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Agency in Trucking Cases: Recent Developments in Illinois

by Brian J. Hunt

Recent developments in Illinois case law make the issue of agency in the trucking industry a delicate issue. A determination of whether a company is acting as your agent will significantly impact any case and, therefore, it is important to understand the controlling factors in making this determination. Illinois courts employ a six-part test in determining whether an entity is an agent of the company for whom it is performing a service: (1) the right to control the manner in which the work is performed; (2) the right to discharge; (3) the method of payment; (4) who provides the tools, materials, or equipment; (5) the level of skill required to perform the work; and (6) who deducts or pays for insurance, social security, and taxes on the employees behalf. *Dowe v. Birmingham Steel Co.*, 2011 Ill.App 091997 (1st Dist. 2011).

However, in the recent years the central focus has been on the control that is exerted over the entity and, even more recently, the Illinois courts addressing trucking cases have tailored this control requirement by focusing mainly on the amount of control that is exerted while a driver is on the road transporting the materials, rather than focusing on the amount of control exerted at other times in the relationship.

Recently, the plaintiff's bar have relied often on the case of *Sperl v. C.H Robinson Worldwide, Inc.*, 408 Ill.App.3d 1051, 946 N.E.2d 463 (3rd. Dist. 2011) wherein a trucking company was found to be an agent of a logistics company based on the amount of control exerted, as well as the type of business that was being conducted. However, nine months after the Third District Appellate Court's decision in *Sperl*, the First District Appellate Court in *Dowe v. Birmingham Steel Co.* has again asserted the position that the focus on the issue of control should be limited to the amount of control exerted while the driver is on the road, transporting the load.

I. The *Sperl* Case

In *Sperl*, the company, CHR, for which the defendant driver was performing work was a logistics company that provided a variety of transportation related services (i.e. a freight broker). *Sperl*, 408 Ill.App.3d at 1052, 946 N.E.2d at 467. CHR would sell its services to customers or shippers needing to transport goods and then contract with carriers to provide transportation for its customers. *Id*. At the time of the occurrence, CHR had contracted with Jewel to transport perishable food wherein CHR would purchase the produce; store it; and then arrange for transportation of the produce to Jewel's various grocery stores. *Id*. at 1053, 468.

At that same time, Henry, the owner of a semi-tractor, contacted CHR and requested a load. *Id*. at 1054, 468. CHR offered a load of potatoes that were to be delivered to CHR's warehouse where they would be repackaged and shipped to various Jewel grocery stores. *Id*. In connection with Henry's transporting the load, CHR sent a load confirmation sheet, which provided "special instructions," including: driver must make check calls daily; driver must verify package count; driver will incur fine for being late; driver must stay in constant communication with CHR throughout the load; driver must call after each pick-up and verify that he is loaded; and driver must pulp all product being loaded on the truck. *Id*. CHR also imposed fines on Henry for her failure to comply with the special instructions. *Id*. At trial, Henry testified that she called CHR five times during her trip wherein she communicated her location and the temperature and integrity of the load. *Id*. at 1055, 469. Although Henry determined what route she would take from Idaho to

Bollingbrook, Illinois, Henry did ask CHR for directions when she was close to the warehouse. *Id*. After Henry successfully delivered the load, CHR directly deposited payment into her personal bank account. *Id*.

At the close of trial, CHR moved for a directed verdict on the issue of agency, and the trial court denied the defendant's motion. *Id*. The Appellate Court -- in affirming the trial court's ruling -- noted that the cardinal consideration in determining whether a party is an agent is the right to control the manner of work performance. *Id*. at 1058, 472. Specifically, the Appellate Court held that Henry's calling to request the load, accepting the load in Idaho, and the special instructions, all supported a finding that CHR controlled the manner in which Henry performed her job. *Id*. The Appellate Court further stated that a second factor of great significance is the nature of the work performed in relation to the general business of the defendant. *Id*. at 1059, 472. With respect to the second factor, the Appellate Court held that CHR is in the business of transportation logistics and, therefore, CHR's business necessarily requires the service of semi-tractor drivers. *Id*. Henry's business is directly related to, if not the same as, the general transportation business conducted by CHR. Accordingly, the Appellant Court concluded that the evidence supported a finding of agency. *Id*.

Although the Court's ruling in *Sperl* addresses the issue of control, it is distinguished by the nature of business presented in its case and, therefore, it is important to look at how control has been dealt with in past and recent Illinois decisions which have narrowly tailored the issue of control to those instances when the driver is on the road transporting the materials.

II. **When Is Control Enough?**

In *Shoemaker*, the plaintiff brought suit against the defendant, Elmhurst, a shipper whose goods were being hauled by the trucking company, for injuries she sustained as a result of being struck by a truck.*Shoemaker v. Elmhurst-Chicago Stone Co., Inc.*, 273 Ill.App.3d 916, 652 N.E.2d 1037 (1st Dist. 1994). Greg Anderson, the driver of the truck at the time of the accident, is also the individual who owned the truck, which was leased to Lawrence Trucking. *Id*. at 918, 1038. Lawrence Trucking would obtain the hauling jobs and instruct Anderson to go perform the work, but it was Anderson who ultimately decided whether he would accept the load. *Id*. At the time of the incident, a majority of Anderson's work was done for Elmhurst, at the direction of Lawrence Trucking. *Id*. Lawrence Trucking would pay Anderson for his work, and Anderson did not have any agreement with Elmhurst nor did Elmhurst set any rules as to how Anderson was to drive the truck. *Id*. Anderson would determine what route to take when transporting a load. *Id*. at 919, 1039. When a truck would arrive at the Elmhurst plant, the truck would be weighed by an Elmhurst employee, and an Elmhurst employee would assist the driver in loading the truck. *Id*. Once the truck was loaded, Elmhurst would have the truck driver sign a load ticket, which contained the name and address of the purchaser, the material being hauled and the weight of the material. Id. Elmhurst did not have any contact with the truck drivers once they left the plant. *Id*. The trial court entered judgment in favor of the plaintiff, and Elmhurst appealed, arguing that Anderson was an independent contractor, not Elmhurst's agent.*Id*. The Appellate Court reversed the trial court's ruling. *Id*. The Appellate Court held that Elmhurst's weighing and loading of the truck were preliminary tasks that were necessary before the driver could perform his job, and in no way controlled the manner in which the driver actually performed his job. *Id*. at 921, 1041. The Court further stated that Elmhurst's instructing Anderson on the location of the delivery was not evidence of control because it merely specified the particular hauling task for which Lawrence Trucking was hired. *Id*. Therefore -- because Elmhurst did not control Anderson's conduct while hauling the load, did not pay Anderson directly, and did not have the authority to hire or fire Anderson -- Anderson was not an agent of Elmhurst. *Id*. Accordingly, the Court held that judgment in favor of the defendant was proper as a matter of law. *Id*.

In *Dowe*, several passengers of an Amtrak train bought suit against the defendant, Birmingham Steel, for injuries sustained as a result of a semi-tractor trailer colliding with the train. *Dowe v. Birmingham Steel Co.*, 2011 Ill.App 091997 (1_{st} Dist. 2011). In addition to the passengers, Amtrak also filed suit against Birmingham Steel. *Id*. Both the passengers and Amtrak alleged that the driver of the semi-tractor was an agent of Birmingham Steel. *Id*. The semi-tractor was driven by John Stokes, and Stokes was employed by

Melco Transfer, Inc. ("Melco"), an independent carrier that hauls goods for various companies, including the defendant, Birmingham Steel. *Id*. at ¶ 3. Just prior to the collision, Stokes had picked-up a large load of rebar from Birmingham Steel to transport and deliver it to Gem City Steel. *Id.* Stokes characterized Melco as the "house" truck for Birmingham Steel, and Melco was the only entity that hauled Birmingham Steel's oversized loads of rebar. *Id*. at ¶ 32. In addition to Birmingham Steel having an exclusivity agreement with Melco, Birmingham Steel also had written rules which governed the conduct of the drivers while at the steel mill as well as the manner in which the trucks were loaded. *Id*. Birmingham Steel had the authority to terminate the services of a Melco driver if it believed that the driver was not performing the work in a safe manner, he was impaired, or Birmingham Steel received a customer's complaint. *Id*.

Despite the amount of control Birmingham Steel exerted over Melco and its drivers, the trial court granted Birmingham Steel's motion for summary judgment, and the Appellate Court affirmed. *Id*. at ¶ 34. The Appellate Court stated that the above factors did not establish that Birmingham Steel had the authority *to control the manner in which Stokes hauled steel from the steel mill. Id*. The Appellate Court focused on the following factors in determining that Stokes was not an agent of Birmingham Steel: Stokes chose his own route; controlled his own hours; provided and maintained his own equipment; was paid directly by Melco; Melco paid Stokes' liability and cargo insurance; Stokes performed his job pursuant to the rules placed on him by Melco; and Birmingham Steel did not have the authority to discharge Stokes from his employment with Melco. *Id*. at ¶ 31.

III. Conclusion

Despite the inherent vagaries in agency law -- and those exacerbated by the *Sperl* decision -- it is clear that the Illinois courts still consider the central factor in an agency determination to be whether the putative principal controlled the manner in which the work was performed and -- even more specifically -- the work that was performed while the driver was transporting the materials.

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