

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

2008 NOV 24 PM 2:55

SHAUN JORDAN)
)
Appellant -Employee,)
)
v.)
)
J.B. HUNT TRANSPORTATION, INC.,)
)
Respondent-Employer.)

Appeal No. WD 70140

90394

FILED

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On Appeal to the Missouri Court of Appeals from the
Labor and Industrial Relations Commission

APPELLANT-EMPLOYEE'S BRIEF

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JURISDICTIONAL STATEMENT

This is an appeal by the Appellant-Employee, Shaun Jordan from a Final Award of the Labor and Industrial Relations Commission on August 19, 2008 denying compensation of the employee and entered in favor of the Employer-Respondent. The Appellant-Employee appeals pursuant to his rights under Section 287.495, RSMo (2005).

The action is one involving the question of whether Missouri has jurisdiction over the Appellant-Employee's claim for workers' compensation pursuant to his rights Missouri law under Section 287.495 and Section 287.110.2 RSMo (2005), and hence involves the construction of the law of jurisdiction in this state. This appeal is within the general appellate jurisdiction of the Missouri Court of Appeals pursuant to the provisions of the Missouri Constitution, Article V, Section 3, as amended in 1970, and does not involve issues specifically reserved for the Missouri Supreme Court. The Appellant timely filed its notice of Appeal. Accordingly this Court has jurisdiction over this appeal.

STATEMENT OF FACTS

Appellant-Employee Shaun Jordan resided in the State of Missouri when he interviewed with a representative of J.B. Hunt's office near Ameristar Casino in Kansas City, Missouri. (TR., 17). At this meeting, the J.B. Hunt representative informed Shaun Jordan of what he would be doing, how much he would be making, the details of his vacation, and other similar information (TR., 18). When Shaun Jordan left the meeting that day in Kansas City, Missouri, he was told that he had a job with J.B. Hunt as a dedicated-route truck driver and that he would need to report to Arkansas for training (TR., 17-18, 25). Shaun Jordan was hired by J.B. Hunt to drive a dedicated run every week from Claycomo, Missouri, to Tennessee and then he would drive back from Tennessee to Claycomo, Missouri and return to his home in Kansas City, Missouri every week. (TR., 19). After accepting the job with J.B. Hunt in Kansas City, Shaun Jordan went out to dinner with his girlfriend to celebrate (TR., 19).

When Shaun Jordan began driving for J.B. Hunt, he was required to pick up his truckload every Monday morning at the J.B. Hunt facility in Kansas City, Missouri (TR., 20-21). After his truck was loaded up at the Kansas City, Missouri, facility, Shaun Jordan drove a route to Tennessee and returned back to the J.B. Hunt location in Kansas City, Missouri with a stop in Claycomo, Missouri. (TR., 20-21). Shaun Jordan would return his truck to the J.B. Hunt facility in Kansas City, Missouri every Friday for the weekend (TR., 20-21). Kansas City, Missouri was Shaun Jordan's home base; he returned his truck to the J.B. Hunt facility in Kansas City every Friday, where it would remain to be reloaded for the next week's run, and Shaun Jordan stayed at home in

Kansas City during the weekends when he was off duty with J.B. Hunt (TR., 21).

Furthermore, Shaun Jordan's truck was serviced at the J.B. Hunt facilities in Kansas City, Missouri, and also in St. Louis, Missouri (TR., 21-22).

On May 10, 2005, Shaun Jordan was injured when his 18-wheeler truck was hit by another 18-wheeler while he was pulled over in a rest stop in Tennessee (TR., 8). At the time of the accident, Shaun Jordan was sleeping in the bunk of his truck, and the impact knocked him off the bunk and threw him to the floor (TR., 8). Shaun Jordan hit his head during the fall, and he landed on his left arm and his back, causing injury to his head, neck, left arm, and back (TR., 9). When the accident happened, Shaun Jordan reported the injury to his supervisor and called a state trooper, following J.B. Hunt's accident instruction kit (TR., 9-10).

Approximately one week after the accident, Shaun Jordan was driving his route back to Kansas City, Missouri when he began experiencing pain in his neck and poor vision (TR., 11-12). He contacted J.B. Hunt and upon their instruction, he sought medical attention (TR., 11-12). Diagnostic tests were performed on Shaun Jordan, he was prescribed medication, and he was told to follow up with medical care in Kansas City, Missouri (TR., 13). Upon his return to Kansas City, Shaun visited the J.B. Hunt clinic, where he was referred to specialists, who performed further diagnostic studies (TR., 13-14). Shaun Jordan underwent a CT scan of his brain, X-rays, and an MRI of the cervical spine (TR., 34). At the J.B. Hunt clinic, Shaun Jordan had therapy performed on his neck, left arm, and lower back five days a week (TR., 14). During this time, Shaun Jordan continued to experience sharp pains and tingling in his neck, left arm, and lower

back, and he required a heating pad to ease the pain while he slept (TR., 14-15). Shaun Jordan was unable to work for some time due to pain (TR., 15).

Dr. P. Brent Koprivica, who did an independent medical evaluation of Shaun Jordan, concluded that Shaun Jordan is permanently partially disabled as a result of the injury he suffered at work on May 11, 2005, specifically that he “sustained a chronic cervicothoracic strain with the development of regional myofascial pain,” as well as a “chronic lumbosacral strain.” (TR., 53). Dr. Koprivica further determined that Shaun Jordan is at maximum medical improvement and would benefit from ongoing strength, flexibility, and aerobic fitness exercises at an appropriate therapeutic facility (TR., 53).

Presently, Shaun Jordan continues to experience pain in his neck and lower back, still experiences tingling in his left arm, still requires a heating pad while he sleeps, and has trouble lifting things (TR., 16-17). Although he is now working with a new trucking company, Shaun Jordan uses a cushion while driving to alleviate pain in his back, continues to experience sharp pain in his neck when he turns quickly, and drives only with his right arm to avoid sharp pains in his left arm (TR., 36-37).

POINTS RELIED ON

I. THE LABOR AND INDUSTRIAL RELATIONS COMMISSION ERRED IN FINDING THAT MISSOURI DOES NOT HAVE JURISDICTION OVER THE APPELLANT-EMPLOYEE BECAUSE THE FACTS FOUND BY THE COMMISSION DO NOT SUPPORT THE AWARD PURSUANT TO § 287.495.1 IN THAT EMPLOYEE SHAUN JORDAN'S EMPLOYMENT WAS PRINCIPALLY LOCALIZED IN MISSOURI AND EVIDENCE THAT THE EMPLOYEE SPENT MOST OF HIS TIME DRIVING IN THE STATE OF MISSOURI HAS NEVER BEEN REQUIRED TO ESTABLISH AN EMPLOYEE'S EMPLOYMENT IS "PRINCIPALLY LOCALIZED" IN THE STATE OF MISSOURI

Bamber v. Dale Hunt d/b/a Dale Hunt Trucking,
No. 96-441200 (LIRC Aug. 6, 2002)

Cable v. Schneider Transportation, Inc.,
No. 88-183019 (LIRC March 7, 1997)

Camargo v. D.A.Y. Suburban Const. Co.,
No. 98-000963 (LIRC Aug. 6, 1999)

Davis v. Research Med. Ctr.,
903 S.W.2d 557 (Mo. App. W.D. 1995)

Gabriel v. Burlington Motor Carriers,
No. 97-013677 (LIRC Aug. 31, 1998)

National Commission on State Worker's Compensation Laws Model Act 1986, Part I,
Section 7(d)(4)

MO. REV. STAT. § 287.110.2

MO. REV. STAT. § 287.495.1

II. THE LABOR AND INDUSTRIAL RELATIONS COMMISSION ERRED IN FINDING THAT MISSOURI DOES NOT HAVE JURISDICTION OVER THE APPELLANT-EMPLOYEE, BECAUSE THE FACTS FOUND BY THE COMMISSION DO NOT SUPPORT THE AWARD PURSUANT TO § 287.495.1, IN THAT MISSOURI HAS A STRONG INTEREST IN ADJUDICATING THE CASE PURSUANT TO § 287.110.2 AND AS RULED ON IN *GABRIEL* WHERE THE APPELLANT'S MOST SIGNIFICANT CONTACTS ARE IN MISSOURI, AND THE APPELLANT-EMPLOYEE IS A MISSOURI RESIDENT AND HIS EMPLOYMENT IS PRINCIPALLY LOCALIZED IN MISSOURI

Gabriel v. Burlington Motor Carriers,
No. 97-013677 (LIRC Aug. 31, 1998)

Miller v. Hirschbach Motor Lines, Inc.,
714 S.W.2d 652 (Mo. Ct. App. 1986)

Swallow v. Enterprise Truck Lines, Inc.,
894 S.W.2d 232 (Mo. Ct. App. 1995)

MO. REV. STAT. § 287.110.2

R. Leflar, American Conflicts Law § 160, p. 330 (3d ed. 1977)

Restatement (Second) of Conflict of Laws § 181

ARGUMENT

COMES NOW Appellant-Employee, by and through undersigned counsel, and submits his Brief appealing the Labor and Industrial Relation Commission's finding that Chapter 287 of the Missouri Revised Statutes does not grant the State of Missouri jurisdiction over Appellant-Employee's work injury suffered on May 10, 2005. The LIRC erred in that (1) the Appellant-Employee presented ample evidence that his employment was "principally localized" in Missouri and thus jurisdiction is proper in Missouri under Section 287.110.2, RSMo, and (2) its decision allowing J.B. Hunt's choice of law clause to control jurisdiction in this case stands in the face of Missouri public policy interests in protecting Missouri resident employees with significant Missouri contacts.

I. THE LABOR AND INDUSTRIAL RELATIONS COMMISSION ERRED IN FINDING THAT MISSOURI DOES NOT HAVE JURISDICTION OVER THE APPELLANT-EMPLOYEE BECAUSE THE FACTS FOUND BY THE COMMISSION DO NOT SUPPORT THE AWARD PURSUANT TO § 287.495.1 IN THAT EMPLOYEE SHAUN JORDAN'S EMPLOYMENT WAS PRINCIPALLY LOCALIZED IN MISSOURI AND EVIDENCE THAT THE EMPLOYEE SPENT MOST OF HIS TIME DRIVING IN THE STATE OF MISSOURI HAS NEVER BEEN REQUIRED TO ESTABLISH AN EMPLOYEE'S EMPLOYMENT IS "PRINCIPALLY LOCALIZED" IN THE STATE OF MISSOURI

A. STANDARD OF REVIEW

Section 287.495.1, RSMo, governs the standard of review in appeals from final judgment of the LIRC. It sets out, in pertinent part:

The court, on appeal, shall review only questions of law and may modify, reverse, remand for rehearing, or set aside the award upon any of the following grounds and no other:

- (1) That the commission acted without or in excess of its powers;
- (2) That the award was procured by fraud;
- (3) That the facts found by the commission do not support the award;
- (4) That there was not sufficient competent evidence in the record to warrant the making of the award.

§ 287.495.1, RSMo. With respect to questions of law, the review of the Commission's decision is *de novo*. Davis v. Research Med. Ctr., 903 S.W.2d 557, 573 (Mo. App. W.D. 1995).

B. THE TEST FOR JURISDICTION UNDER THE PRINCIPALLY LOCALIZED REQUIREMENT PURSUANT TO MO. REV. STAT. § 287.110 REQUIRES EITHER 1) THE EMPLOYER HAS A PLACE OF BUSINESS IN MISSOURI AND THE EMPLOYEE REGULARLY WORKS FROM THAT PLACE OF BUSINESS, OR 2) THE EMPLOYEE BE DOMICILED IN MISSOURI AND WORK A SUBSTANTIAL PART OF HIS TIME IN MISSOURI

Employee Shaun Jordan's employment was principally localized in the state of Missouri pursuant to Mo. Rev. Stat. § 287.110.2 because Employer J.B. Hunt has a

place of business in Kansas City, Missouri where Employee Shawn Jordan regularly worked from the same place of business in Kansas City, Missouri.

Section 287.110.2, RSMo, confers jurisdiction over Appellant-Employee's claim.

It reads as follows:

“This chapter shall apply to all injuries received and occupational diseases contracted in this state, regardless of where the contract of employment was made, and also to all injuries received and occupational diseases contracted outside of this state under contract of employment made in this state, unless the contract of employment in any case shall otherwise provide, **and also to all injuries and occupational diseases contracted outside of this state where Employee's employment was *principally localized in this state.***”

Mo. Rev. Stat. 287.110.2 (2007) (emphasis added.)

The Commission had its first occasion to address the “principally localized” portion of Section 287.110.2, RSMo, in Cable v. Schneider Transportation, Inc., No. 88-183019 (LIRC, March 7, 1997). The Commission in Cable applied the National Commission on State Workers' Compensation Laws Model Act's meaning of “principally localized,” and held that a person's employment is principally localized in this or another State when:

- (1) his employer has a place of business in this or such other State and he regularly works at or from such place or business, ***or***

- (2) **If clause (1) foregoing is not applicable**, he is domiciled and spends a substantial part of his working time in the service of his employer in this or such other State.

Cable v. Schneider Transportation, Inc., No. 88-183019 (LIRC, March 7, 1997)(emphasis added) (citing National Commission on State Workers' Compensation Laws Model Act 1986, Part I, Section 7(d)(4) (cited in Cable, No. 88-183019).

In the Cable decision introduced above, the Commission held that the employee's employment was "principally localized" in Missouri. No. 88-183019. The employee in Cable was also an over-the-road truck driver who lived in Missouri and was injured on his job while in Kentucky; the employer's headquarters were located in Wisconsin and according to the employer, the employee was hired in Wisconsin. No. 88-183019. In deciding that Missouri did have jurisdiction under the "principally localized" portion of the statute, the Commission noted that the employee (like Appellant Shaun Jordan) regularly worked out of the Kansas City, Missouri terminal; that he used the terminal for general truck maintenance and repair; that he was a Missouri resident; that he spent most weekends at home in Missouri; and that most of his routes involved driving through Missouri. Cable, No. 88-183019.

Since Cable, the LIRC has continually referred to the Model Act mentioned above for its interpretation of the term "principally localized." Gabriel v. Burlington Motor Carriers, No. 97-013677 (LIRC, August 31, 1998); Camargo v. D.A.Y. Suburban Construction Company, L.L.P., No. 98-000963 (LIRC, August 6, 1999); Bamber v. Dale

Hunt d/b/a Dale Hunt Trucking, No. 96-441200 (LIRC, August 6, 2002); Cable v. Schneider Transportation, Inc., No. 88-183019 (LIRC, March 7, 1997).

A year after Cable in 1998, the Commission decided Gabriel v. Burlington Motor Carriers. In Gabriel, the Commission *again* adopted the National Commission on State Workers' Compensation Laws Model Act 1986 for its definition of "principally localized" and in doing so determined that the employee's employment was "principally localized" in Missouri. No. 97-013677 (LIRC, August 31, 1998). Like the instant case, the employee in Gabriel applied to the employer company in the state of Missouri; worked solely out of a terminal in Missouri, even though company headquarters were located in another state; and was asked to complete a choice of law agreement by the employer (which the employee did not remember signing, although he conceded it was his signature on the agreement). The Commission held that "it is the principal location of the employee's employment which is the relevant factor under our statute" and ultimately decided that jurisdiction was proper under Section 287.110.2, RSMo. Gabriel, No. 97-013677.

The Commission refers to the Model Act *again* in 1999 in the case of In Camargo v. D.A.Y. Suburban Construction Company, L.L.P. stating: "We refer to the Model Act only because **it is the best guide we could find to define 'principally localized.'**" No. 98-00963 at *10. However, the facts of Camargo are distinguishable from the case at bar in that the employee worked exclusively at a worksite in Kansas and "no evidence was presented" to show he regularly worked at or from Missouri." No. 98-000963, *8 (LIRC, August 6, 1999).

And finally, the Commission decision of Bamber v. Dale Hunt d/b/a Dale Hunt Trucking has discussed the “principally localized” section of the statute and applied the National Commission on State Workers Compensation Laws for its definition of “principally localized.” No. 96-441200 (LIRC, August 6, 2002). The Bamber Commission held the employee’s employment was not covered under the principally localized requirement, however Bamber is distinguishable from the facts of the instant case. In Bamber v. Dale Hunt d/b/a Dale Hunt Trucking, the employer’s only location was in the state of Arkansas, the employee lived in Arkansas, and he spent most of his time outside of Missouri. No. 96-441200 (LIRC, August 6, 2002). The Commission specifically cited the fact that “[t]here was no testimony that all or even a majority of claimant’s trips began in Missouri” as a factor in its decision. Bamber, No. 96-441200.

At the hearing on this matter, Appellant-Employee Shaun Jordan presented ample evidence to support a finding that Missouri has jurisdiction over this case, in that Appellant-Employee’s employment was “principally localized” in the State of Missouri under Section 287.110.2, RSMo.

Under the Model Act which has been adopted by the LIRC in several previous cases discussed above, the Appellant Shaun Jordan meets the first clause of the Model Act in that J.B. Hunt has a place of business in Missouri, and Shaun Jordan “regularly works at or from such place of business.” Thus, in applying the instant facts to the Model Act requirements, Employer J.B. Hunt has a place of business in Missouri, in particular the location near Ameristar Casino in Kansas City, Missouri, and it was this J.B. Hunt location in Kansas City, Missouri that Appellant-Employee Shaun Jordan picked up his

truck every week on Monday for his dedicated route to Tennessee, and then the Appellant would drop off his truck on Friday of every week in J.B. Hunt's Kansas City, Missouri location. Shaun Jordan would spend his weekends at his residence in Kansas City, Missouri. Shaun Jordan's exclusive and dedicated route began and ended in Missouri, with stops in Missouri along the way. The trucks Shaun Jordan drove were serviced either in Kansas City or St. Louis, Missouri. Shaun Jordan interviewed with J.B. Hunt in Kansas City, Missouri, where he was told he had a job with the company.

The Commission improperly required the Appellant-Employee to prove clause 2 of the model act because the model act clearly states only "if clause (1) is not applicable" then the employee may go on to clause (2) and provide evidence that he was both domiciled in Missouri and spends a substantial part of his working time in Missouri. Shaun Jordan presented sufficient evidence before the Labor and Industrial Relation Commission that his employment was principally localized in the state of Missouri and that he worked at or from his Employer, J.B. Hunt's facility in Kansas City, Missouri, and as such, jurisdiction is proper in Missouri pursuant to Section 287.110.2, RSMo.

II. THE LABOR AND INDUSTRIAL RELATIONS COMMISSION ERRED
WHEN IT FOUND THAT MISSOURI DOES NOT HAVE JURISDICTION
OVER THE APPELLANT'S CLAIM, BECAUSE PURSUANT TO § 287.110.2
AS RULED ON IN *GABRIEL* APPELLANT'S MOST SIGNIFICANT
CONTACTS WERE IN MISSOURI, IN THAT THE APPELLANT-
EMPLOYEE IS A RESIDENT OF MISSOURI, HIS EMPLOYMENT IS
PRINCIPALLY LOCLIZED IN MISSOURI, HIS TRUCK IS SERVICED IN

MISSOURI, AND HIS ROUTE BEGINS AND ENDS IN THE STATE OF MISSOURI, AS SUCH MISSOURI HAS A STRONG INTEREST IN ADJUDICATING THE CASE.

Where the “most significant contacts” are in Missouri, Missouri courts will disregard choice of law language in contracts. Gabriel (citing Miller v. Hirschbach Motor Lines, Inc., 714 S.W.2d 652 (Mo.App. 1986) (superseded by statute on other grounds) and Swallow v. Enterprise Truck Lines, Inc., 894 S.W.2d 232 (Mo.App. 1995)). The Commission has been reluctant to apply choice of law language contained in employment contracts. Gabriel v. Burlington Motor Carriers, No. 97-013677 (LIRC, August 31, 1998).

Although the Gabriel case held that Missouri had jurisdiction pursuant to Section 287.110.2, RSMo, in that the employee’s employment was “principally localized” in Missouri, the Commission stated that even if it had not decided that way, Missouri would still have jurisdiction “notwithstanding the choice of law language contained in the purported contract.” No. 97-013677. According to the Commission, **“[t]here is good reason to ignore the choice of law language contained in the contract”... “because the ‘most significant contacts’ were in Missouri.”** No. 97-013677, *4.

In Gabriel, the Commission found a sufficient number of contacts with Missouri to disregard the choice of law provision, including that the employee resided in Missouri, his paychecks were mailed to his Missouri address, and he received dispatches from the employer’s Missouri location. No. 97-013677. The Commission took note that although the injury did not take place in Missouri, it also did not take place in the employer’s

choice of law state. No. 97-013677. In its decision, the Commission noted that the employment agreement including the choice of law provision was prepared solely by the employer, that the employee merely acquiesced in signing the agreement, and that the agreement “should not control.” No. 97-013677.

Miller v. Hirschback Motor Lines, Inc. and Swallow v. Enterprise Truck Lines, Inc. are both Missouri appellate court decisions in which the court chose to disregard choice of law language supplied in employment contracts due to the employees’ employment having “most significant contacts” with Missouri, as well as public policy considerations. Miller, 714 S.W.2d 652 (Mo.App. S.D. 1986); Swallow, 894 S.W.2d 232 (Mo.App. E.D. 1995). In Miller, the Court held that where the agreement prepared by the employer specified that Nebraska law would apply, where the injury occurred in Missouri, and where the employee was a resident of Missouri, Missouri had jurisdiction over the claim, despite the existence of a choice of law provision. 714 S.W.2d at 656.

As to public policy concerns, the Miller Court stated:

[A choice of law] provision has been said to be valid, but most states give it little or no effect. Since compensation cases involve interests considerably beyond the desires of the immediate parties, the tendency is to hold that rules for choice of law imposed by the state supersede the parties’ stated intent, especially if the intent clause appears in a form contract prepared by the employer and merely acceded to by the other party.

714 S.W.2d at 655 (citing R. Leflar, American Conflicts Law § 160, p. 330 (3d ed. 1977)). The Court further stated: “Generally, an agreement by the parties to have a

particular state's law apply will not deprive another state's courts of the power to apply the law of the forum '...if such application is required either by the terms of the statute or by its underlying policy.'" Id (quoting Restatement (Second) of Conflict of Laws § 181, comment a).

Swallow similarly dispenses with the choice of law agreement prepared by the employer in that case. 894 S.W.2d 232. In Swallow, the accident occurred in Missouri, the employee resided in Missouri, the employee received paychecks at his Missouri residence, and the employee picked up "quite a lot" of his truckloads in Missouri. 894 S.W.2d at 233. The Swallow Court ultimately chose to disregard the choice of law provision. Id.

In the instant case, when Shaun Jordan went to Arkansas for training, he was required to sign numerous documents, including the Jurisdiction Agreement. This agreement was prepared by J.B. Hunt and Shaun Jordan merely acquiesced in signing it. Shaun Jordan was not in a position to negotiate the terms of the Jurisdiction Agreement. In fact, Shaun Jordan testified that he did not specifically remember signing the agreement, although he admitted that the signature on the document was his.

Shaun Jordan's case has numerous significant contacts with the state of Missouri. Shaun Jordan is a resident of Missouri. He was a resident of Missouri at the time of his hiring with J.B. Hunt, and he was a resident of Missouri at the time of the accident on May 10, 2005. Shaun Jordan first met and interviewed with J.B. Hunt in Kansas City, Missouri. Shaun Jordan was told he had a job with J.B. Hunt during this meeting with a company representative in Kansas City, Missouri. Shaun Jordan's home base was

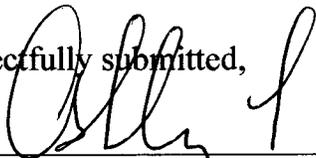
Kansas City, Missouri. He began and ended his dedicated route in Kansas City, with stops along the way in Missouri. The trucks he drove, provided by J.B. Hunt, were serviced in Kansas City and St. Louis, Missouri. To note, Shaun Jordan was not injured in Missouri; however, he was also not injured in J.B. Hunt's choice of law state, Arkansas.

Missouri's public policy concerns for the its residents whose employments put them into significant contact with Missouri weigh in favor of this court finding that Missouri has jurisdiction over Shaun Jordan's claim.

CONCLUSION

Because the Labor and Industrial Relation Commission erred in allowing J.B. Hunt's choice of law clause to control jurisdiction in this case, which stands in the face of Missouri public policy interests in protecting Missouri resident employees with significant Missouri contacts, and because the Appellant-Employee presented ample evidence that his employment was "principally localized" in Missouri and thus jurisdiction is proper in Missouri under Section 287.110.2, RSMo, Appellant-Employee requests that this court reverse the Labor and Industrial Relation Commission's decision on this case.

Respectfully submitted,


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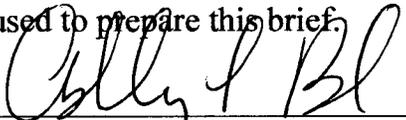
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CERTIFICATE OF COMPLIANCE

The undersigned certifies that a copy of the compact disc containing the full text of the Appellate Brief of Appellant-Employee Shaun Jordan is attached to the Brief and has been scanned for viruses and is virus-free.

Pursuant to Rule 84.06(c), the undersigned hereby certifies that: (1) this Brief includes the information required by Rule 55.03; (2) this Brief complies with the limitations contained in Rule 84.06(b); and (3) this Brief contains 4,156 words and 425 lines, as calculated by the Microsoft Word software used to prepare this brief.



ASHLEY L. BAIRD

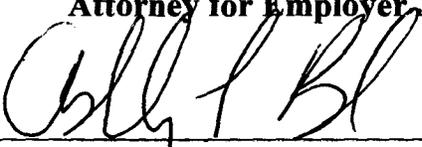
CERTIFICATE OF SERVICE

I hereby certify that the original and six (6) true and correct copies of the above and foregoing Brief of Appellant were hand-delivered this 24th day of November 2008, to:

Clerk of the Court of Appeals
Missouri Court of Appeals Western District
1300 Oak Street
Kansas City, Missouri 64106-2970

And that two copies of the above and foregoing were hand-delivered, this 24th day of November 2008 to:

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