

Summary of SC94464, Gateway Taxi Management v. Division of Employment Security

Appeal from the labor and industrial relations commission

Argued and submitted March 18, 2015; opinion issued May 12, 2015

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This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A cab company appeals the labor and industrial relations commission’s decision that its drivers were employees and, therefore, that it owes employment taxes. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the commission’s decision. There was competent and substantial evidence on the whole record supporting the commission’s decision that the drivers were employees – they were paid wages for employment, and, considering the relationship between the company and the drivers, their drivers were employees rather than independent contractors.

Facts: Gateway Taxi Management, which does business as Laclede Cab Company (Laclede), operates a taxi service in metropolitan St. Louis. Both Laclede and its drivers are subject to a local vehicle-for-hire code, which regulates issues such as driver’s licensing, appropriate and authorized colors, logo, trademark, symbols, lettering, and equipment. A deputy in the division of employment security determined that Laclede drivers performed services for “wages” in the “employment” of Laclede and, therefore, that Laclede owed employment tax between 2009 and 2011. Laclede appealed the determination, which an appeals tribunal reversed. The division then appealed to the labor and industrial relations commission, which reversed the appeals tribunal’s decision, finding the drivers were employees of Laclede. Laclede appeals.

AFFIRMED.

Court en banc holds: There was competent and substantial evidence on the whole record supporting the commission’s decision that Laclede’s drivers were employees of Laclede. For Laclede to be covered under Missouri’s employment security law, the relationship between the company and the drivers must constitute “employment,” and the drivers must not be independent contractors. Section 288.034.1, RSMo, defines “employment” to include any service performed for “wages,” which section 288.036.1, RSMo, defines to mean “all remuneration, payable or paid, for personal services.” Laclede obtains the driver’s services by paying them 100 percent of the fares they collect minus a flat rate, a 10-percent handling charge for credit card fares, and other expenses such as gasoline and daily cleaning costs for the cabs. As such, the evidence supports the commission’s decision that Laclede paid its drivers remuneration for their services,

and this decision does not misapply the law. Once it was established that Laclede paid the drivers “wages” for “employment,” the burden shifted to the company to prove the drivers were independent contractors rather than employees under both common-law agency principles as well as 20 factors set out by the Internal Revenue Service for determining employment status. The commission found that 13 of these 20 factors weighed in favor of an employer-employee relationship, three were neutral and four favored independent-contractor status, and this Court need not reweigh each factor. There was competent and substantial evidence on the record to support the commission’s decision that the drivers were Laclede’s employees.