

Redacted to remove Social Security Numbers

COLLEEN M. ROMANS, Employee/Appellant, v. NORTHWEST AIRLINES, INC. and KEMPER INS. CO., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS  
SEPTEMBER 18, 1990

File No. [Redacted to remove SSN]

Determined by RIEKE, C.J., CERVANTES, J., and TOUSSAINT, J.  
Compensation Judge: Jeanne E. Knight

Reversed in part and vacated in part.

OPINION

EDWARD TOUSSAINT, Judge

Employee appeals the method used to calculate employee's weekly wage and the exclusion of per diem payments in the weekly wage calculation.

BACKGROUND

On August 3, 1986, employee sustained an injury to her low back while employed as a flight attendant with employer. Employer and insurer admitted liability and paid various benefits to employee including 17.5% impairment compensation and temporary partial disability benefits.

As a flight attendant at Northwest Airlines employee was required to fly a minimum of 75 hours per month. These hours could be spread over the entire month or could be completed within a couple of weeks. In the 26 weeks preceding her injury, employee's work schedule was irregular. For example, in March employee worked eight days over three weeks; in June she worked 16 days over four weeks. The parties agreed that in the 26 weeks preceding her injury, employee worked 63 days in 21 weeks.

Employee's wages were also irregular, fluctuating from \$383.00 on February 15, 1986 to \$1292.02 on April 30, 1986. Employee was paid twice a month. On the 27th of each month she received half of her base salary. On the 13th of each month employee received the other half together with other pay such as international dollars incentive, ground time, lead flight

attendant, and per diem.<sup>1</sup> In addition to the per diem payment, flight attendants were provided in-flight meals.

Employee ultimately claimed an underpayment of temporary benefits alleging that employee's weekly wage was irregular and therefore should be calculated under Minn. Stat. § 176.011, subds. 3 and 18 (1988). Employee also claimed that the per diem payments and the value of the in-flight meals should be included in employee's wage. The matter was heard before a compensation judge on August 3, 1989. The compensation judge included the value of the in-flight meals in the weekly wage calculation and ordered a recalculation of the temporary partial disability benefits based on the increased weekly wage.<sup>2</sup> The compensation judge excluded the per diem and determined that employee's weekly wage was not irregular. Employee appeals.<sup>3</sup>

### IRREGULAR WAGE CALCULATION

The compensation judge used a non-statutory method to determine employee's weekly wage which was calculated as 1/26th of her total earnings in the 26 weeks preceding her injury.<sup>4</sup> The compensation judge determined that employee's wage was neither irregular nor difficult to determine because employee was paid a base salary, i.e., her wages were not dependent upon the number of days or weeks worked in any given month. We disagree.

Employee's work schedule and wages clearly were irregular. Her work schedule varied depending on how and when she logged the 75 hour flying requirement each month. Even though employee received a base pay, her wage varied depending on whether she was paid the

---

<sup>1</sup> Per diem is paid to flight attendants, pursuant to a union contract, for meal expenses and other incidentals. Flight attendants are not required to submit receipts of actual expenses. Instead, per diem is based on a fixed dollar amount. On flights exceeding three hours flight attendants were paid \$1.60 per hour for domestic flights and \$1.70 per hour for international flights.

<sup>2</sup> The parties agreed that, in the 26 weeks prior to her injury, employee was provided 54 meals by employer at the value of \$4.00 per meal. ( $54 \times \$4.00 = \$216.00$ ).

<sup>3</sup> At the close of the hearing, employee moved to amend her claim to include the value of hotel lodging in employee's weekly wage. The compensation judge denied the motion. Despite denying the motion, the compensation judge made a finding that the value of hotel lodging was not to be included in employee's weekly wage. (Finding 11). As this issue was not properly before the court, we vacate the finding.

<sup>4</sup> ( $\$6554.65 \text{ divided by } 26 = \$252.10$ ).

"extras," i.e., international dollars incentive, per diem, ground time and lead flight attendant pay. If employee had, in fact, received the same wage each payday, there would have been no need to average her wage over the pre-injury 26-week period. Her wage could be determined by simply looking at one week. We conclude that employee's weekly wage was irregular and should be calculated in accordance with Minn. Stat. § 176.011, subds. 3 and 18. See also Boschee v. Blower, File No. [Redacted to remove SSN] (W.C.C.A. August 25, 1989).

#### PER DIEM PAY

The compensation judge excluded employee's per diem pay from the weekly wage calculation reasoning that because employee's business expenses in 1986 exceeded her per diem payments employee realized no economic gain.<sup>5</sup>

We believe the compensation judge's reliance on the tax consequences of employee's per diem is incorrect. Minn. Stat. § 176.011, subd. 3 states:

"Where board or allowances other than tips and gratuities are made to an employee in addition to wages as a part of the wage contract they are deemed a part of earnings and computed at their value to the employee."

Employee's per diem payments clearly fall within the statute and therefore should be included in employee's weekly wage calculation. See also, Illg v. Daggett Truck Finds, Inc., File No. [Redacted to remove SSN] (W.C.C.A. May 18, 1990) (flat fee paid to over the road truck driver for travel expenses included in weekly wage calculation pursuant to the holding in Truesdale v. Dettman, Inc., 40 W.C.D. 12 (1987).

---

<sup>5</sup> Mr. Thomas Lemm, director of property tax at Northwest Airlines, testified that the per diem amount was reported as taxable income on the W-2, but no income tax was withheld. Where an employee could supply actual receipts and expense vouchers, the IRS allowed the deduction of these amounts as business expenses. When the per diem exceeded actual expenses, income was realized which was then taxable.