does not carry workers' compensation insurance.

Issue: Delaware's Workers' Compensation Act ("the Act") states that:

> [t]his chapter shall not apply to farm laborers or to their respective employers unless such an employer carries insurance to insure the payment of compensation to such employees or their dependents.

DEL. CODE ANN. tit. 19, § 2307(b).[1] As noted, Employer does not carry workers' compensation insurance. The sole issue presented to the Board is whether Claimant constitutes a "farm laborer" so as to come under the exemption language of this section.

[1] A farm might well choose to get workers' compensation insurance and put itself under the coverage of the Act. If a farm and farm laborer are exempted from the Act under this section, an injured farm worker could then sue the farm directly in a personal injury action because the exclusion clause of section 2304 of the Act would not apply. An injured worker's potential recovery in tort could be well in excess to the comparatively limited benefits made available under the Act.

Evidence: Claimant testified that Employer is a farming operation and he has worked for it for about two years, working on farms in Delaware and North Carolina (and, he believes, in Maryland as well). Robert J. Collins is the boss.

Claimant reviewed certain text messages from his own phone. A text dated August 28, 2020, showed tickets reflecting the weight of loads he drove in a truck for delivery to Kaolin Mushroom Farms, Inc. Another photo (from February 9, 2021) showed a vehicle called a Manitou, which was used to load straw on to the truck. Claimant had been driving the Manitou on the farm and it got stuck in mud in a ditch. He periodically would drive a Manitou for loading of the truck. The phone also contains a photo of tipped over hay bales. Claimant agreed that he has separated bales before. Every once in a while he would drive a tractor, similar to the kind shown in Employer's Exhibit 2 (although Claimant had not driven that particular tractor).

This exhibit also shows the truck Claimant had been driving on the date of the accident. The truck bears a license plate: FT 1022. Employer asserts that the "FT" designation stands for "Farm Truck." Claimant explained that, on the day of the accident, he was driving the truck with the intended destination being North Carolina. When done loading bales there, he would then have driven the bales to Pennsylvania. As noted earlier, he was involved in a motor vehicle accident while in Virginia, heading to North Carolina.

Claimant stated that he has had 24 years of experience driving trucks. He possesses a CDL Class A license (for tractor-trailer combination vehicles). He has specialized training in operating the vehicle. Although he has loaded and shipped hay bales, he has not farmed or harvested hay. He began to work for Employer because he had been driving his own truck. When that truck broke down, he could not afford to repair it, so instead he began working for Employer. He drove tractor-trailers for Employer. He had driven the one shown in Employer's Exhibit 2 for a couple of months prior to

the accident. Claimant showed a photo (Claimant's Exhibit 1) displaying four trucks that Employer had. Claimant drove at least two of them.

Claimant explained that, at Employer, he would start the truck and drive it from Delaware down to North Carolina. There, bales of straw would be loaded onto the truck. The straw was already baled in North Carolina. Claimant did not do the baling of the hay. Once the straw bales were loaded, he would then drive the truck to the mushroom plant in Pennsylvania, where the straw was unloaded and he would then bring the empty truck back to Delaware. About 90% of the time he was driving.

Claimant occasionally would use the truck to transport equipment (such as the Manitou loader) and crops for Employer.

Robert J. Collins testified that he is the owner of Employer, which started circa 2016. It is a farm operation engaged in farming, baling and hauling. The farm crops include beans, straw, hay and corn fodder. Employer will both sharecrop (rent a piece of ground) and operate its own farm.[2] As a necessary part of farm operation, crops must be harvested. To harvest, the operation needs farm equipment such as tractors, bailers, loaders, rakes and Haybines.[3]

Mr. Collins stated that Employer has two full-time employees and one part-time employee (the office manager), although when he goes to North Carolina he takes extra help with him because he cannot do it by himself. Employer has never purchased workers' compensation insurance because the operation falls under the farm exemption. He considers a "farmhand" to be anybody who works for the farm, including those who drive tractors, bale hay, load hay onto trucks and drive the bales to

[2] Employer sharecrops in Delaware, Maryland and North Carolina with about 25 landowners. Some of the sharecropping is in hay. Employer might bale the hay and give half to the landowner and keep half. Another arrangement involves a pay-per-bale systems. A combine goes through and collects the landowners' wheat and leaves the straw and then Employer bales the straw.

[3] Haybine is a brand name sometimes used generically by farmers to refer to a hay mower-conditioner, which is necessary in large scale haymaking.

other locations. They all function as part of the farm operation. He would consider Claimant to be a farmhand. He agreed that Claimant's primary job set involved hauling hay to mushroom farms.

Mr. Collins confirmed that the truck Claimant drove had an "FT" plate because it was a farm truck. All vehicles that haul a farm's own crops are "farm trucks." The designation helps with insurance. A farm truck can haul crops and farm equipment, but cannot be used to haul other non-farm items. You have to be a farm to merit a farm truck designation.

Mr. Collins explained that the employees are paid differently for different jobs. When acting as mechanics, they are paid an hourly rate. If one is driving a truck locally (close by) then the pay is by the hour. Longer drives are paid by the load. So, for example, the drive to North Carolina and then to Pennsylvania would be paid by the load.

Case Law Review: The issue for the Board to decide is whether Claimant qualifies as a "farm laborer" as that term is used in section 2307(b) of the Act. If he is, then he is exempted from coverage under the Act. The term itself is not specifically defined in the Act. The parties have provided case law to guide the interpretation of the language.

In 1922, the Board considered the issue in *Edge v. Cow Marsh Ditch Co.*, Del. IAB, Hearing No. 19497 (February 16, 2022). In that case, the employer was a corporation

> organized for the purpose of keeping open a number of passage ways for contributing streams of water in the southwestern part of Kent County which eventually find their ways into the Choptank River. The object in keeping open these passage ways and the main ditch is that the farm lands adjacent thereto may be irrigated and the production of beneficent crops thereby encouraged.

Edge, at 1. It was noted that membership in the corporation was limited to "farmers or retired farmers, owners of the land that is to be drained." The members paid in money to conduct the work and the pecuniary benefit received was from "the improvement of the land and the production of more abundant crops." *Edge*, at 1-2.

In *Edge*, an employee of the corporation was injured while clearing a ditch. The question was whether he qualified as a "farm laborer" even though his employer was not itself a farm. The Board held:

> The work in which the Claimant was engaged at the time of his injury was upon farm land and was being done for the benefit of the crops that were to be grown upon the land. Ditching is necessary to production of crops and other kinds of farm work. It is all farm work and the person so employed is a farm laborer.

Edge, at 2.

In 1988, Superior Court first weighed in on the proper interpretation of the phrase "farm laborer." In *Bohemia Hall, Inc. v. Sturgill*, Del. Super., C.A. No. 86A-OC-5, Stiftel, P.J., 1988 WL 4755 (January 7, 1988), the claimant worked for a "horse farm" that bred, "broke" and trained horses for racing, but grew no crops (apart from grass seed, which was planted in pastures for the horses to graze upon). The claimant's job duties "consisted of cleaning or 'mucking' horse stables; 'bedding the horses' for the night; giving them feed and water; and preparing the horses for their training sessions." *Bohemia Hall*, 1988 WL 4755 at *1. The Board had decided that the "farm laborer" exemption did not apply to a "horse breeding" farm that was in no way engaged in agricultural endeavors. *Bohemia Hall*, 1988 WL 4755 at *2.

Superior Court disagreed. The Court observed that the Board seemed to have been influenced by the question of whether the employer's business (breeding horses rather than production of crops) constituted a "farm." The Court stated that, instead, the majority of jurisdictions "place the emphasis upon the nature of the employee's work rather than upon the nature of the employer's business." *Bohemia Hall*, 1988 WL 4755 at *2. The Court then concluded that the claimant's "duties clearly were that of a 'farm laborer.' Cleaning stalls, feeding horses, etc., are the traditional labors one thinks of when one considers farming activities." *Bohemia Hall*, 1988 WL 4755 at *3.

In 2000, the Superior Court considered the case of a boarding stable and an injury to an employee who gave riding lessons and exercised, trained and cared for horses owned by the employer. The Board had found the stable to be a "horse farm" but that the claimant's employment as a riding instructor was not a "farm laborer." The Court agreed that the claimant's job as a riding instructor was not being a farm laborer, but it also disagreed that a riding stable met the traditional definition of a farm. *See Irish Hunt Farms, Inc. v. Stafford*, Del. Super., C.A. No.99A-02-003, Carpenter, J., 2000 WL 972656 at *4-*5 (April 28, 2000).

The next case referenced is a Board decision from 2004, *West v. Vincent Farms*, Del. IAB, Hearing No. 1250422 (October 1, 2004). The claimant worked for the employer, a farm operation, but he argued that he was not a "farm laborer" because he did masonry and construction work on the farm (such as framing sheds). He also did such tasks as cutting hay, mowing grass, planting watermelon, maintaining farm equipment and the like. Although claimant disagreed with the apportionment, the Board made a factual finding that his masonry work constituted only 6.66% of his time and the rest was doing farm laborer work. *See West*, at 3. The Board also found that the activity that claimant was injured doing (cleaning a trench to place a waterline from a greenhouse to the street) was a "typical farming activity." *West*, at 3. The occasional excursion into non-traditional farm duties (masonry work) was to be disregarded. While finding that the claimant was clearly a farm laborer, the Board did observe that, when the character of an employee's work is ambiguous in nature, then the scales can be tipped by considering the nature of the employer's business, which in this case was clearly agricultural. *See West*, at 5-6.

This approach was again displayed in *Lowe v. Vincent Farms, Inc.*, Del. IAB, Hearing No. 1373141 (October 31, 2011). The claimant worked for Vincent Farms. He estimated that about 85% of his time was working as a mechanic, repairing machinery or vehicles. Only about 12% of the time was doing farming work and 3% making hydraulic hose for irrigation systems. It was agreed that the

employer's irrigation business was separate from the farming business. The Board opined that the work of a farm laborer is varied and maintaining farm equipment is a typical farming activity necessary for the operation of the farm. As such, it concluded that the claimant, largely doing mechanical work on farm equipment, was a farm laborer. *Lowe*, at 4. "The Legislature exempted farm laborers from the workers' compensation statute and did not specify that the exemption was limited to migrant workers or employees working strictly in the fields." *Lowe*, at 5. The Board's decision in *Lowe* was affirmed by Superior Court. The Court observed that claimant's argument incorrectly attempted to re-write the statutory phrase "farm laborer" to mean "field laborer." *See Lowe v. Vincent Farms, Inc.*, Del. Super., C.A. No. 11A-12-001, Stokes, J., 2012 WL 1413580 at *1 (February 23, 2012).

Claimant in the matter presently before the Board also references certain case law from other jurisdictions. A case from South Dakota, *Keil v. Nelson*, 355 N.W.2d 525 (S.D. 1984), involves a motor vehicle accident to an employee (Keil) driving a truck for the Nelsons. The Nelsons used to operate a trucking business. They then got into farming, but still used their two trucks for commercial hauling as well as hauling their farm livestock and produce. *See Keil*, 355 N.W.2d at 527. The employee was paid by checks made out under the name of the trucking business and the Nelsons' business tax forms distinguished between farm income and trucking income. The trial court accepted the employee's representation that 75% of his activities were devoted to commercial hauling; 20% to hauling for the Nelsons' personal use; and only 5% devoted to farm labor. *See Keil*, 355 N.W.2d at 528. Under these facts, the court found that the employee was primarily employed in the Nelsons' "secondary, albeit small, trucking business" and was not a farm laborer. *See id.*

The next case referenced is from Arkansas: *Dockery v. Thomas*, 295 S.W.2d 319 (Ark. 1956). The injured employee was a licensed pilot experienced in the dusting or spraying of crops by plane. The employer was a flying service with a fleet of planes primarily used in dusting and spraying crops

all over the United States. *See Dockery*, 295 S.W.2d at 319. The employee was injured when his plane crashed while dusting a field. The issue was whether he was engaged in "agricultural farm labor." In finding that the injured worker was not a farm laborer, the Supreme Court of Arkansas held:

> The employer-appellant is not a farmer but is an independent contractor engaged in the highly specialized and hazardous business of spraying and dusting crops and other vegetation by plane. [The employee] is a licensed commercial flyer with long experience as a "duster pilot," an occupation that could scarcely be classified as ordinary farm work. . . . A different result might follow if [the employee] had been employed by the farmer who owned his own plane.

Dockery, 295 S.W.2d at 321.

Finally, Claimant references a decision from Nebraska: *Oliver v. Ernst*, 27 N.W.2d 622 (Neb. 1947). In that case, the employer ran a business in which he contracted to move dirt by bulldozer. The business had worked on a few farms, as well as for an oil company and for a drilling company. The employee was injured while performing a contract to fill a ditch and build a dam on a farm in order to prevent further erosion and thereby conserve soil. *See Oliver*, 27 N.W.2d at 622-23. The Supreme Court of Nebraska observed that a workman does not become a farm laborer just because he happens to be doing work on a farm or happens to be doing a task ordinarily considered farm labor. By the same token, a farmer's hired man does not cease to be a farm laborer just because he was caring for machinery or doing electrical work for the farm. Reviewing the facts, the court found that the entire relationship consisted of the employee being employed to operate a bulldozer and do whatever work the employer had contracted for in the way of moving dirt. In the court's opinion, that was not a "farm laborer" within the meaning of Nebraska's workers' compensation act. *See Oliver*, 27 N.W.2d at 623.

Analysis: This case law review puts the evidence into proper focus. Claimant was undeniably employed by a farm. *Edge* and *Bohemia Hall* stress that the nature of the employer is not controlling,

but rather one needs to focus on the tasks that the employee did. However, it should be noted that, in both *Edge* and *Bohemia Hall* the employer was not clearly a traditional farm. It is in that context that the Court held that the nature of the business was not controlling. The cases do not stand for the proposition that one should completely ignore the fact that Claimant's employer is a farm. As the Board held in *West*, when other factors are ambiguous, the nature of the employer's business (being a farm) can tip the balance.

Nevertheless, it is clear that the nature of Employer's business is not the determinative factor. One must look at what Claimant's function or work was for Employer. Claimant was a truck driver. He has had many years of experience driving trucks and he has a CDL license. The Board accepts that the majority of his work for Employer consisted of transporting the crops or produce of the farm, often hay bales. He also operated the machinery to load the bales on to the truck. However, operating machinery or driving trucks does not preclude a finding of farm laborer. As the Superior Court noted in *Lowe*, the term "farm laborer" is not limited to just field work. In that case, a person who spent the majority of his time as a mechanic was found to be a "farm laborer" because maintaining farm equipment is a typical farm activity necessary for the operation of the farm.

The cases from other jurisdictions do shed similar light on the question. In *Keil*, the court found that the farm also operated, on the side, a small trucking business. It also accepted that the majority of the employee's time was in commercial hauling—not just farm hauling. As such, it was found that the employee was not a farm laborer but rather was associated with the trucking business.

The situation is quite different here. While Employer owns trucks and Claimant drove those trucks, the trucks were not ever a separate business of Employer. The trucks were solely for farm use, as shown by being licensed as "farm trucks." Mr. Collins testified that they could not legally be used to haul non-farm items. There is no evidence that the trucks were ever used for general

commercial hauling or indeed for anything other than for furthering Employer's farming business, hauling Employer's crops and farm equipment.

In *Dockery*, the crop duster planes were a separate independent specialized business. Because of this, the court did not find flying the planes to be farm labor. However, tellingly, the court did specifically state that the result might be different if it was the farmer who owned the plane and the pilot hired by the farmer. *See Dockery*, 295 S.W.2d at 321. This is very close to the situation presented in the present case. Employer, a farm, owns the trucks and employed the driver specifically to transport the farms crop (mainly hay bales). Claimant was not working for a separate truck driving company that just happened to carry a load of crops or produce. Claimant's employment was integral to the overall functioning of Employer's farm business.

Claimant was employed by the farm. He loaded crops (bales) on to the farm's trucks. He drove the farm's trucks to the farm's customer, delivering the crop. All of this is well within the realm of traditional or typical farm activity necessary for the operation of the farm business. As such, the Board concludes that Claimant does fit the designation of "farm laborer" as that term is used in section 2307(b) of the Act. He is exempted from coverage under the Workers' Compensation Act and his petition seeking workers' compensation benefits must be dismissed.

IT IS SO ORDERED this 24th day of JANUARY, 2024.

INDUSTRIAL ACCIDENT BOARD

Idel M. Wilson/cs
IDEL M. WILSON

Peter W. Hartranft/cs
PETER W. HARTRANFT

I, Christopher F. Baum, Hearing Officer, hereby certify that the foregoing is a true and correct decision of the Industrial Accident Board.

Christopher F. Baum

Mailed Date: 1-26-24

OWC Staff

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Joseph Andrews, Esquire, for Employer