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**Gallagher Sharp Shop Talk: Workers' Compensation**

**Question: Is an employee injured while on the way to pick up his paycheck injured in the "course and scope" of his employment?**

The "coming and going" rule (that "fixed-site" employees injured while traveling to or from work are not actually in the "course and scope" of employment) is one that we have discussed often over the years. Recently, I encountered a claim involving an employee who was killed by a train while traveling to pick up his paycheck, which put a different spin on this issue.

The claim involved a decedent who was employed as a nursery worker. The decedent was a guest worker of Mexican descent, with a valid visa, and had been traveling to the U.S. to work for the same employer for the last 12 years. The work was seasonal, and the employer would pay for housing and for transportation to and from Mexico. On the date of the injury, the decedent was in his personal vehicle traveling on a private road owned and maintained by the employer. There was a private railroad crossing on the road, and the employer had an easement to cross the tracks. The decedent was traveling to pick up his paycheck at the time of the injury and took the shortest route to the office, which required the decedent to cross the tracks. While crossing the tracks, he was struck and killed by an oncoming train, likely while trying to "beat" the train. A workers' compensation claim was filed, and a DHO allowed the claim over the objections of the employer, prompting an appeal.

The SHO agreed, finding that the "coming and going" rule was not applicable because the decedent lived on the employer's premises, was traveling on a private road owned and maintained by the employer, and therefore was not "coming or going" anywhere. Further, looking to *Parrott v. Industrial Comm. of Ohio* (1945), 145 Ohio St. 66, the SHO found that the retrieval of the decedent's paycheck was an activity in the "course and scope" of his employment, even though the decedent was not working that day. Finally, the SHO rejected the employer's argument that the decedent was trying to "beat" the train and therefore the injury was a material deviation from his job duties, finding that the decedent was not being safe would be injecting fault into the no-fault system of workers' compensation.

Obviously, the SHO's reliance upon the ownership of the property is troubling, because it can be argued that any activity being performed on the property would have been covered. The employer is expected to appeal this matter. If you have any questions, or would like to discuss

this or any other workers' compensation issues, you can contact me or Adam Sadowski from our Toledo office.

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