

2003

W. Scott McLaws and Utah Labor Commission v. Hedayat Kazamini, Kazz's Kars, Uninsured Employers Fund : Brief of Appellant

Utah Court of Appeals

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IN THE COURT OF APPEALS

STATE OF UTAH

W. SCOTT MCLAWS,

Plaintiff/Appellee,

and

UTAH LABOR COMMISSION,

Joined Appellee,

vs.

HEDAYAT KAZAMINI dba KAZZ'S
KARS (Uninsured) and/or
UNINSURED EMPLOYERS FUND,

Defendants/Appellant/Appellee,

Case No. 20030607CA

Priority No. 14

BRIEF OF APPELLANTS

ON APPEAL FROM THE JUDGMENT OF THE
APPEALS BOARD OF THE UTAH LABOR COMMISSION
THE HONORABLE RICHARD M. LA JEUNESSE, JUDGE

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STATE OF UTAH

Defendants/Appellant/Appellee,

BRIEF OF APPELLANTS HEDAYAT KAZAMINI DBA KAZZ'S KARS

STATEMENT OF JURISDICTION AND NATURE OF PROCEEDINGS

The Utah Court of Appeals has jurisdiction of this appeal under U.C.A. §78-2a-3(4)(a) and Rule 14 of the Utah Rules of Appellate Procedure. This appeal is from the order of the Appeals Board of the Utah Labor Commission entered on June 30, 2003 denying Kazemini's Motion for Review and granting McLaws' Motion for Review.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether Mr. McLaws was at any time an employee of Kazz's Kars. R. pg. 85.

Applicable Standard of Review: Appellate courts apply an intermediate standard of review to determinations of the Utah Labor Commission and, therefore, review the commission's decisions for reasonableness. Johnson Bros. Const. v. Labor Com'n, 967 P.2d 1258 (Utah App. 1998). In reviewing commission orders, the appellate court defers to the commission's findings of fact unless it makes findings not supported by substantial evidence. Bennett v. Industrial Com'n of Utah, 726 P.2d 427 (Utah 1986). "Whether a worker is an employee within the meaning of the workmen's compensation laws requires the application of a statutory standard to the facts. Since resolution of the issue is not benefitted by Commission expertise or experience, we do not defer to the Commission's ruling." Id, at 429. It is a

matter of law whether the commission erred in ruling that Mr. McLaws was an employee. Id.

2. Whether Mr. McLaws was an employee of Kazz's Kars at the time of the accident on January 30, 2001. R. pg. 85

Applicable Standard of Review: Appellate courts apply an intermediate standard of review to determinations of the Utah Labor Commission and, therefore, review the commission's decisions for reasonableness. Johnson Bros. Const. v. Labor Com'n, 967 P.2d 1258 (Utah App. 1998). In reviewing commission orders, the appellate court defers to the commission's findings of fact unless it makes findings not supported by substantial evidence. Bennett v. Industrial Com'n of Utah, 726 P.2d 427 (Utah 1986). "Whether a worker is an employee within the meaning of the workmen's compensation laws requires the application of a statutory standard to the facts. Since resolution of the issue is not benefitted by Commission expertise or experience, we do not defer to the Commission's ruling." Id., at 429. It is a matter of law whether the commission erred in ruling that Mr. McLaws was an employee. Id.

3. Whether Mr. Kazamini was required to obtain workers compensation insurance.

Appellate courts apply an intermediate standard of review to determinations of the Utah Labor Commission and, therefore,

review the commission's decisions for reasonableness. Johnson Bros. Const. v. Labor Com'n, 967 P.2d 1258 (Utah App. 1998).

4. Whether Mr. McLaws was paid an average of \$752.25 per week for the services he provided to Kazz's Kars. R. pg. 92.

Applicable Standard of Review: Appellate courts apply an intermediate standard of review to determinations of the Utah Labor Commission and, therefore, review the commission's decisions for reasonableness. Johnson Bros. Const. v. Labor Com'n, 967 P.2d 1258 (Utah App. 1998).

APPLICABLE STATUTORY PROVISIONS

Definition of an independent contractor:

U.C.A. §34A-2-103(2)(a) states as follows:

"Independent contractor" means any person engaged in the performance of any work for another who, while so engaged, is:

- (i) independent of the employer in all that pertains to the execution of the work;
- (ii) not subject to the routine rule or control of the employer;
- (iii) engaged only in the performance of a definite job or piece of work; and
- iv) subordinate to the employer only in effecting a result in accordance with the employer's design.

STATEMENT OF THE CASE

Mr. Kazamini teaches school full time at Layton High School as a shop teacher and sells used cars through a business, Kazz's Kars, to supplement his income. If the vehicles are damaged he makes arrangements to have them repaired before he sells them. The repairs are made at Mr. Kazamini's shop at 3994

South 300 West, Salt Lake City, Utah. Mr. Kazamini arranges for the repairs by entering into a contract with a auto body repair man. Mr. W. Scott McLaws was an auto body repair man who entered into contracts with Mr. Kazamini. Mr. Kazamini has little or no experience or knowledge regarding auto body repair.

Petitioner, W. Scott McLaws, filed an Application for Hearing with the Utah Labor Commission on April 2, 2001 regarding an accident which occurred on January 30, 2001. Petitioner claimed entitlement to medical expenses, recommended medical care, temporary total disability compensation and permanent partial disability compensation. Said application was heard on November 5, 2001, the Honorable Richard M. La Jeunesse, Administrative Law Judge, presiding. On July 30, 2002 the Findings of Fact, Conclusions of Law, and Order were signed and mailed to the parties. The Court determined that petitioner was an employee of respondent at the time of the accident and awarded certain benefits.

A Motion for Review was filed by Mr. McLaws on August 20, 2002 and a Motion for Review was filed by Mr. Kazamini on August 29, 2002. On June 30, 2003 the Appeals Board of the Utah Labor Commission entered its Order Denying Kazemini's Motion for Review and Order Granting McLaws' Motion for Review.

STATEMENT OF THE FACTS

The following facts are divided into numbered paragraphs to make reference thereto more convenient:

1. At all times relevant hereto, Mr. Kazamini was teaching school full time at Layton High School as a shop teacher and selling cars to supplement his income. Mr. Kazamini has little or no experience or knowledge regarding auto body repair. Trn. pg. 120 ln. 9-25 and pg. 112 ln. 22 - pg. 113 ln. 7.

2. Mr. Kazamini sells used cars through a business, Kazz's Kars, which he owns and operates. Trn. pg. 112 ln. 24 - pg. 113 ln. 7.

3. If the vehicles are damaged he makes arrangements to have them repaired before he sells them. Trn. pg. 112 ln. 25 - pg. 113 ln. 7.

4. The repairs were made at Mr. Kazamini's shop at 3994 South 300 West, Salt Lake City, Utah.

5. Mr. Kazamini arranges for the repairs by entering into a contract with a auto body repair man. Trn. pg. 112 ln. 25 - pg. 113 ln. 7.

6. Mr. McLaws began to provide auto body services for Mr. Kazamini during the summer, 2000. Trn. pg. 11 ln. 9-12.

7. Mr. McLaws also worked for Rocky Mountain Collision and Abra, Utah, Inc., at this time. Mr. McLaws testified that his wife said that if he worked more for Mr. Kazamini they could have

a van. Trn. pg. 11 ln. 9-1; pg. 211 ln. 8-15 and pg. 131 ln. 25 - pg. 132 ln. 3.

8. Accordingly, Mr. McLaws began to do more work for Mr. Kazamini at the end of October, 2000 because he wanted to trade his work for a 1999 Dodge Caravan which Mr. Kazamini had purchased and which needed \$3,000.00 in repairs. Trn. pg. 134 ln. 6-20 and R. pg. 74.

9. Mr. McLaws acknowledged that he did auto body work at his home and that it was not uncommon for body repair men to fix their cars and friend's cars. He also worked with a buddy to whom he owed a favor. Trn. pg. 17 ln. 10-12 and pg. 18 ln. 25 - pg. 19 ln. 3.

10. During part of September, October, November and part of December, 2000 Mr. McLaws provided most of the auto body repair services used by Mr. Kazamini. Trn. pg. 237 ln. 15-25; pg. 140 ln. 2; and pg. 141 ln. 9.

11. Mr. McLaws determined what hours he worked. The testimony is undisputed that if Mr. McLaws didn't want to work for 2 or 3 days, he didn't and he didn't discuss it with Mr. Kazamini. Trn. pg. 208 ln. 23 - pg. 209 ln. 1; pg. 216 ln. 25 - pg. 217 ln. 23; and pg. 162 ln. 10-14.

12. Mr. McLaws determined what work was done on a vehicle, when it was done and how it was done. Mr. Kazamini had little or no knowledge regarding auto body work and did not exercise any

control over the work. Trn. pg. 82 ln. 19 - pg. 83 ln. 1 and pg. 84 ln. 5-10.

13. Mr. McLaws would examine the vehicle, submit a bid regarding what work needed to be done in his opinion and include in the bid the amount for which Mr. McLaws would do the work. Mr. McLaws would determine what work needed to be done and tell Mr. Kazamini what parts he should buy, what supplies were needed and what paint Mr. Kazamini should buy. Trn. pg. 29 ln. 17-22; pg. 30 ln 14-23; pg. 31 ln. 2-25; and pg. 81 and pg. 82.

14. Mr. Kazamini was never at the shop except that he would come to the shop after he was finished teaching, to see if the repairs were finished so that the vehicle could be sold. Trn. pg. 29 ln. 5-6; pg. 127ln. 3-8; and pg. 145 ln. 11-15.

15. Mr. Kazamini's only input in the repair process was how much he would pay Mr. McLaws and whether the look of the repaired vehicle was sufficient that Mr. Kazamini could sell the vehicle. Trn. pg. 29 ln. 17-22; pg. 127 ln. 3-8 and pg. 208 ln. 12-22.

16. Very rarely did anyone come to the shop for repair work to an automobile owned by the customer. If that occurred Mr. McLaws would determine what work needed to be done and the cost of the work and then Mr. Kazamini would add an amount to cover the cost of the shop. Trn. pg. 236 ln. 13 - pg. 237 ln. 7; pg. 183 ln. 11-12, 15-22; and pg. 67 ln. 16 - pg. 68 ln. 6.

17. Mr. McLaws acknowledged that he had his own auto body repair tools including the specialized auto body repair tools which he used as needed. It is disputed whether Mr. Kazamini had anything more than a few ordinary tools. Trn. pg. 27 ln. 13-16; pg. 86 ln. 2-7; and pg. 190 ln. 10 - pg. 192 ln. 2.

18. No benefits of any kind were provided by Mr. Kazamini and Mr. Kazamini did not withhold taxes. Trn. pg. 209 ln. 17-23.

19. Part of December, 2000 and January, 2001 Mr. McLaws worked on restoring the body of a Chevrolet pickup which belonged to a customer of Mr. McLaws. Nothing was paid to Mr. Kazamini in regard to the pickup. The 1972 Chevrolet pickup was not removed from Mr. Kazamini's shop by Mr. McLaws until February 1, 2001. Trn. pg. 87 ln. 11-1; pg. 162 ln. 16-25; pg. 181 ln. 16-22; and pg. 192 ln. 10-14.

20. While Mr. McLaws was restoring the pickup there was no room in the shop to work on any other vehicle. He had two beds and the pickup in the shop. Trn. pg. 114 ln. 5-7, 10-14, 16-21; and pg. 170 ln. 1-22.

21. Mr. McLaws did not do any work for Mr. Kazamin after mid-December, 2000. Ex. 4, R. pg 68-69 and pg. 146 ln. 5-9.

22. Mr. Kazamini refused to submit anymore vehicles for bid to Mr. McLaws because of the quality of his work. Trn. pg. 146 ln. 15-19.

23. Because the pickup was disassemble Mr. McLaws had to have the vehicle towed on February 1, 2001 rather than drive it. Trn. pg. 194 ln. 10-14.

24. Mr. McLaws never purchased the van because in January, 2001 he used his credit for services he had provided to Mr. Kazamini to purchase a Trooper from Mr. Kazamini. The paper work regarding the sale could not be completed until the repairs to the Trooper were complete and it had passed a safety inspection. Trn. pg. 179 ln. 3-13 and pg. 180 ln. 9-12 and 16-19.

25. Mr. McLaws claims he cut his hand on January 30, 2001 while working on the Trooper for Mr. Kazamini even though there was no room in the shop to work on the Trooper because Mr. McLaws was using the shop to restore the Chevrolet pickup for his customer. Trn. pg. 254 ln. 20-22.

SUMMARY OF ARGUMENT

Mr. Kazamini never controlled the time of work, method of work or manner of work of Mr. McLaws. His only right was to control the end result and to terminate his agreement with Mr. McLaws based on legitimate grounds. Accordingly, Mr. McLaws was never an employee of Kazz's Kars.

At the time of Mr. McLaws' accident he was either working on a vehicle of a customer of his or he was working on a vehicle which he owned. His relationship with Mr. Kazamini had terminated and Mr. Kazamini was just waiting for him to remove

the Chevy pickup from the shop. Accordingly, Mr. McLaws was not an employee of Kazz's Kars on January 30, 2001. As a result Mr. McLaws is not entitled to any recover from Mr. Kazamini.

ARGUMENT

I. WHETHER AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTED BETWEEN KAZZ'S KARS AND SCOTT MCLAWS.

U.C.A. §34A-2-103(2)(a) states as follows:

"Independent contractor" means any person engaged n the performance of any work for another who, while so engaged, is:

- (i) independent of the employer in all that pertains to the execution of the work;
- (ii) not subject to the routine rule or control of the employer;
- (iii) engaged only in the performance of a definite job or piece of work; and
- iv) subordinate to the employer only in effecting a result in accordance with the employer's design.

In every single respect the relationship between Mr. McLaws and Mr. Kazemini fits the above definition of an independent contractor. Mr. Kazemini was not present while Mr. McLaws performed the work in regard to which he had submitted a bid. He came to the shop when he wanted, left when he wanted and didn't come if he didn't want to. There was absolutely no control over him while he was at the shop. Mr. McLaws was engaged in the performance of a definite job or piece of work and the only input Mr. Kazemini had was if the finished vehicle looked good enough that he could sell the vehicle and how much he would pay for the work.

In Stoica v. Pocol, 136 Idaho 661, 39 P.3d 601, 603 (Idaho 2001) the Idaho Supreme Court stated:

The ultimate question in finding an employment relationship is whether the employer assumes the right to control the times, manner and method of executing the work of the employee, as distinguished from the right merely to require definite results in conforming with the agreement.

The Arizona Court of Appeals in Special Fund Div. V. Industrial Com'n, 172 Ariz. 319, 836 P.2d 1029, 1033 (Ariz.App.Div.2 1992)

further explained this test as follows:

[T]he exercise of "routine supervision" over an employee is not in itself sufficient to establish an employment relationship. "The right to control or supervise the method of reaching a specific result determines whether an individual is an employee or an independent contractor." . . . In addition the applicable test is whether there is control over the method of reaching a desired result versus control over the end result. (Citations omitted).

Mr. Kazamini had no control over the times, manner and method of the work performed by Mr. McLaws. His only right was to require that the finished vehicle look good enough to be sold. Also, Mr. Kazamini had a right to terminate the agreement with Mr. McLaws based on legitimate grounds for dissatisfaction as opposed to a right to terminate at will. These rights do not create an employer-employee relationship. Burns v. Nyberg, 108 Idaho 151, 697 P.2d 1165 (Idaho 1985).

Mr. Kazamini described the operation of his business as follows:

Mr. Kazamini teaches school full time at Layton High School and coaches soccer as a shop teacher and sells cars to supplement his income - trn. pg. 120 ln.9-25; he operates a business, Kazz's Kars, wherein he sells used vehicles and if the vehicles are damaged he makes arrangements to have them repaired as instructed by the auto body person before he sells them - trn. pg. 112 ln. 24 - pg. 113 ln 7; he told Mr. McLaws that he was a dealer; that he didn't have a body shop; that he would buy damaged cars; Mr. McLaws would go over them and see what he needs to do and how much it would cost; Mr. McLaws would tell Mr. Kazamini and then they would agree or disagree - trn. pg. 112 ln. 22 - pg. 113 ln. 7.

This was the procedure followed every time because Mr. Kazamini didn't know what it would take to fix the car - trn. pg. 116 ln. 7-12.

In December, 2000 Mr. McLaws was the only person doing work for Mr. Kazamini and he was working on trade cars - trn. pg. 237 ln. 15-25.

In Bennett v. Industrial Commission of Utah, 726 P.2d 427, 429-430 (Utah 1986) the Utah Supreme Court stated:

It will almost always follow that if the evidence shows that an "employer" retains the right to control the work of the claimant, the claimant is the employer's employee for workmen's compensation purposes. (Citations omitted). Certainly, the concept of right to control is not to be rigidly and narrowly defined.

Rather it should be defined to give full effect to the remedial purposes of the Workmen's Compensation Act. (Citations omitted).

.
Many factors have been applied in determining the right to control. Among those factors are actual supervision of the worker, the extent of the supervision, the method of payment, the furnishing of equipment for the worker, and the right to terminate the worker. (Citations omitted). Although these factors are not inclusive, they are relevant in many cases.

In the instant case none of the above factors exist except there is a dispute regarding whether Mr. Kazamin furnished equipment to Mr. McLaws and the extent of what equipment was furnished to Mr. McLaws.

In Averett v. Grange, 909 P.2d 246, 250 (Utah 1995) the Utah Supreme Court stated:

[T]he most important factor in determining whether an employer-employee relationship exists is not what relationship the parties intended to create, but what relationship was *in fact* created.

In this case it was an independent contractor relationship which was in fact created between Mr. Kazamini and Mr. McLaws.

In Broadway Deluxe Cab v. National Council on Compensation Insurance, et al., 113 Or.App. 482, 833 P.2d 1303 (Or.App. 1992) the Court of Appeals of Oregon analyzed whether taxi drivers were employees of a taxi company. The court analyzed that the drivers have absolute control over how much or how little they work; can conduct themselves in any manner they see fit as long as they do not violate company policy; control their rate of compensation by setting fares, choosing zones and deciding how many hours to

operate the taxi; dispatching services are provided but drivers are not required to use them; and the company provided taxis to the drivers. The court held that the drivers were not employees. There is no substantive difference between the above case and the instant case. Mr. McLaws had absolute control over how much or how little he worked; he conducted his work in the manner he saw fit; he controlled his compensation through the bid process, how many hours it took him to complete the particular job and how many hours he was willing to work; and there were some ordinary tools available to Mr. McLaws, but he was not required to use the tools and often used his own specialized tools. Accordingly, Mr. McLaws was never an employee of Kazz's Kars.

A. Findings of the Court.

In its findings the Court relied upon an advertisement which read: "AUTO/PAINTER FRAME TECH top wages, Full or part time."

Exhibit No. 1, R. pg. 63.

Regarding the ad, Mr. Kazamini explained:

He meant he was looking for someone who could help him a few hours; when Mr. McLaws began doing work for Mr. Kazamini he was doing one job at a time - trn. pg. 228 ln. 7-17; it increased sometime in October and November - trn. pg. 228 ln. 18-21; he increased the amount of time he was putting towards the work he was doing so that he could get a van - trn. pg. 228 ln. 24 - pg. 229 ln. 4.

Mr. McLaws testified:

He asked Mr. Kazamini to take out taxes and to help him with insurance and Mr. Kazamini said he would and that's why Mr. McLaws started working full-time for him - - trn. pg. 251 ln. 10-14; he didn't work for anyone else up until -. trn. pg. 251 ln. 20-21; he completely thought he was an employee and he was never told not to go on the premises - trn. pg. 254 ln. 22-24.

It is insufficient that Mr. Kazemini referred to wages or to full or part time in an abbreviated 2 line ad. It was a term used in an abbreviated context by a lay person. In substance the relationship was not that of an employer-employee and Mr. Kazamini did not have the right to control Mr. McLaws. The most important factor is what relationship was in fact created.

Averett 909 P.2d at 250.

The Court also made the following findings:

1. Mr. Kazamini engaged the services of Mr. McLaws based on his response to the advertisement of employment - R pg. 86;
2. As of September, 2000 Mr. McLaws began to work full time 9:00 a.m. to 6:00 p.m. for Mr. Kazamini - R. pg. 87;
3. Mr. McLaws repaired all of the vehicles at Mr. Kazemini's shop - R. pg. 87;

4. The preponderance of the evidence demonstrates that Mr. Kazamini supplied the tools, parts, and supplies used by Mr. McLaws to repair vehicles for Mr. Kazamini - R. pg. 87; and

5. Mr. Kazamini monitored the quality and progress of the jobs performed by Mr. McLaws - R. pg. 87.

1. Finding: Mr. Kazamini Engaged the Services of Mr. McLaws Based on his Response to the Advertisement of Employment.

Mr. McLaws testified:

He called on an ad in July, 2000; went to the shop and talked to Mr. Kazamini - trn. pg. 11 ln. 3-6; Mr. McLaws had another part-time job he was working at a different location and he started working for Kaz about a month later - trn. pg. 11 ln. 9-12; he worked part time for Mr. Kazamini in September and he was working for Rocky Mountain Collision - trn. pg. 26 ln. 2-8; He was uncertain when he quit working for Rocky Mountain - trn. pg. 27 ln. 17-25. Mr. Kazamini didn't have "any idea of anything" - trn. pg. 84 ln. 9-10; he has no idea how to fix a car - trn. pg. 29 ln. 22-25; he wanted them just done - trn. pg. 84 ln. 18-20; he wasn't sure how to bid jobs; he would use body guys to get kind of an idea; trn. pg. 24 ln. 19-21.

At the time of the ad Mr. McLaws was working for another business. Approximately one month after the ad, Mr. McLaws began to do some work for Mr. Kazamini and advise him regarding auto body repairs. Initially, Mr. McLaws was providing auto repair

services to both Mr. Kazamini and Rocky Mountain Collision. There was nothing in the initial relationship between Mr. Kazamini and Mr. McLaws to find that Mr. Kazamini had a right to control Mr. McLaws. To the contrary, according to Mr. McLaws the work for Mr. Kazamini was performed on a bid basis. And contrary to the finding of the Appeals Board, Mr. McLaws was performing the same services for other businesses.

2. Finding: As of September, 2000 Mr. McLaws Began to Work Full Time 9:00 a.m. to 6:00 p.m. for Mr. Kazamini.

Mr. McLaws testified:

He was not working full-time for Mr. Kazamini in September - trn. pg. 25 ln 10-13; he brought his neighbor's Chevy truck to the shop the second day he started working full time for Mr. Kazamini - trn. pg. 32 ln.1-5.

Mr. Kazamini testified:

Mr. McLaws came on weekends, then he came more than weekends. "I [Mr. Kazamini] don't know what that is called"; trn. pg. 212 ln14-17; Mr. McLaws started doing full time work when Mr. Kazamini bought the Dodge van for Mr. McLaws - trn. pg. 134 ln. 6-20. Exhibit 8 shows that Mr. Kazamini bought the van on October 26, 2000 - R. pg. 74.

There is no evidence to support the finding that Mr. McLaws worked 9:00 a.m to 6:00 p.m. except if he decided to work those hours. Furthermore, the evidence was that it was the end of

October, 2000 before Mr. McLaws increased the amount of work that he was doing for Mr. Kazamini.

Additionally, as explained more fully below, Mr. McLaws did no work for Mr. Kazamini after mid December, 2000. Accordingly, there is no basis to find that Mr. McLaws began to work full time for Mr. Kazamini as of September, 2000 or any other time. Mr. McLaws increased the amount of work that he was doing for Mr. Kazamini in order to buy a van with which Mr. Kazamini would help him.

The evidence which has been overlooked in this regard is as follows:

a. Mr. McLaws did Other Body Work While Doing Work for Mr. Kazamini.

Mr. Cheshire (a friend of Mr. McLaws:) testified:

He stopped over when Mr. McLaws was working on neighbor's or friend's cars in his garage at his home and that it was very common. Trn. pg. 95 ln. 10-16.

Mr. Kazamini testified:

Mr. McLaws worked at Rocky Mountain, in his garage at his home, at his buddy's dad's shop in Tooele and at Abrra - trn. pg. 211 ln. 8-15; when Mr. McLaws began to do work for Mr. Kazamini, he was also doing work for Rocky Mountain and Dent Free - trn. pg. 218 ln. 14-17.

Mr. McLaws was doing the same work that he did for Mr. Kazamini for other businesses. There appears to have been a

short period of time when he increased the amount of work that he was doing for Mr. Kazamini in order to purchase a van at the urging of his wife.

b. Mr. McLaws Controlled his Work and Hours.

Mr. Kazamini testified:

Mr. McLaws would tell Mr. Kazamini what needed to be done and the cost so that he could decide whether to fix the car; this was the procedure followed for every car - trn. pg. 116 ln. 2-12; Exhibit 5, R. pg. 70, is a group of bids prepared by Mr. McLaws; Mr. Kazamini had "these forms forever, and I would write them down and will write down what a person is going to do and how much he's going to do it for, okay, and that I will pay at the end when it is completed" - trn. pg. 119 ln. 6-12; "the worker, whoever they are, they will determine how they [sic] going to do the work and what parts they're going to need, some parts they can save, some parts you need to buy" - trn. pg. 124 ln. 20-23; "they're going to look and see how many hours they're going to spend on each car, and then they will tell you how much, and then I will write it down and say, okay, we agree on this much, when the job is done" - trn. pg. 125 ln. 7-11; "they will tell me what [parts] they need and I'll call places that I know and they will bring the parts" - trn. pg. 125 ln. 18-21; Exhibit 7, R. pg. 72, is an example of the

agreement between Mr. McLaws and Mr. Kazamini for Mr. McLaws to repair a '97 Honda four-door red and a '96 silver Civic - trn. pg. 128 ln. 10-12; 90% of the work done by Mr. McLaws on cars owned by Mr. Kazamini were done this way; jobs for less than \$100 weren't done this way - trn. pg. 130 ln. 2-9.

A Tacoma truck was not repaired by Mr. McLaws because his bid was too high - trn. pg. 140 ln. 2 - pg. 141 ln. 9; it was later fixed (by someone else) for \$2,000.00 - trn. pg. 171 ln. 11-17.

Mr. McLaws was on his own; he would give Mr. Kazamini a price of a car; and they agreed; (it appears from the transcript that Mr. McLaws is agreeing with this testimony) - trn. pg. 208 ln. 12-22.

Mr. Kazamini did not make Mr. McLaws come to work at a certain time nor to paint at night - trn. pg. 208 ln. 23 - pg. 209 ln. 1; when painting the truck Mr. McLaws started painting at 8:00 o'clock in the morning and didn't finish until 9:00 o'clock the next morning - trn. pg. 209 ln. 2-6.

When Mr. Kazamini tried to get Mr. McLaws to finish and move a Chevy truck from the shop which Mr. McLaws was fixing for a neighbor, Mr. McLaws didn't come to the shop for five days because he wanted to spend time with his wife - trn. pg. 216 ln.25 - pg, 217 ln, 23.

Mr. Kazamini did not issued 1099 forms nor W2 forms -
trn. pg. 209 ln. 17-23.

Mr. Kazamini didn't tell Mr. McLaws when to do it;
sometimes they paint in the middle of the night and
sometimes they come early in the morning - trn. pg. 119 ln.
13-17; that it's easier for him if the painter tells him how
much and he pays when he is done; he doesn't have any
controls, these guys are adults - trn. pg. 120 ln. 20-21 and
trn. pg. 121 ln. 2-4.

In December, 2000 Mr. McLaws said to Mr. Kazamini that
he couldn't do any work this month because of his wife's
birthday, his anniversary and Christmas and New Years - trn.
pg. 162 ln. 10-14.

In January, 2001 Mr. Kazamini was going to a soccer
tournament over the Martin Luther King holiday and he asked
Mr. McLaws when the Chevy truck would be done; Mr. McLaws
promised that it would be done when Mr. Kazamini came back,
but it wasn't and Mr. McLaws' explanation was that it felt
good to spend time with his wife - trn. pg. 165 ln. 14 - pg.
166 ln. 19; on one occasion his son Benji commented that Mr.
McLaws hadn't done anything and Mr. Kazamini replied that he
say he wants to be with his wife, and he has that right -
trn. pg. 217 ln. 13-19.

Mr. McLaws testified:

Before a vehicle owned by Mr. Kazemini was repaired by Mr. McLaws, Mr. McLaws would look at the vehicle "and think, okay, this thing is going to take me three days or four days or a week, and then that's how I would do it. . . . I compared it to times working in the past, how long jobs similar to that would have taken me, and how much I would have been paid." trn. pg. 82 ln. 19 - pg. 83 ln. 1; "I didn't think he [Mr. Kazamini] had any idea of anything." - trn. pg. 84 ln. 5-10; "[T]hen when I fixed the car I would be paid those hours, regardless of it [sic] it took me one hour or it it took me all week." - trn. pg. 83 ln. 20-24. Mr. McLaws testified that it was full-time. Trn. pg. 212 ln. 16-18.

At the first he had his own keys to both shops [Mr. Kazamini's and Rocky Mountain Collision] - trn. pg. 27 ln. 1-5; he had his own tools which were at Rocky Mountain Collision - trn. pg. 27 ln. 13-16; he had a deal with Rocky Mountain Collision that if they got busy he could come back - trn. pg. 27 ln. 20-24.

When asked if he had certain hours he had to work, Mr. McLaws responded that "Well, Mr. Kazamini liked me to - he pretty much - he had things he wanted me to do, and he wanted them just done. . . . He did always like me to be

there when he got there" trn. pg. 84 ln. 15-24; on an average Mr. Kazamini was there at 5:00 - trn. pg. 85 ln. 1-4.

Mr. McLaws controlled what was done to each vehicle, the manner in which it was done and when it was done. He controlled when he worked. Mr. Kazamini did not control Mr. McLaws. This is the reason that the Appeals Board found that there were no hard and fast rules, R. pg. 236.

c. From Mid December, 2000 through January, 2001 Mr. McLaws was Working on a Chevy Truck which Belonged to a Customer of his and for which Mr. Kazamini Received Nothing.

Mr. McLaws testified as follows:

He received \$3,500 (regarding the Chevy truck); the check was made out to him; and Mr. Kazamini had nothing to do with it - trn. pg. 87 ln. 1-2, 11-12, 13-15.

Mr. Kazamini testified as follows:

Mr. McLaws said he wasn't going to pay him anything for using the shop - trn. pg. 169 ln. 13-15. The first conversation regarding the truck was during the first meeting between Mr. Kazamini and Mr. McLaws - trn. pg. 218 ln. 1-6; the first conversation regarding Mr. McLaws wanting to do some work on a neighbor's truck was the end of September - trn. pg. 114 ln. 22-25; at first Mr. Kazamini told Mr. McLaws to bring it to the shop so that he didn't have to go to three places, but he didn't mean to hand him

the shop for five to six weeks and have two beds spread all over the place - trn. pg. 114 ln. 5-7, 10-14, 16-21; and when Mr. Kazamini told Mr. McLaws that he could bring the Chevy to the shop he didn't know that it would mean that his shop would be tied up for five weeks; initially he thought it would be a half an hour, one hour or two hours at the end of the day - trn. pg. 170 ln. 1-22.

Mr. McLaws had begun work on the Chevy in December, 2000 and had disassembled the truck in the shop - trn. pg. 162 ln. 16-25; from December on he was waiting for the truck to be done - trn. pg. 169 ln. 3-5; the Chevy was removed from Mr. Kazamini's shop on February 1, 2001 - trn. pg. 181 ln. 16-22; Exhibit 15, R. pg. 80, is an invoice to have the Chevy towed - trn. pg. 181 ln. 20 - pg. 182 ln. 2 and pg. 194 ln. 2-9; and if the truck was done it could have been driven and there wouldn't have been any need to tow it - trn. pg. 194 ln. 10-14.

That on an exhibit submitted by Mr. McLaws it showed that he received \$5,000 for the work on the Chevy, which Mr. McLaws denied - trn. pg. 209 ln. 5-10.

Mr. Chesire testified:

In January he went over to help Mr. McLaws set a bed on the truck and Mr. McLaws had jammed all the truck and stuff and it was ready to paint - trn. pg. 96 ln. 3-13.

Mr. McLaws testified:

The truck sat in front of Mr. Kazamini's shop for so long that he (Mr. Kazamini) knew the exact amount of work the thing needed; he's been in the business for 15 years - trn. pg. 252 ln. 1-4. By the time he was able to work on it, it was January - trn. pg. 252 ln. 5-7.

The evidence is undisputed that during the time that Mr. McLaws worked on the Chevy pickup he did not repair any vehicles for Mr. Kazamini and that there was no connection between the Chevy pickup and Mr. Kazamini. Mr. McLaws is unclear on how long he worked on the Chevy pickup, but Mr. Kazamini is very clear that Mr. McLaws was working on the pickup for 6 weeks. Again, it is clear that Mr. Kazamini did not control Mr. McLaws. Contrary to the finding of the Appeals Board, there was no consent for Mr. McLaws to take over Mr. Kazamini's shop for 5-6 weeks to restore a Chevy pickup for a customer of Mr. McLaws.

3. Finding: Mr. McLaws Used Tools Belonging to Mr. Kazamini to do the Repairs.

Mr. McLaws testified:

He had his own tools, but Kaz had everything, and so they used Kaz's tools at Mr. Kazamini's, except "[o]nce in awhile, if he didn't have something . . ." - trn. pg. 86 ln. 2-7; "at all the other shops you have to take your own tools" - trn. pg. 86 ln. 5-7; "I didn't do much work for

them [Rocky Mountain Collision]. They still had my - - my tools there, and I did - - once in awhile I'd go in. He still had me on his payroll, but I didn't really work for him."- trn. pg. 27 ln 13-16; it was Kaz's sander that Mr. McLaws used - trn. pg. 86 ln. 8-11.

Mr. Kazamini testified:

He (Mr. Kazamini) has regular tools - some sockets, a grinder, electric screwdriver, a welding machine and a cutting torch - trn. pg. 190 ln. 10 - pg. 191 ln. 9; Mr. McLaws would bring his specialized tools when needed - trn. pg. 191 ln. 12 - pg. 192 ln. 2.

The evidence was that Mr. McLaws used regular tools at the shop, but if any specialized auto body repair tools were needed, Mr. McLaws had his own tools and he used his own tools. This factor is a mixed factor, in that Mr. McLaws used the tools of Mr. Kazamini and his own tools.

4. Finding: Mr. Kazamini Supplied all of the Parts, Materials and Paint to do the Repairs.

Mr. McLaws testified as follows:

Mr. Kazamini would determine which car to work on and Mr. McLaws would decide how to repair it - trn. pg. 29 ln. 17-22; Mr. Kazamini was never there - trn. pg. 29 ln. 5-6; Mr. McLaws determined the supplements - trn. pg. 30 ln. 14-23; Mr. McLaws would tell Mr. Kazamini what needed to be fixed on the car and what kind of paint to buy - trn. pg. 31

ln. 2-25; at one point Mr. McLaws and Mr. Kazamini contemplated having Mr. McLaws teach Mr. Kazamini how to fix cars - trn. pg. 44 ln. 2-6; Mr. McLaws would determine what he would charge for labor to fix a car and tell Mr. Kazamini and Mr. Kazamini would buy the supplies as instructed by Mr. McLaws - trn. pg. 81 and pg. 82. ln. 9-10.

Mr. Kazamini added the following:

If the paint is PPG or Sherwin Williams, they tell me what kind to get - trn. pg. 126 ln.11-18.

The evidence was that the contract between Mr. McLaws and Mr. Kazamin was that Mr. McLaws would provide the expertise and do the labor. The contract was that the materials and supplies would be provided by Mr. Kazamine as directed by Mr. McLaws. In the instant case this factor demonstrates that Mr. Kazamini did not control Mr. McLaws.

B. Erroneous Findings of the Court.

1. Mr. Kazemini Admitted that Mr. McLaws Worked Full Time for Him Because Mr. McLaws' Wife Wanted Him to Purchase a 1999 Dodge Caravan from Mr. Kazemini in Trade for Work.

The only testimony by Mr. Kazamini in this regard was that Mr. McLaws told Mr. Kazamini that he was debating if he should work for Rocky Mountain or if he should quit to come over there. But his wife told him (Mr. McLaws), you should work for Mr. Kazamini, because he could get them the van - trn. pg. 131 ln.25 - pg. 132 ln. 3; Mr. McLaws started being at the shop full-time

when Mr. Kazamini purchased a '99 Dodge Caravan which Mr. McLaws was going to purchase from Mr. Kazamini - trn. pg. 133 ln. 10-14; Exhibit 8 is the purchase order for the van; the date on Exhibit 8, R. pg. 74, is October 26th and it was paid by Mr. Kazamini on November 2nd - trn. pg. 134 and pg. 135;

a. Deal for Dodge Van.

Mr. Kazamini testified:

The reason Mr. Kazamini bought the van was because Mr. McLaws wanted to purchase the van - trn. pg. 136 ln. 1-6.

Mr. McLaws was going to give Mr. Kazamini a down payment and do the rest with trade - trn. pg. 137 ln. 16-19; the price was \$4,500 - trn. pg. 137 ln. 20-22; the down payment check bounced and so there was no option to buy the van because the parts to fix the van were going to cost \$3,000 - trn. pg. 138 ln. 1-6; Mr. McLaws refused to put money into the bank to cover the check and told Mr. Kazamini that he paid his brother instead - trn. pg. 138 ln. 19-25.

In mid November Mr. McLaws said he was going to bust his butt off working to make up the money to pay for the van - trn. pg. 139 ln. 12-20; the '97 red Civic and the '99 black two-door Civic on Exhibit 4, R. pg. 68-69, were done part on trade - \$3,500 - and rest was paid to Mr. McLaws - \$500 - trn. pg. 143 ln. 10 - trn. pg. 144 ln. 4; the work was done prior to mid December, 2000 - trn. pg. 144 ln. 21-

23; the date is based on an invoice, Exhibit 12 - R. pg. 77, for putting the glasses (windshield) back on these cars; the last thing that Mr. McLaws does on a car is have the glasses put back on - trn. pg. 144 ln. 25 - pg. 145 ln. 24.

He tried to sell the van at the auction, but couldn't and finally traded it to someone and lost \$2,000 - trn. pg. 198 ln. 13-20.

The contract to buy the van was verbal and that is why Mr. Kazamini bought it at the auction - trn. pg. 248 ln. 9-15.

Mr. Kazamini specifically stated that when Mr. McLaws came more than on the weekends to work, he didn't know what it was called - trn. pg. 212 ln. 12-19.

There is no dispute that Mr. McLaws was trading his work for a van. The amount was \$4,000. Mr. McLaws agreed with this amount. No taxes or other deductions were to be made from this amount. This evidence demonstrates that Mr. McLaws did not regard himself as an employee, but an independent contractor. At the time that Mr. McLaws claims that he was an employee, he was by a preponderance of the evidence a purchaser of a van from Mr. Kazamini by trading his work for the van. This is not an employer-employee relationship.

2. The Parties Concurred that When a Repair Job Came In, Mr. Kazemini Consulted Mr. McLaws on the Needed Repairs Then Mr. Kazemini Negotiated the Bid with the Customer.

Mr. Kazemini testified:

He was not in the business of repairing automobiles; Maybe, one in a thousand might be from somebody who needs a little paint - trn. pg. 236 ln.13 - pg. 237 ln 7; the cars aren't all salvage vehicles, but they're all damaged - trn. pg. 236 ln. 17-19; and Mr. Kazamini is not there to take jobs in - trn. pg. 237 ln. 5-6.

The customer who owned the Mercedes was a customer of Mr. McLaws - trn. pg. 183 ln. 6-8; Mr. McLaws told the customer he would fix the car for \$600 - trn. pg. 183 ln. 11-12; Mr. Kazamini required that the check be paid to him; added \$200 for overhead and Mr. Kazamini paid the \$600 to Mr. McLaws - trn. pg. 183 ln. 15-22.

Mr. McLaws stated:

That if that occurred he would determine what work needed to be done and the cost of the work, fix it and then pay Mr. Kazamini - trn. pg. 67 ln.16 - pg. 68 ln. 6; in regard to a Mercedes, Mr. Kazamini added \$200 to the bid and the money was paid to Kazz's Cars - trn. pg. 68 ln.7-21; "the reason that we charged him more is because the Mercedes parts are all glued on the car as well as bolted, and we would have destroyed the parts getting them off, and it takes a long time to get them off, so we upped the amount of it" - trn. pg. 68 ln. 13-17.

The parties did not concur that Mr. Kazamini consulted with Mr. McLaws and then negotiated the bid with the customer. The evidence was that Mr. McLaws negotiated the bid with the customer. Mr. Kazamini was not there to take the job in.

3. Mr. Kazemini Confirmed that He Monitored Mr. McLaws' Progress on Specific Jobs. Mr. Kazemini also Acknowledged that He Became Upset and Dissatisfied With Mr. McLaws' Progress or Quality on a Job.

Mr. Kazamini testified:

He didn't tell Mr. McLaws when to come to the shop - trn. pg. 208 ln.23-25; the worker will determine how they're going to do the work and what parts they're going to need, some parts they can save, some parts you need to buy - trn. pg. 124 ln.20-25; Mr. McLaws would go to the auction and tell Mr. Kazamini what car to buy and he would fix it - trn. pg. 149 ln. 7-13 and - pg. 65 ln. 14-18; Mr. Kazamini would just let them do the work and he would come from school or wherever he had been to see how much they had done; if they haven't done anything he would be upset and if they have it done he would be happy - trn. pg. 127 ln. 3-8.

The way that Mr. Kazamini knew that the work was bad was that he was getting cars back for repairs more often than he should - trn. pg. 145 ln. 11-15; Mr. Kazemini described in detail the complaints that he was receiving regarding the work of Mr. McLaws - trn. pgs. 149 - 156; and after the injury Mr. Kazamini and Mr. McLaws discussed

having Mr. McLaws teach Mr. Kazamini how to do the work, but never went through with it - trn. pg. 238 ln. 1-22.

Mr. McLaws testified

Mr. Kazamini didn't keep time records and that he [Mr. McLaws] made a form to keep track of his work - trn. pg. 102 ln. 3-8; every time that they talked about a job and came up with a price, Mr. McLaws would write down on the form - trn. pg. 104 ln. 23-24; that he would decide which car he wanted to work on - trn. pg. 172 ln. 14-19.

Mr. McLaws takes a lot of pride in his work. He has letters from other body shops which appreciated his work - trn. pg. 254 ln. 6-9; He's been offered jobs back at the same places. Mr. Kazamini asked him to teach him - trn. pg. 254 ln. 10-13.

The evidence does not support that Mr. Kazamini monitored Mr. McLaws' progress or quality of work. Mr. Kazamini was upset if the cars were not ready to sell, but that does not equate to monitoring the progress of the work. Similarly, the only way that Mr. Kazamini knew that the quality was inferior was because of complaints back to Mr. Kazamini by customers who had purchased the cars. There was no monitoring or control during the work performed by Mr. McLaws. Mr. Kazamini's right to require a certain end result does not equate to the right to control Mr. McLaws. Special Fund Div. 836 P.2d 1033

II. THE ONLY RELATIONSHIP WHICH EXISTED BETWEEN PETITIONER AND RESPONDENT ON JANUARY 30, 2001 WAS THAT OF SELLER/BUYER.

It is undisputed that part of December, 2000 and January, 2001 Mr. McLaws worked on restoring a Chevrolet pickup which belonged to a customer of Mr. McLaws. Nothing was paid to Mr. Kazemini in regard to the pickup. The 1972 Chevrolet pickup was not removed from Mr. Kazemini's shop by Mr. McLaws until February 1, 2001.

The testimony of the parties was disputed that in December, 2000 the only work which Mr. McLaws performed at Mr. Kazemini's shop were 2 small bids on a Honda Prelude and a Honda Civic and the trade work for the Trooper. It is disputed that on January 5, 2001 it was agreed that the \$3,500 which Mr. Kazemini owed to Mr. McLaws would be applied to the purchase of a 1992 Trooper which Mr. McLaws had been trying to purchase from Mr. Kazemini since December 29, 2000. Mr. Kazemini disputes that there was ever any agreement to pay \$1,000 in repairs to Mr. McLaws. The \$3,500 was Mr. Kazemini's cost. If Mr. Kazemini was going to pay \$1,000.00 for the repairs, the sale price would have been much greater than \$3,500.00. Mr. McLaws was going to take the Trooper to the shop of a friend and repair it.

It was also disputed that while Mr. McLaws was working on the pickup there was no room in the shop to work on any other vehicle. However, Mr. McLaws had two pickup beds and the pickup

in the shop. Because the pickup was dissembled Mr. McLaws had to have the vehicle towed on February 1, 2001 rather than drive it.

a. The Court erroneously found that Mr. Kazemini terminated the relationship with Mr. McLaws in January, 2001.

Mr. McLaws testified as follows:

The work on the Prelude was done after the Chevy pickup and before the Trooper - trn. pg. 102 ln. 19-23.

Mr. McLaws admitted as follows:

Exhibit 4, R. pg. 68-69, shows the work done in December, 2000 as a red Civic on December 4th, a 1995 white Civic on December 10th and a green Civic on December 11th, a '97 red Civic and a '99 black Civic with no date but were done in December (trn. pg. 255 ln. 11-24); a Prelude - teacher's put handle in and a '92 maroon Isuzu Trooper in December, 2000; he can't remember when the trade jobs were finished - trn. pg 260 ln. 10-1; there was nothing in January, 2001 - trn. pg. 256 ln. 11-13.

The Prelude was done after the truck was finished - trn. pg. 256 ln. 3-5; the truck was finished the third week of January, but not towed until February 1 even though he testified earlier that it was towed as soon as it was done - trn. pg. 256 ln. 6-18; the truck was taken before the work on the Prelude and then the truck may have been still sitting there - trn. pg. 256 ln. 19-25.

At first Mr. McLaws says December was a big month - a \$200 job, a \$1,200 job and the \$1,800 job; then he acknowledges that the \$1,200 and \$1,800 job were trade jobs and he only received a little cash for those jobs to pay for pots and pans for his wife - trn. pg. 257 ln. 6 - pg. 258 ln. 4. In December he still intends to buy the van even though he hasn't done anything to make the bounced check good; the bounced check was a down payment in addition to the trade work - trn. pg. 258 ln. 23 - pg. 259 ln. 25; "there's a thousand bucks siting in the Trooper, that's probably why I wanted to finish it so fast. Actually, I told - - well, never mind." - trn. pg. 260 ln. 6-8.

Mr. Kazamini testified as follows:

The Prelude belonged to Coach Hawkins and the work was done before December, 2000 - trn. pg. 131 ln. 1-16; the last work done by Mr. McLaws was the trade work which were completed in mid December, 2000 - trn. pg. 146 ln. 5-9; by mid December, 2000.

He was getting cars back for repair more often than he thought Mr. McLaws' quality should allow - trn. pg. 146 ln. 10-13; because of this Mr. Kazamini told Mr. McLaws that the cars weren't being fixed good - trn. pg. 146 ln. 15-19.

Mr. Kazemini's testimony was that he had determined in December, 2000 not to offer any more vehicles to Mr. McLaws for

bids. Mr. McLaws acknowledged that in December, 2000 he was trying to find other work and that he was not going to do anymore work for Mr. Kazamini.

The only vehicle upon which Mr. McLaws claims he performed any services for Mr. Kazemini in January, 2001 was the Prelude. However, his own exhibit along with the testimony of Mr. Kazamini places this work in November or December, 2000. He did not provide any proof of a bid for the work on the Trooper as was the usual procedure if Mr. McLaws was going to work on a vehicle which belonged to Mr. Kazemini. It is not believable that he had been asked to work on the Trooper by Mr. Kazemini. The evidence shows that Mr. McLaws was working on the Chevrolet pickup on January 30, 2001 not the Trooper. There was no evidence that there was a contract to work on the Trooper. The evidence was that a contract had not been entered into because Mr. Kazamini and Mr. McLaws could not agree on the amount for the repairs. At the most, Mr. McLaws was working on the Trooper without an agreement with Mr. Kazamini, with the hope that he could convince Mr. Kazamini to pay him \$1,000 for the work. Mr. McLaws did not do any work for Mr. Kazamini from mid December, 2000 through January, 2001.

b. The Relationship Between Mr. Kazamini and Mr. McLaws was Terminated Before the Time of the Injury.

Mr. Kazamini testified as follows:

In December, 2000 Mr. McLaws moved his tool box to a warehouse so that he can take it to his new job easier - trn. pg. 146 ln. 21 - pg. 147 ln. 4; Exhibits 9, 10 and 11, R. pg. 75-76, are in regard to cars which needed to be re-repaired; in a conversation regarding the Chevy truck, Mr. Kazamini told Mr. McLaws to get it done and then they were finished and to give Mr. Kazamini his keys. Mr. Kazamini knew that Mr. McLaws was looking for jobs - trn. pg. 166 ln. 22-25; by the time that the truck was sitting in the shop, Mr. Kazamini wanted Mr. McLaws out and didn't want him to work on any of his cars - trn. pg. 171 ln. 1-4; on January 15, 2001 Mr. McLaws promised he would get the truck finished and leave - trn. pg. 205 ln. 15-19; when Mr. Kazamini returned from his trip over Martin Luther King holiday, he told Mr. McLaws that he wanted the truck done so we can get this over with - trn. pg. 217 ln. 5-9.

Mr. McLaws testified:

In December, 2000 he knew he wasn't gong to do any more work for Mr. Kazamini - trn. pg. 70 ln. 5 - pg. 71 ln. 7. The preponderance of the evidence is that Mr. McLaws did not make any contracts with Mr. Kazamini for auto body repair work after mid December, 2000. Mr. Kazamini's testimony was that he was not going to do anymore contracts with Mr. McLaws and Mr. McLaws testified that he was looking for other work. The conclusion is

that the relationship between Mr. Kazamin and Mr. McLaws was terminated as of the time of the accident. There is no basis for the Appeals Board to find that Mr. McLaws resume his duties for Mr. Kazamini after working on the Chevy pickup by commencing to work on the Trooper.

c. The Court Erroneously Found that Mr. Kazemini Conceded that the Sale of the Trooper to Mr. McLaws Occurred on February 28, 2001 When he was Confronted with the Bill of Sale (Exhibit No. 17).

Exhibit No. 17, R. pg. 83, is a Motor Vehicle Contract of Sale regarding the Trooper. As explained by Mr. Kazemini this could not be completed until February 28, 2001 because he could not sign the form until the repairs to the Trooper were complete and it had passed a safety inspection. However, the vehicle was sold to Mr. McLaws on January 5, 2001.

Mr. Kazamini testified as follows:

The '92 Trooper was delivered to his shop on December 29, 2000; Exhibit 14, R. pg. 79, is the invoice for the purchase of the Trooper on December 28, 2000 - trn. pg. 175 ln. 1-13; the Trooper was purchased for a specific individual - Jeremy Kingston - trn. pg. 175 ln. 16 - pg. 176 ln. 10.

From the time the vehicle was delivered Mr. McLaws began to bug Mr. Kazamini that he wanted to buy the Trooper - trn. pg. 177 ln. 10-13. The van was out of the question because he needed more money to fix it, but Mr. Kazamini

owed him \$3,500 for the two cars on trade - trn. pg. 179 ln. 3-8.

The first week in January, it was agreed that Mr. Kazamini would give Mr. McLaws the Trooper for \$3,500 and include tax and license and a door for the Trooper - trn. pg. 179 ln. 9-13; Mr. McLaws said he would take to a buddy of his and fix it - trn. pg. 179 ln. 17-20.

Mr. McLaws was driving the Trooper different places - trn. pg. 180 ln. 1-3; after January 5th or 6th the Trooper could be in front of Mr. Kazamini's door, it could be Mr. McLaws driving it or it could be at his house; Mr. Kazamini wasn't there to see where it was - trn. pg. 245 ln. 4-8; it was Mr. McLaws's Trooper with Mr. Kazamini's dealer plate - trn. pg. 245 ln. 16-18.

The Trooper could not be licensed until it was fixed enough to get it safety inspected - trn. pg. 180 ln. 9-12; by the end of February it was fixed enough to license and transfer title - trn. pg. 180 ln. 16-19.

There was never any discussion with Mr. McLaws about a bid to fix the Trooper - trn. pg. 197 ln. 1-10; Mr. Kazamini never said one word to him about fixing the Trooper - trn. pg. 244 ln. 3-7; "I'm not so stupid to pay him \$1,000 to fix it, buy the car for \$2,000 and give him a door and give him a fender and give him a hood for \$3,500.00" - trn. pg. 244

ln. 8-12. Mr. Kazamini had no reason to fix the Trooper -
trn. pg. 197 ln. 11-19.

The document regarding the Trooper was signed on
February 28, 2001 - trn. pg. 215 ln. 1-4: Mr. Kazamini
referred to the date of sale as 2/28: trn. pg. 215 ln. 1-4.
and ln. 22-23.

Mr. Kazamini gave Mr. McLaws \$300 for the door when it
was driveable, but before it passed the safety inspection
which was the beginning of February; Mr. Kazamini didn't
know if that was before or after the injury - trn. pg. 229
ln. 8-24; the Trooper could be driven on a dealer's plate
before it is fixed or passes safety inspection; but before a
tag can be put on it, it must pass safety inspection - trn.
pg. 230 ln. 9-18; it was February 28th when the Trooper was
tagged - trn. pg. 230 ln. 20-24. Between January 30th and
February 28th Mr. McLaws was driving the vehicle - trn. pg.
231 ln. 1-5.

The sale was verbally done before it passed safety
inspection, but it was not written down - trn. pg. 232 ln.
6-11. Exhibit 17 is the purchase order regarding the
Trooper - trn. pg. 233 ln. 8-17.

Mr. Kazamini was the legal owner of the Trooper on
January 30, 2001 - trn. pg. 234 ln. 13-15; the vehicle can
only be released to Mr. Kazamini from the auction - trn. pg.

242 ln. 19-25; the title to the vehicle comes with the release - trn. pg. 243 ln. 6-12.

Mr. Kazamini purchased the headlight bracket and the fender for the Trooper after January 30, 2001 - trn. pg. 235 ln. 14-18 and pg. 236 ln. 4-6; it was probably in March, 2001 - trn. pg. 242 ln. 1-3; Mr. Kazamini and Mr. McLaws argued about what parts were suppose to be with the Trooper - trn. pg. 241 ln. 6-8; he didn't have to find parts, but he is the most stupid, giving hearted person there is - trn. pg. 241 ln. 17-23.

The price was \$3,500 not the \$6,000 on Exhibit 17; \$6,000 is what it is worth if it is fixed - trn. pg. 241 ln. 11-17.

After the truck was removed from the shop, the keys which Mr. McLaws had were returned to Mr. Kazamini - trn. pg. 239 ln. 3-6. Mr. McLaws had ben driving the Trooper and it was not stored at the shop after the keys were returned - trn. pg. 239 ln. 18 - pg. 240 ln. 1.

Someone changed a gas tank for Mr. McLaws on the Trooper and he used a tank from a Trooper which Mr. Kazamini uses for parts because it was cheaper than going to the junkyard and buying another one - trn. pg. 240 ln. 9-23.

Rick Chesire testified:

In January before Mr. McLaws got hurt, Mr. McLaws was

working on Mr. McLaws' Trooper at Kazz's Cars - trn. pg. 91
ln. 11-20.

Mr. McLaws testified:

When the Trooper came in he was interested in buying it and very excited about it, but his wife didn't want it she wanted the van and that was the end of wanting the Trooper - trn. pg. 252 ln. 7-13.

He and Mr. Kazamini talked several times about fixing the Trooper because Mr. Kazamini thought a thousand bucks was a little too bit expensive; Mr. Kazamini told Mr. McLaws he was thinking more like eight hundred bucks - trn. pg. 252 ln. 15-21; so anyhow Mr. Kazamini's intention was to fix the Trooper for a thousand bucks and he had no intention of buying it - trn. pg. 252 ln. 22-24.

He showed a lot of interest in the Trooper; it just happened to be that that was the car he hurt himself on; Mr. Kazamini owed him \$3,500; and that was the only one that drove - trn. pg. 253 ln. 2-11.

He never drove it prior and it was probably three weeks after the accident before he drove it; it was completely stripped apart - trn. pg. 253 ln. 12-18.

The Trooper was Mr. Kazamini's when he hurt his hand and he had no intention of buying it until after the accident - trn. pg. 254 ln. 20-22.

There is no evidence to support the Court's finding that Mr. McLaws was working for Mr. Kazemini on a Trooper owned by Mr. Kazemini on January 30, 2001 when he was injured, except Mr. McLaws' statement that this is what happened. All of the other evidence supports a finding that Mr. McLaws provided no further services to Mr. Kazemini after mid-December, 2000 and that on January 30, 2001 Mr. McLaws was working on a 1972 Chevrolet pickup which belonged to his customer or his own vehicle. Mr. Chesire, a friend of Mr. McLaws, testified that Mr. McLaws was working on Mr. McLaws' Trooper in January, 2001. Mr. McLaws testified that it was completely stripped apart before his accident, but three weeks after his accident he drove the vehicle. There is no explanation about how it was no longer stripped apart.

d. Mr. McLaws did not Consult Mr. Kazamini Regarding his Injury Except to Attempt to Obtain Payment.

Mr. Kazamini testified:

He didn't talk to Mr. McLaws the day that he got hurt - trn. pg. 234 ln. 23-25; Mr. McLaws couldn't have called him at work because he didn't take his cell phone into classes he was teaching - trn. pg. 235 ln. 3-4; he did know when or where Mr. McLaws got hurt; that Mr. McLaws didn't call him from the shop; and Mr. Kazamini did not direct Mr. McLaws to go to St. Mark's Hospital - trn. pg. 215 ln. 5-16.

The first time he knew of the injury was when Mr. McLaws came to his house with his hand wrapped up - trn. pg. 183 ln. 6-8; on this occasion Mr. McLaws asked if Mr. Kazamini was going to take care of him and Mr. Kazamini replied that he wasn't working on his cars; Mr. McLaws said he was having problems with his finances and was going to take somebody to the cleaners - trn. pg. 183 ln. 12-22.

The next time Mr. Kazamini saw Mr. McLaws was at the shop; again Mr. McLaws ask if Mr. Kazamini was going to take care of this; Mr. Kazamini replied that he was working on his own car; Mr. McLaws then said that all he had to do to get Mr. Kazamini was lie about the car and he wasn't going to let his kids down - trn. pg. 184 ln. 4-1 and pg. 201 ln. 19-22.

Mr. McLaws talked to Mr. Kazamini a third time when he got the license for the Trooper; and Mr. Kazamini suggested that he turn the paperwork into his insurance - trn. pg. 184 ln. 20-25.

Mr. McLaws asked Mr. Kazamini to lie to Medicaid or Medicare and say that Mr. McLaws worked until March; Mr. Kazamini told the representative that he worked until December - trn. pg. 185 ln. 18 - pg. 186 ln. 5.

Mr. McLaws testified:

He never said any of the things Mr. Kazamini said -
trn. pg. 253 ln. 20-25.

III. MR. KAZAMINI DID NOT THINK THAT HE WAS REQUIRED
TO OBTAIN WORKERS COMPENSATION INSURANCE.

Mr. Kazamini testified:

He thought he had all the insurance that he was suppose
to have - trn. pg. 188 ln. 12 - pg. 189 ln. 2; he doesn't
have Workers Compensation because he's a dealer not a body
shop and he didn't have workers; he has the insurance
required for a dealer's license - trn. pg. 218 ln. 18 - pg.
219 ln. 5; he only has one person work a few hours and he
works before or after his first job - trn. pg. 219 ln. 13-
20; he is a Spanish guy who stays in the backroom of the
shop; on an average he may work three hours a week for Mr.
Kazamini; he only does minor things - trn. pg. 246 ln. 14-
16; he has two other jobs - trn. pg. 222 ln. 19-25; pg. 224
ln. 11-16; he was helping Mr. Kazamini in January, 2001 -
trn. pg. 226 ln. 25 - pg. 227 ln. 3.

He did not have Workers Compensation on January 30,
2001 - trn. pg. 222 ln. 14-15.

He didn't ask Mr. McLaws for proof that he has a valid
certification of Workers Compensation Insurance and has
never received anything from Mr. McLaws saying he has a
valid certification - trn. pg. 227 ln. 15-20; he didn't ask
the person staying in his shop if he had Workers

Compensation, because he didn't know that if someone sleeps in your room you're suppose to ask them - trn. pg. 248 ln. 20-25; he didn't ask Mr. McLaws because he was working on commission; when he charges hundreds of hours to fix a car but works only twenty hours to fix the car, the other should go for his insurance and taxes - trn. pg. 249 ln. 2-9.

Since Mr. Kazamini does not have any employees he is not required to have worker's compensation insurance.

IV. MR. MCLAWS WAS NOT PAID AN AVERAGE OF \$752.25 PER WEEK FOR THE SERVICES PROVIDED TO KAZZ'S KARS.

Mr. Kazamini testified:

That he can't tell from Exhibit 4 if the cars on the exhibit are cars done for him because many don't have the year of the vehicle - trn. pg. 194 ln. 18 - pg. 195 ln. 13; Exhibit 16 shows all of the checks paid to Mr. McLaws by Kazz's Cars - trn. pg. 199 ln. 7-10; in addition to the checks Mr. Kazamini paid Mr. McLaws approximately \$2,595 in cash - trn. pg. 199 ln. 11 - pg. 200 ln. 25; he did not pay Mr. McLaws a total of \$17,000 during the time that Mr.

McLaws did work for Mr. Kazamini - trn. pg. 206 ln. 14-15.

The more credible evidence is that Mr. McLaws received a total of \$11,195.00 from Mr. Kazamini for the entire time that he provided repair work to Mr. Kazamini. There is insufficient evidence to reduce this amount to a weekly or monthly amount.

CONCLUSION

Mr. McLaws was an independent contractor regarding the services performed for Mr. Kazemini and that relationship terminated in December, 2000. On January 30, 2001 Mr. McLaws was working on a vehicle belonging to his customer or his own vehicle. Accordingly, Mr. McLaws is not entitled to any benefits from Mr. Kazemini and no penalty should be assessed.

Respectfully submitted this 10th day of December, 2003.



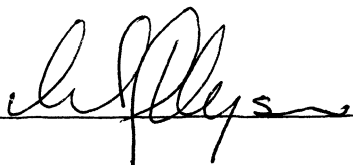
DAVID J. HODGSON

CERTIFICATE OF SERVICE

I hereby certify that I mailed two (2) copies of the foregoing to the following, postage prepaid, this 10th day of December, 2003:

Alan Hennebold
160 East, 300 South, 3rd Floor
Salt Lake City, Utah 84114

W. Scott McLaws
5795 Southside Dr.
Rapid City, SD 57703



ADDENDUM

1. FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER.
2. ORDER DENYING MOTION FOR REVIEW.

UTAH LABOR COMMISSION
P.O. BOX 146615
Salt Lake City, Utah 84114-6615

Case No. 2001340

<p>WALLACE SCOTT MCLAWS,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>HEDAYAT KAZEMINI dba KAZZ'S KARS (uninsured) and/or UNINSURED EMPLOYERS FUND,</p> <p style="text-align: center;">Respondents,</p> <p>*****</p>	* * * * * * * * * * * * *	<p>FINDINGS OF FACT,</p> <p>CONCLUSIONS OF LAW,</p> <p>AND ORDER</p> <p>Judge: Richard M. La Jeunesse</p>
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HEARING: Room 334, Labor Commission, 160 East 300 South, Salt Lake City, Utah, on November 5, 2002, at 8:30 a.m. Said Hearing was pursuant to Order and Notice of the Commission.

BEFORE: Richard M. La Jeunesse, Administrative Law Judge.

APPEARANCES: The petitioner, Wallace Scott McLaws, was present and represented himself pro se.

The respondent Hedayat Kazemini dba Kazz's Kars was represented by his attorney David J. Hodgson.

The respondent Uninsured Employers Fund was represented by attorney Sherrie Hayashi.

I. STATEMENT OF THE CASE

The petitioner, Wallace Scott McLaws, filed an “Application For Hearing” with the Utah Labor Commission on April 2, 2001, and claimed entitlement to the following workers’ compensation benefits: (1) medical expenses; (2) recommended medical care; (3) temporary total disability compensation, and; (4) permanent partial disability compensation. Mr. McLaws claim for workers’ compensation benefits arose out of an alleged industrial accident that occurred on January 30, 2001.

The respondents denied that Mr. McLaws' injury on January 30, 2001 arose out of and in the course of employment with Mr. Kazemini.

II. ISSUES.

1. Did Wallace Scott McLaws' injury on January 30, 2001 arise out of and in the course of his employment with Hedayat Kazemini dba Kazz's Kars?
2. What workers compensation benefits, if any, do either respondent owe Wallace Scott McLaws?

III. PROCEEDINGS.

After the hearing on November 5, 2001 I left the evidentiary record open for the receipt of additional pertinent medical records from UEF. On November 26, 2001 UEF filed a "Supplemental Medical Exhibit" at which time I considered the record closed and ready for order.

IV. FINDINGS OF FACT

A. Existence of an Employment Relationship in General.

The main dispute between the parties involved the issue of whether an employment relationship ever existed between Mr. McLaws and Mr. Kazamani. More particularly the parties disagreed over whether Mr. Kazemini employed Mr. McLaws on the date of his accident and injury on January 30, 2001.

Mr. Kazemini operated a business wherein he purchased damaged automobiles at auction, repaired the vehicles, and then sold them at a profit. Mr. Kazemini ran his business out of a shop located at 3994 South 300 West in Salt Lake City, Utah. Mr. Kazemini did business under the assumed name Kazz's Kars.

In July of 2000 Mr. Kazemini placed an advertisement in the Salt Lake Tribune's "Help Wanted" section that stated: "AUTO/PAINTER FRAME TECH top wages. Full or part time." [Exhibit "1"]. Mr. McLaws responded to Mr. Kazemini's advertisement and met Mr. Kazemini at his shop. Mr. McLaws claimed that Mr. Kazemini offered him a job as an auto body repair man.

The parties essentially agreed that Mr. Kazemini paid Mr. McLaws piece rate which the parties negotiated separately for each vehicle. Mr. Kazemini paid Mr. McLaws with both cash and an occasional check [Exhibit "16"]. Mr. Kazemini never withheld taxes from the amounts he paid to Mr. McLaws. Further, Mr. Kazemini issued no W-2s or 1099s to Mr. McLaws.

Mr. McLaws stated that he commenced employment for Mr. Kazemini part time in August 2000. Mr. McLaws testified that up to the end of September 2000 he worked part time for Mr. Kazemini and part time for Rocky Mountain Collision across the road. At the end of September 2000 Mr. McLaws claimed he began to work for Mr. Kazemini full time.

Mr. McLaws said the he usually worked from 9:00 a.m. to around 6:00 p.m. Because he worked full time as a shop teacher at Layton High School, Mr. Kazemini only came to the shop from 5:00 p.m. to 6:00 p.m. Mr. Kazemini denied that he actually employed Mr. McLaws. Rather, Mr. Kazemini claimed that Mr. McLaws worked when he pleased as a sort of independent contractor. Mr. Kazemini admitted that Mr. McLaws began to work full time for him because Mr. McLaws' wife wanted him to purchase a 1999 Dodge Caravan from Mr. Kazemini in trade for work. Mr. Kazemini valued the Dodge Van at \$4,500.00.

Mr. McLaws repaired all the vehicles in Mr. Kazemini's shop. Mr. McLaws testified that all of the tools he used to repair vehicles for Mr. Kazemini in fact belonged to Mr. Kazemini. Mr. Kazemini acknowledged that he kept tools in his shop including: (1) socket wrenches; (2) screw drivers; (3) a grinder, and; (4) a cutting torch. However, Mr. Kazemini maintained that Mr. McLaws used his own tools for the repair work.

Mr. Kazemini conceded that he supplied all parts, materials, and paint needed for each repair job performed by Mr. McLaws. The parties concurred that when a repair job came in, Mr. Kazemini consulted Mr. McLaws on the needed repairs then Mr. Kazemini negotiated the bid with the customer. Mr. Kazemini retained control over the bid process with prospective customers.

Mr. Kazemini confirmed that he monitored Mr. McLaws' progress on specific jobs. Mr. Kazemini also acknowledged that he became upset when dissatisfied with Mr. McLaws' progress or quality on a job.

The preponderance of the more credible evidence in this case verified that an employment relationship existed between Mr. Kazemini and Mr. McLaws. Mr. Kazemini advertised for what all intents and purposes purported to be a full or part-time position of employment as an automotive painter and frame technician. Mr. Kazemini also advertised that he would pay wages for the services of the automotive painter and frame technician.¹ Mr. Kazemini engaged the services of Mr. McLaws based on his response to the advertisement of employment.

¹ Although Mr. Kazemini actually paid Mr. McLaws a negotiated piece rate for each job, Mr. Kazemini still characterized the pay as wages in his advertisement.

As of September 2000 Mr. McLaws began to work full time 9:00 a.m. to 6:00 p.m. for Mr. Kazemini. Mr. Kazemini challenged Mr. McLaws' statement concerning the hours he worked. However, Mr. Kazemini admitted that Mr. McLaws began to work full time for Mr. Kazemini so that Mr. McLaws could afford to purchase a 1999 Dodge Caravan for his wife.

Mr. McLaws repaired all of the vehicles at Mr. Kazemini's shop. The preponderance of the evidence demonstrated that Mr. Kazemini supplied the tools, parts, and supplies used by Mr. McLaws to repair vehicles for Mr. Kazemini.

The preponderance of the evidence in this case disclosed that Mr. Kazemini retained control over the manner and method of the work performed by Mr. McLaws. Mr. Kazemini monitored the quality and progress of the jobs performed by Mr. McLaws. In sum, the preponderance of the evidence in this case established an employer/employee relationship between Mr. McLaws and Mr. Kazemini.

B. Accident Arising Out of and in the Course of Employment.

On January 30, 2001 Mr. McLaws testified that he worked on a 1992 Isuzu Trooper for Mr. Kazemini in his shop. Mr. McLaws stated that as he yanked on the Isuzu's rear fender it cut through the palm and little finger on his left hand.

Mr. Kazemini maintained that Mr. McLaws completed his last jobs for Mr. Kazemini in Mid-December 2000. Mr. Kazemini recalled that in January 2001 he became dissatisfied with Mr. McLaws' work and terminated the relationship. Mr. Kazemini alleged that he told Mr. McLaws to finish work on his neighbor's 1972 Chevrolet pickup truck and clear out. Mr. Kazemini claimed that after December 2000 Mr. McLaws did his own jobs exclusively including his neighbor's 1972 Chevrolet pickup truck and the 1992 Isuzu Trooper.

Mr. Kazemini alleged that he sold the 1992 Isuzu Trooper to Mr. McLaws in January 2001. Therefore, according to Mr. Kazemini, any work performed by Mr. McLaws on the 1992 Isuzu Trooper constituted work on Mr. McLaws' own vehicle for his own benefit.

The purchase, ownership, and resale of the 1992 Isuzu Trooper had a convoluted history. The parties agreed that when Mr. McLaws first began work for Mr. Kazemini he negotiated for the purchase of a 1999 Dodge Caravan from Mr. Kazemini in the amount of \$4,500.00. The parties concurred that as Mr. McLaws lacked the finances to purchase the 1999 Caravan, Mr. McLaws would exchange labor for the vehicle.

The parties further agreed that in December 2000 Mr. McLaws performed \$3,500.00² in work for Mr. Kazemini to be applied against the purchase of the 1999 Caravan. Mr. McLaws never received the 1999 Caravan from Mr. Kazemini. Rather, Mr. Kazemini confirmed that after January 2001 he took the 1999 Caravan back to auction and traded it for another vehicle.

On December 21, 2000 Mr. Kazemini purchased the 1992 Isuzu Trooper for his customer Jeremy Kingston. [see: Exhibit "14"]. Mr. Kazemini took delivery of the 1992 Trooper on December 29, 2000. [id.]. Mr. Kazemini offered the 1992 Trooper to Mr. Kingston for \$2,750.00. Mr. McLaws stated that agreed to fix the 1992 Trooper for Mr. Kazemini for \$1,000.00.

Mr. McLaws testified that he also offered to purchase the 1992 Trooper himself from Mr. Kazemini for \$2,500.00 plus \$1,000.00 in parts as an offset against the \$3,500.00 owed Mr. McLaws by Mr. Kazemini. However, Mr. McLaws claimed his wife still wanted the 1999 Caravan. Ultimately, Mr. Kazemini sold Mr. Kingston a door off the 1992 Trooper, but not the vehicle itself.

On January 30, 2001 Mr. McLaws testified that he commenced work on the 1992 Trooper and injured his left hand. Mr. McLaws stated that he eventually purchased the 1992 Trooper on February 28, 2001 in exchange for the \$3,500.00 owed him by Mr. Kazemini. When confronted with the bill of sale, Mr. Kazemini conceded that the actual sale of the 1992 Trooper to Mr. McLaws occurred on February 28, 2001. [Exhibit "17"]. Prior to February 28, 2001 Mr. Kazemini remained the owner of the 1992 Trooper. [see: Exhibits "14" and "17"]. Mr. Kazemini acknowledged that he applied the \$3,500.00 he owed Mr. McLaws to the purchase of the 1992 Trooper.

The undisputed evidence in this case verified that on January 30, 2001 Mr. McLaws commenced work on the 1992 Trooper owned by Mr. Kazemini. The preponderance of the more credible evidence in this case established that Mr. McLaws agreed to fix the 1992 Trooper for Mr. Kazemini for \$1,000.00. Although Mr. McLaws eventually purchased the 1992 Trooper, the purchase occurred on February 28, 2001 almost one month after the industrial accident. In the end Mr. Kazemini received \$3,500.00 in value for the 1992 Trooper, which he sold to Mr. McLaws for the work Mr. McLaws performed as an employee. Accordingly, the preponderance of the evidence in this case revealed that Mr. McLaws injured his left hand on January 30, 2001, which injury arose out of an in the course of his continued employment with Mr. Kazemini.

² Mr. McLaws repaired a 1997 red Honda Civic and 1999 black Honda Civic for Mr. Kazemini. [Exhibit "4"].

C. Nature of the Industrial Injury.

The medical evidence in this case stood undisputed as to the injuries suffered by Mr. McLaws on January 30, 2001. On February 1, 2001 Dr. Mark Greene M.D. diagnosed Mr. McLaws with a:

Laceration of left small finger with laceration of the flexor profundis superficialis and ulnar digital nerve. [Exhibit "J-1" at 37].

Dr. Greene operated on Mr. McLaws and performed a: "Repair of flexor profundis superficialis and ulnar digital nerve." [id.]. On May 7, 2001, after a lengthy course of treatment, Dr. Greene provided a further diagnosis of Mr. McLaws' left hand:

Extension contracture of the left small finger...with rupture of flexor profundis tendon. [id. at 1].

Dr. Greene performed a second operation on Mr. McLaws which involved a: "Tenolysis and pulley reconstruction." [id.]. Mr. McLaws continued to have problems with his left hand, and on May 17, 2001 Dr. Greene opined that Mr. McLaws still had a: "Tendon rupture of the left small finger." [id. at 3]. Mr. McLaws underwent a third operation that involved a: "Tenotomy and first-stage tendon graft." [id.]. On July 25, 2001 Mr. McLaws endured yet a fourth and final operation that consisted of: "Removal of tendon spacer and second stage tendon grafting." [id. at 95].

D. Compensation Rate.

At the time of the industrial accident in issue, Mr. McLaws was married with three dependent children. As noted in Section IV. A. Mr. Kazemini paid Mr. McLaws a piece rate which the parties negotiated separately for each vehicle repaired by Mr. McLaws. Mr. Kazemini paid Mr. McLaws as he finished each job. The 1992 Trooper constituted only vehicle Mr. McLaws worked on for negotiated compensation in the month of January 2001. [see: Section IV. B.]. Mr. Kazemini agreed to pay Mr. McLaws \$1,000.00 for repair of the 1992 Trooper. [id.]. However, the industrial accident prevented Mr. McLaws from completing work on the 1992 Trooper.

Because Mr. McLaws never completed work on, nor received pay for, the 1992 Trooper, the only useful method for calculating a wage rate in the week of Mr. McLaws' industrial injury consisted of the applicable minimum wage. Consequently, Mr. McLaws' temporary total disability benefit rate equaled \$157.00 per week. [$\$5.15/\text{hour (minimum wage)} \times 40 \text{ hours per week} = \$206.00 \text{ per week} \times 2/3 = \$137.33/\text{week} + \$20.00/\text{week dependants' allowance} = \$157.00/\text{week (TTD rate rounded to nearest whole dollar)}$].

E. Temporary Total Disability Compensation.

No dispute existed that Mr. McLaws remained unemployed from January 31, 2001, through the date of hearing on November 5, 2001. The medical evidence also stood unchallenged concerning the period of time Mr. McLaws remained medically unstable and unable to work. On July 25, 2001 Mr. McLaws underwent the last surgery for his left hand injury sustained in the industrial accident. On November 11, 2001 Dr. Greene declared that Mr. McLaws remained medically unstable. Accordingly, Mr. Kazemini owed Mr. McLaws temporary total disability compensation from January 31, 2001, through the date of hearing on November 5, 2001, and ongoing at the rate of \$157.00 per week until he reaches medical stability. From January 1, 2001, through November 5, 2001 Mr. Kazemini owed Mr. McLaws **\$6,258.02 in temporary total disability compensation**. [39.86 weeks (from January 31, 2001, through November 5, 2001) x \$157.00/week (TTD rate) = \$6,258.02].

F. Permanent Partial Disability Compensation.

The last medical evidence in this case stated that as of the date of hearing Mr. McLaws had not reached medical stability. Therefore, the issue of an impairment rating, and an award of permanent partial disability benefits, remained unripe at the time of hearing.

G. Liability of the Uninsured Employers Fund.

Mr. Kazemini admittedly had no workers' compensation insurance on January 30, 2001. However, no evidence existed that Mr. Kazemini lacked the funds to pay the workers' compensation benefits owed to Mr. McLaws. Consequently, no evidence existed that UEF should be liable for the workers' compensation benefits owed to Mr. McLaws by Mr. Kazemini.

V. CONCLUSIONS OF LAW

A. Existence of an Employment Relationship in General.

Utah Code § 34A-2-401(1) provides in relevant part that:

Each employee described in Section 34A-2-104 who is injured...by accident arising out of and in the course of the employee's employment...shall be paid compensation for loss sustained on account of the injury....

The Utah Supreme Court held that:

[i]t will almost always follow that if the evidence shows that an “employer” retains the right to control the work of the claimant, the claimant is the employer’s employee for workmen’s compensation purposes. (citations omitted). Certainly, the concept of right to control is not to be rigidly and narrowly defined. Rather it should be defined to give full effect to the remedial purposes of the Workmen’s Compensation Act. (citations omitted).

Many factors have been applied in determining the right to control. Among those factors are actual supervision of the worker, the extent of the supervision, the method of payment, the furnishing of equipment for the worker, and the right to terminate the worker. (citations omitted). Although these factors are not inclusive, they are relevant in many cases.... Bennett v. Industrial Commission of Utah, 726 P. 2d 427, 429-430 (Utah 1986).

Mr. Kazemini retained control over the manner and method of the work performed by Mr. McLaws. Mr. Kazemini monitored the quality and progress of the jobs performed by Mr. McLaws.

Other indicia of an employment relationship between Mr. McLaws and Mr. Kazemini included the manner in which Mr. Kazemini retained the services of Mr. McLaws. Mr. Kazemini advertised for what purported to be a full or part-time position of employment as an automotive painter and frame technician. Mr. Kazemini also advertised that he would pay wages for the services of the automotive painter and frame technician. Mr. Kazemini engaged the services of Mr. McLaws based on his response to the advertisement of employment.

As of September 2000 Mr. McLaws began to work full time 9:00 a.m. to 6:00 p.m. for Mr. Kazemini. Mr. McLaws repaired all of the vehicles at Mr. Kazemini’s shop. Additionally, Mr. Kazemini supplied the tools, parts, and supplies used by Mr. McLaws to repair vehicles for Mr. Kazemini. In sum, the facts of this case demonstrated that an employer/employee relationship existed between Mr. McLaws and Mr. Kazemini.

B. Accident Arising Out of and in the Course of Employment.

On January 30, 2001 Mr. McLaws worked on a 1992 Isuzu Trooper owned by Mr. Kazemini in his shop. As Mr. McLaws yanked on the Isuzu’s rear fender it cut through the palm and little finger on his left hand.

Mr. McLaws agreed to fix the 1992 Trooper owned by Mr. Kazemini for \$1,000.00. Mr. McLaws injured his left hand on January 30, 2001, which injury arose out of an in the course of his employment with Mr. Kazemini.

C. Nature of the Industrial Injury.

The injuries suffered by Mr. McLaws on January 30, 2001 consisted of a lacerated and ruptured tendon in the little finger of his left hand. Mr. McLaws injuries from the January 30, 2001 industrial accident resulted in four surgeries to repair the damage.

D. Compensation Rate.

At the time of the industrial accident in issue, Mr. McLaws was married with three dependent children. Mr. Kazemini paid Mr. McLaws a piece rate which the parties negotiated separately for each vehicle repaired by Mr. McLaws. Mr. Kazemini paid Mr. McLaws as he finished each job. The 1992 Trooper constituted only vehicle Mr. McLaws worked on for negotiated compensation in the month of January 2001. Mr. Kazemini agreed to pay Mr. McLaws \$1,000.00 for repair of the 1992 Trooper. However, the industrial accident prevented Mr. McLaws from completing work on the 1992 Trooper.

Because Mr. McLaws never completed work on, nor received pay for, the 1992 Trooper, the only useful method for calculating a wage rate in the week of Mr. McLaws' industrial injury consisted of the applicable minimum wage.³ Consequently, Mr. McLaws' temporary total disability benefit rate equaled \$157.00 per week. [\$5.15/hour (minimum wage) x 40 hours per week = \$206.00 per week x 2/3 = \$137.33/week + \$20.00/week dependants' allowance) = \$157.00/week (TTD rate rounded to nearest whole dollar)].

E. Temporary Total Disability Compensation.

Mr. McLaws remained unemployed from January 31, 2001, through the date of hearing on November 5, 2001. As of November 11, 2001 Mr. McLaws remained medically unstable. Accordingly, Mr. Kazemini owed Mr. McLaws temporary total disability compensation from January 31, 2001, through the date of hearing on November 5, 2001, and ongoing at the rate of \$157.00 per week until he reaches medical stability. From January 1, 2001, through November 5, 2001 Mr. Kazemini owed Mr. McLaws **\$6,258.02 in temporary total disability compensation.** [39.86 weeks (from January 31, 2001, through November 5, 2001) x \$157.00/week (TTD rate) = \$6,258.02].

³ Utah Code § 34-40-103 requires that employers pay employees the established minimum wage.

F. Permanent Partial Disability Compensation.

As of the date of hearing Mr. McLaws had not reached medical stability. Therefore, the issue of an impairment rating and an award of permanent partial disability benefits remained unripe at the time of hearing.

G. Liability of the Uninsured Employers Fund.

Utah Code §34A-2-704 (1)(a) states in relevant part that:

There is created an Uninsured Employers' Fund. The Uninsured Employers' Fund has the purpose of assisting in the payment of workers' compensation benefits to any person entitled to the benefits, if:

- (i) That person's employer:
 - (A) is individually, jointly, or severally liable to pay the benefits;
and
 - (B) (I) becomes or is insolvent;
(II) Appoints or has appointed a receiver; or
(III) otherwise does not have sufficient funds, insurance,
sureties, or other security to cover workers' compensation
liabilities;

Mr. Kazemini admittedly had no workers' compensation insurance on January 30, 2001. However, no evidence existed that Mr. Kazemini lacked the funds to pay the workers' compensation benefits owed to Mr. McLaws. Consequently, no evidence existed that UEF should be liable for the workers' compensation benefits owed to Mr. McLaws by Mr. Kazemini.

VI. ORDER

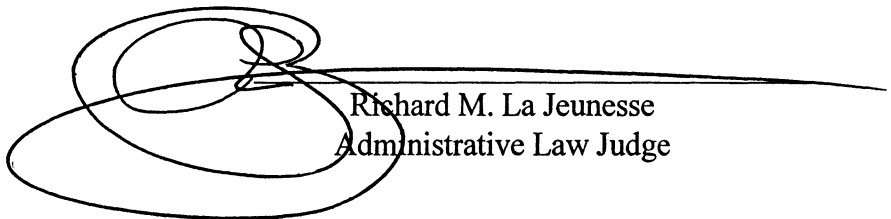
IT IS THEREFORE ORDERED that Hedayat Kazemini dba Kazz's Kars shall pay Wallace Scott McLaws temporary total disability compensation from January 31, 2001, until November 5, 2001, at the rate of \$157.00 per week for 39.86 weeks, for a total of \$6,258.02, under Utah Code §34A-2-410. That amount is accrued, due and payable in a lump sum, plus interest at eight percent (8%) per annum, under Utah Code §34A-2-420 (3) and Utah Administrative Code, Rule 612-1-5. Thereafter, Hedayat Kazemini dba Kazz's Kars shall pay Wallace Scott McLaws temporary total disability compensation at the rate of \$157.00 per week until he reaches medical stability.

IT IS FURTHER ORDERED that Wallace Scott McLaws claim for permanent partial disability compensation remained unripe at the time of hearing. Therefore, an order with respect to permanent partial disability compensation shall be deferred.

IT IS FURTHER ORDERED that Hedayat Kazemini dba Kazz's Kars shall pay all medical expenses reasonably related to Wallace Scott McLaws industrial accident of January 30, 2001, according to Utah Code § 34A-2-418, and the medical and surgical fee schedule of the Utah Labor Commission, and any travel allowances under Utah Administrative Code, Rule 612-2-20, plus interest at eight percent (8%) per annum, under Utah Code § 34A-2-420 (3) and Utah Administrative Code, Rule 612-2-13.

IT IS FURTHER ORDERED that Wallace Scott McLaws claim against the Uninsured Employers Fund is dismissed.

Dated this 30th day of July 2002,



Richard M. La Jeunesse
Administrative Law Judge

NOTICE OF APPEAL RIGHTS

A party aggrieved by the decision may file a Motion For Review with the Adjudication Division of the Utah Labor Commission. The Motion for Review must set forth the specific basis for review and must be received by the Commission within 30 days from the date this decision is signed. Other parties may then submit their Responses to the Motion for Review within 20 days of the Motion for Review.

Any party may request that the Appeals Board of the Utah Labor Commission conduct the foregoing review. Such request must be included in the party's Motion for Review or its Response. If none of the parties specifically requests review by the Appeals Board, the review will be conducted by the Utah Labor Commissioner.

CERTIFICATE OF MAILING

I, Alicia Zavala-Lopez, certify that I did mail by prepaid first class postage, except as noted below, a copy of the Findings of Fact, Conclusions of Law, And Order in the case of McLaws v. Hedayat Kazemini dba Kazz's Kars et al, Case No. 2001340 on the 30 day of July 2002, to the following:

WALLACE SCOTT MCLAWS
5795 SOUTHSIDE DRIVE
RAPID CITY, SD 57703

HEDAYAT KAZEMINI
DBA KAZZ'S KARS
3994 S 300 W NO 39
SALT LAKE CITY UT 84107

DAVID HODGSON ESQ
954 E 7145 S STE B205
MIDVALE UT 84047

SHERRIE HAYASHI ESQ
PO BOX 146600
SALT LAKE CITY UT 84114-6600


Alicia Zavala-Lopez

**APPEALS BOARD
UTAH LABOR COMMISSION**

In the matter of:

**HEDAYAT KAZEMINI dba
KAZZ'S KARS**

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**ORDER DENYING
MOTION FOR REVIEW**

Case No. 10141646779

WALLACE SCOTT MCLAWS,

Applicant,

v.

**HEDAYAT KAZEMINI dba KAZZ'S
KARS (uninsured) and UNINSURED
EMPLOYERS' FUND,**

Defendants.

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**ORDER DENYING KAZEMINI'S
MOTION FOR REVIEW**

**ORDER GRANTING MCLAWS'
MOTION FOR REVIEW**

Case No. 01-0340

The two above-titled proceedings arise from the same facts and present common issues of law. The Appeals Board of the Utah Labor Commission therefore consolidates the two matters for the purpose of addressing the parties' motions for review.

In Case No. 01-0340, Hedayat Kazemini asks the Appeals Board to review the Administrative Law Judge's determination that Wallace Scott McLaws was Mr. Kazemini's employee and, as such, is entitled to benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.). For his part, Mr. McLaws asks the Appeals Board to review his disability compensation amount.

In Case No. 10141646779, Mr. Kazemini asks the Appeals Board to review the ALJ's assessment of penalty against Mr. Kazemini pursuant to §34A-2-211(2) of the Utah Workers' Compensation Act.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §§63-46b-12, 34A-2-211(4)(c) and 34A-2-801(3), and Utah Admin. Code R602-2-1.M.

ORDER ON MOTIONS FOR REVIEW
In Re KAZEMINI (Case No. 10141646779)
MCLAWS v. KAZEMINI/UEF (Case No. 01-340)
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BACKGROUND AND ISSUES PRESENTED

On January 30, 2001, McLaws accidentally injured his left hand while doing auto body repair work on an Isuzu Trooper at Kazemini's business premises. McLaws claimed workers' compensation benefits from Kazemini, who denied liability on the grounds McLaws was not his employee. McLaws then requested a hearing before the Labor Commission's Adjudication Division.

In the meantime, the Commission's Industrial Accidents Division investigated Kazemini's business and concluded he was an employer subject to the insurance requirements of the Act. Because Kazemini had failed to obtain such insurance, the Division assessed a \$1,000 penalty against him. He challenged the penalty assessment by requesting a hearing before the Adjudication Division.

The two foregoing matters were consolidated for evidentiary hearing before Judge La Jeunesse. Judge La Jeunesse concluded that Kazemini was McLaws' employer and was, therefore, liable under the Workers' Compensation Act to pay McLaws' medical expenses and disability compensation. Furthermore, because Kazemini had failed to procure workers' compensation insurance, Judge La Jeunesse also upheld the penalty assessed against Kazemini.

Kazemini now asks the Appeals Board to review Judge LaJeunesse's determination that he was McLaws' employer. McLaws asks the Appeals Board to review Judge La Jeunesse's determination of the amount of disability compensation to be paid to McLaws.

FINDINGS OF FACT

As a preliminary note, the Appeals Board recognizes that McLaws and Kazemini have substantially different versions of the conditions of McLaws' work for Kazemini. Based on the record, including the transcript of the evidentiary hearing, the Appeals Board generally agrees with Judge La Jeunesse's appraisal of the evidence, except on the issue of McLaws' earnings while employed by Kazemini. The Commission therefore affirms Judge La Jeunesse's findings of fact as restated and amended below.

For 20 years, Kazemini has worked as a shop instructor at Davis Applied Technology College. He also owns "Kazz's Kars," which he operates on evenings and weekends. Kazemini's usual practice is to purchase wrecked automobiles at auction, repair them at his used car lot, then resell them.

During July 2000, Kazemini placed a "help wanted" advertisement in the Salt Lake Tribune, as follows: "AUTO/PAINTER FRAME TECH top wages. Full or part time. 916-1621" McLaws responded to the ad, met with Kazemini and, on about August 1, 2000, began repairing cars for Kazemini. At first, McLaws worked on a part-time basis for Kazemini. Later, the work became full-time.

ORDER ON MOTIONS FOR REVIEW

In Re KAZEMINI (Case No. 10141646779)

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The testimony establishes that, at least during the period relevant to these proceedings, Kazemini operated Kazz's Kars without any hard and fast rules or procedures. In general, Kazemini acquired wrecked cars from a local automobile auction. These vehicles would be brought to Kazz's Kars, where Kazemini maintained a repair shop. He would consult with McLaws regarding the amount of time it would take McLaws to repair the vehicle. After McLaws and Kazemini reached an agreement, Kazemini would obtain parts, materials and supplies. McLaws would then begin the necessary work.

McLaws had no business or professional license. He had no place of business of his own, nor did he advertise or otherwise hold himself out as available to do freelance auto body repairs. With the exception of work performed on a neighbor's pickup truck, which was done with Kazemini's consent, all McLaws' work was performed on vehicles owned by Kazemini or his customers.

Kazemini maintained the licenses and satisfied the other requirements necessary to conduct business as a used car dealer. He provided the business location for Kazz's Kars and paid the utility bills. He was not personally skilled in auto body repair techniques and relied on McLaws' judgment in that area. However, he purchased all supplies, parts and materials necessary for McLaws' work. Because of his full-time job as a teacher, Kazemini was not present at Kazz's Kars during week days. He did not require McLaws to conform to any particular work schedule, but did direct the order of McLaws' work. At least in one occasion, involving repair of a Mercedes automobile, Kazemini exercised authority to increase the amount of a repaid bid McLaws had given the car owner.

In some instances, customers were dissatisfied with the auto body repair work that had been done on vehicles purchased from Kazz's Kars. In such cases, the cars would be returned for further repair. Kazemini accepted responsibility for these repairs, but did not in turn hold McLaws responsible.

As already noted, McLaws allowed Kazemini to withhold some payments otherwise due so that McLaws would have a credit that could be used to purchase a vehicle from Kazemini. Ultimately, this credit grew to \$3,500. McLaws wanted to purchase a van, but could not afford the purchase price, even with the \$3,500 credit. During most of January, 2001, McLaws worked on a personal project of restoring a neighbor's pickup. This project was outside his work duties for Kazemini, but nevertheless was performed at Kazz's Kars with Kazemini's consent. By the end of January 2001, McLaws had completed this personal job and returned to his work for Kazemini. It was at this time that McLaws began work on the Isuzu Trooper and suffered the injury giving rise to this claim.

Kazemini purchased the Trooper in question with the intention of selling it to one of his established customers. As with most of Mr. Kazemini's stock in trade, the Trooper had been in a

ORDER ON MOTIONS FOR REVIEW
In Re KAZEMINI (Case No. 10141646779)
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wreck and required substantial repair. In the process of repair, McLaws severely cut his left hand on a sharp piece of metal. After the accident, Kazemini sold the Trooper to McLaws.

For the most part, Kazemini paid McLaws in cash, with no taxes of any sort withheld. At the end of the 2000 tax year, Kazemini provided neither a W-2 nor a 1099 tax form to McLaws. In addition to cash payments from Kazemini, McLaws allowed Kazemini to hold approximately \$3,500 to be applied as a credit against the purchase price of a van McLaws hoped to purchase from Kazemini.

Due to Kazemini's lax business practices and failure to maintain any credible information regarding McLaws' earnings, it is necessary to turn to other evidence to establish McLaws' average weekly wage. The Appeals Board concludes that McLaws' record of earnings, set forth in exhibits 3 and 4 of the record, are the most accurate and persuasive representation of McLaws' earnings. From this evidence, it appears that McLaws earned \$16,549.41 during the 22-week period from August through December, 2000, or \$752.25 per week. The Appeals Board finds that the foregoing wage information is fairly representative of McLaws' average weekly wage. Consequently, with credit for a spouse and three dependent children, McLaws' weekly compensation rate for temporary total disability is \$522 per week.

DISCUSSION AND CONCLUSION OF LAW

The fundamental issue before the Appeals Board is whether McLaws was Kazemini's employee. As relevant to that issue, §34A-2-104(1)(b) of the Utah Workers' Compensation Act defines an employee as:

each person in the service of any employer . . . who employs one or more workers or operatives regularly in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, ... but not including any person whose employment is casual and not in the usual course of trade, business, or occupation of the employee's employer.

It is well established that when an employer has retained the right to control the work of a workers' compensation claimant, the claimant is the employer's employee for workers' compensation purposes. Bennett v. Industrial Commission, 726 P.2d 427, 429-30 (Utah 1986). Among the factors commonly used to determine whether an employer has retained the right of control are: 1) the right to direct the performance of the work; 2) the right to hire and fire; 3) responsibility for payment of wages; and 4) providing necessary equipment. But these factors are not inclusive and no one factor is completely controlling. Johnson Brothers Construction v. Labor Commission, 967 P.2d 1258, 1260 (Utah App. 1998). Ultimately, it is the **right** to control that is determinative. In Averett v. Grange, 909 P.2d 246, 249 (Utah 1995), the Utah Supreme Court stated:

ORDER ON MOTIONS FOR REVIEW

In Re KAZEMINI (Case No. 10141646779)

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In workers' compensation cases, this court has consistently held that whether an employer-employee relationship exists depends upon the employer's right to control the employee. . . . "It is not the *actual* exercise of control that determines whether an employer-employee relationship exists; it is the right to control that is determinative." (citations omitted.)

It is difficult to apply the foregoing standards to the facts of this case because of the widely divergent versions of fact presented by the parties, and Kazemini's ad hoc approach to running his business. With regard to the ultimate question of Kazemini's right to control McLaws, the Appeals Board notes that McLaws was an experienced auto body repairman who required little actual direction in the details of his work. However, Kazemini did exercise control by directing the order of McLaws' work, as well as overriding McLaws' repair bids as he saw fit. On balance, the record indicates that Kazemini had the right to control McLaws' work, even though that right was seldom exercised.

Other factors also convince the Appeals Board that McLaws was Kazemini's employee. McLaws was not established in business in his own right. He did not hold himself out as available for work, except through Kazz's Kars. McLaws had no risk of loss and was not required to make good at his own time and expense any defects in his work. Thus, the economic reality of their relationship indicates that McLaws was Kazemini's employee.

As to the events surrounding the accident of January 30, 2001, the Appeals Board agrees with Judge La Jeunesse that the preponderance of evidence establishes that McLaws was working for Kazemini on the Trooper while it was still owned by Kazemini, prior to any agreement to transfer it to McLaws. Only after the accident did the parties agree to exchange the Trooper in settlement of Kazemini's debt to McLaws.

In summary, the Appeals Board concludes that McLaws was Kazemini's employee during the period in question. The Appeals Board further concludes that McLaws injured his hand in a work-related accident at Kazz's Kars on January 30, 2001. Kazemini is therefore liable for benefits due McLaws under the Workers' Compensation Act.

With respect to the penalty imposed against Kazemini pursuant to §34A-2-211(2) of the Act, the Appeals Board has already determined that Kazemini had at least one employee, McLaws, during the period in question. Kazemini has admitted that he did not have workers' compensation insurance during that period. Consequently, the Appeals Board affirms the \$1,000 penalty imposed Kazemini, which is the minimum penalty provided by Act.

Finally, the Appeals Board turns to McLaws' argument that he is entitled to a larger weekly compensation amount than was allowed in Judge La Jeunesse's order. In most cases, where employers have properly recorded employee wages, it is a simple task to determine the amount of

ORDER ON MOTIONS FOR REVIEW
In Re KAZEMINI (Case No. 10141646779)
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compensation due an injured worker. However, §34A-2-409 recognizes that such wage information is not always available and, for that reason, authorizes use of other methods to determine an injured worker's disability compensation rate. In this case, the Appeals Board has concluded that McLaws' total earnings, averaged over the period of his active employment by Kazemini, is the best and fairest indicator of McLaws' average weekly wage. On that basis, McLaws is entitled to temporary total disability compensation of \$522 per week.

ORDER


The Appeals Board affirms Judge La Jeunesse's decision in Case No. 10141646779.


The Appeals Board also affirms Judge La Jeunesse's decision in Case No. 01-0340, but hereby modifies paragraph one of Judge La Jeunesse's Order, at page 10 of his decision, as follows:

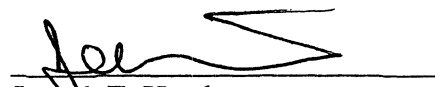
It is ordered that Hedayat Kazemini shall pay Wallace Scott McLaws temporary total disability compensation at the rate of \$522 per week, plus interest at 8% per annum on any installment not paid when due, such payments to commence January 31, 2001, and to continue thereafter until Mr. McLaws reaches medical stability.

All other parts of Judge La Jeunesse's Order remain in effect. It is so ordered.

Dated this 30th day of June, 2003.


Colleen S. Colton, Chair


Patricia S. Drawe


Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals

ORDER ON MOTIONS FOR REVIEW

In Re KAZEMINI (Case No. 10141646779)

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by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

CERTIFICATE OF MAILING

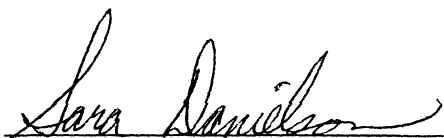
I certify that a copy of the foregoing Order Denying Motion For Review in the matter of Hadayat Kazemini dba Kazz's Kars, Case No. 10141646779, and Denying/Granting Motions For Review in the matter of W. Scott McLaws v. Kazemini, Case No. 01-0340, was mailed first class postage prepaid this 30th day of June, 2003, to the following:

HEDAYAT KAZEMINI
DBA KAZZ'S KARS
3994 S 300 W #39
SALT LAKE CITY UT 84107

DAVID HODGSON
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Sara Danielson
Support Specialist
Utah Labor Commission