

1993

Joanna Mitchell, individually and Joanna Mitchell,
personal representative of the estate of Jerry
Mitchell, deceased v. Estate of Jerry L. Rice and
John Does I through V : Brief of Appellee

Utah Court of Appeals

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DOCKET NO. 930 639 CA

IN THE UTAH COURT OF APPEALS

JOANNA MITCHELL, individually
and JOANNA MITCHELL, personal
representative of the estate
of Jerry Mitchell, deceased,

Plaintiff/Appellant,

vs.

Estate of JERRY L. RICE and
JOHN DOES I through V,

Defendants/Appellees.

636
Court of Appeals No. 930296

District Court No 910902469

Priority No. 15

BRIEF OF APPELLEE

Appeal from the Second Judicial District Court
Weber County, State of Utah
The Honorable Michael J. Glasmann, District Judge

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DEC 2

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BRIEF OF APPELLEE

STATEMENT OF JURISDICTION

The appellee adopts the appellant's Statement of
Jurisdiction.

STATEMENT OF THE ISSUES

The issues on appeal are whether as a matter of law,
Jerry Rice was an employee of Jerry Mitchell, or whether both
Mr. Rice and Mr. Mitchell were co-employees of Logistics Express,
and therefore whether the exclusive remedy provision of the Utah
Workers Compensation Act bars any claim by Mr. Mitchell's estate
against Mr. Rice's estate.

The appellee does not contest the appellant's statement of the applicable standards of review, but notes for the record that this case involves the trial court's granting of a motion for summary judgment in a case that was scheduled for a bench trial.

DETERMINATIVE STATUTES AND CONSTITUTIONAL PROVISIONS

Interstate Commerce Act, 49 U.S.C. section 11107 (1982)

The full text of the above statute is fully set out as Addendum "1" to Appellee's brief.

STATEMENT OF THE CASE

Nature of the Case

The appellee adopts the appellant's Statement of the Nature of the Case.

Course of Proceedings

The appellee does not contest the appellant's Statement of the Course of Proceedings, yet it adds that Judge Glasmann's Order stated that summary judgment was granted on the basis of the memoranda filed. The appellee's memoranda contained an alternative ground for summary judgment, that Mr. Mitchell and Mr. Rice were co-employees for Logistics Express d/b/a Logex, and that therefore the exclusive remedy provision of the Utah Workers Compensation Act, Utah Code Annotated Section 35-1-60 barred the plaintiff's Complaint. At oral argument Judge Glasmann did focus

on the issue discussed in the appellant's brief and orally stated it was the basis for his opinion.

Disposition at Trial Court

The appellee adopts the appellant's Statement of the disposition at trial court.

STATEMENT OF FACTS

On September 19, 1989, Jerry L. Rice and Jerry H. Mitchell both died as a result of a one-vehicle rollover accident. (R. 135) Mr. Mitchell's widow, Joanna Mitchell, filed suit against the estate of Jerry L. Rice, alleging that Mr. Rice was negligently operating the vehicle, (a tractor-trailer), at the time of the accident. (R. 1)

The tractor Jerry Rice was operating was owned by Jerry H. Mitchell. (R. 182) Mr. Mitchell entered into an independent contractor equipment lease agreement with Logistics Express, Inc., dba Logex, on July 9, 1987. (R. 240) (See Addendum "2") The agreement states in the fourth paragraph of the first section of the agreement entitled "Witnesseth," that owner (Jerry H. Mitchell) leases said equipment (tractor) with driver to Logex. The fifth paragraph of that section states that owner (Jerry H. Mitchell) will furnish Logex with a tractor and driver to operate the same. (R. 239)

The second sentence of paragraph 4 of the "terms and conditions" section of the agreement states as follows:

Owner (Jerry H. Mitchell) warrants and agrees that it (Mitchell) shall have full and direct control and supervision over the operation of the motor vehicle(s) provided hereunder, as well as the performance of all necessary transportation services provided by it in a manner consistent with the dispatch of each shipment, whether Owner and/or Owner's (Mitchell's) employee(s) actually operates the equipment and performs the service provided for herein. (R. 239)

Paragraph 4 of this section further states as follows:

Owner (Jerry H. Mitchell) may determine the routes of travel, points of stop for rest and service to its equipment, and shall, in every respect, direct and control its (Mitchell's) employees, including their hire, discharge, training, wages, hours, and working conditions. (R. 239)

Paragraph 5 of the same section of the lease agreement states in part as follows:

Owner (Jerry H. Mitchell) agrees and warrants that Owner as well as any employee driver and helper, as the case may be, employed by Owner, are experienced, properly licensed and qualified to perform the transportation and operate the equipment relative thereto provided hereunder. Owner (Mitchell) further agrees and warrants that Owner and any and all employees employed by Owner to operate the vehicle(s) provided hereunder, are familiar with and shall operate the same in accordance with the safety regulations of the Interstate Commerce Commission and/or the U.S. Department of Transportation, as well as any such rule or regulation of any State or local government. Owner (Jerry H. Mitchell)

shall obtain and be solely responsible for Workers Compensation insurance for Owner and Owner's employee(s), if any. In addition, Owner shall pay all withholding and employment taxes due to Federal, State or local governments on account of Owner and/or Owner's employee(s) necessary for the performance of owner's obligations under the terms of this Agreement.

* * *

Owner (Jerry H. Mitchell) agrees and warrants to:

- a. Maintain in force at all times proper Workers Compensation insurance covering Owner, as well as any and all drivers, driver's helpers and laborers used by Owner in the performance of this Agreement, and shall provide to Logex, upon execution hereof, a certificate of such insurance;
- b. File all Federal, State and local income, withholding and employment and Federal Highway Use Tax form and returns, which it may be required by law to file, on account of itself and all drivers, driver's helpers and laborers used by it in the performance of this Agreement at the time and place which may be specified in the applicable Federal, State and local laws, and to pay when due all taxes and contribution(s) reported in such forms and returns; and
- c. Furnish Logex with such evidence of compliance with the foregoing as Logex shall reasonably require.

In order to assist Owner in obtaining the Workers Compensation insurance coverage provided for herein with respect to any employee(s) employed by Owner for the

performance of Owner's obligations under the terms of this Agreement, Logex has arranged for insurance in which Owner may voluntarily, at Owner's sole cost and expense, elect to participate by signing and returning the written form provided by Logex. (R. 239)

Paragraph 6 of the same section of the same document states as follows:

Owner (Jerry H. Mitchell) agrees to furnish and operate equipment which is properly licensed and equipped in a manner consistent with the requirements of each shipment transported hereunder and is maintained in good running condition. Owner agrees to maintain its equipment in proper working order, to furnish all necessary oil, fuel, tires, tubes, services and repairs for the operation of said equipment and to pay any and all other expenses incident to such operation provided by Owner.

Paragraph 10 of the lease agreement states as follows:

Owner (Jerry H. Mitchell) acknowledges and expressly agrees that it is Owner's responsibility to pay as part of Owner's own operating expense any and all income, business, applicable fuel costs, equipment use and basic license (plate) fees, driver's license costs, and other taxes, fees, costs or fines that may be assessed against the equipment, operation, or the conduct of its business. (R. 239)

Mr. Mitchell was required to have a Logex-approved driver accompany him on all "over 500 mile" Logex trips.

(R. 194) Mr. Mitchell had employed a number of people as co-drivers. (R. 194) During 1989, the year of the accident, he only used Jerry Rice to fill this role. (R. 195) Mr. Mitchell

paid Mr. Rice 13¢ per mile and either \$7.00 or \$8.00 per hour for delays. (R. 202)

When traveling in the Mitchell vehicle the only expense Mr. Rice paid was for his own food. (R. 218) Mr. Rice's workmen's compensation insurance was paid for through a deduction in Mitchell's reimbursement from Logex. (R. 204)

A document prepared by Logex and entitled Exhibit "C" signed by Jerry Rice and dated June 24, 1988, states that "the undersigned (Jerry L. Rice) being an employee driver of Jerry Mitchell" certifies that he does not consider himself to be an employee of Logex Express dba Logex. The document states that: "Rather, I (Jerry L. Rice) am and will continue to be an employee of Jerry Mitchell for any and all purposes in connection with the contract services provided by Logex." (R. 179) (See Addendum "3")

On August 18, 1988, Jerry L. Rice signed a document prepared by the Mitchells. It states he will work on a commission basis. It also states that he will pay all court costs and lawyer fees to obtain expense money back drawn against the truck in excess of receipts should I (Jerry L. Rice) quit or "I am terminated." (R. 180) (See Addendum "4")

The vehicle was being operated under Logex' ICC authority at the time of the incident. (R. 208) The tractor and

all its fuel, parts, and expenses were paid for by Mr. Mitchell.
(R. 203)

SUMMARY OF ARGUMENT

The appellees' first point is that Mr. Rice was Mr. Mitchell's employee. The Utah Supreme Court has ruled that the key element in making this determination is the alleged employer's right to control the other worker's action. The control in this situation was set by the lease agreement entered into by Mr. Mitchell and Logex. That agreement left Mitchell with control of the vehicle. He also had control over Jerry Rice's actions, including the right to hire and fire Mr. Rice. The Utah Supreme Court has adopted a four-pronged test. The four parts of this test, when applied to this situation all show that Rice was Mitchell's employee. All of the documents submitted to the trial court support this conclusion.

The appellant presented no disputed material facts to the trial court. All facts were conceded. In addition, the facts raised by the appellant did not go to the issue of the right of control. The only case cited by the appellant is distinguishable and does not involve a trucking situation.

The second point in the appellees' brief is an alternative argument that if Mr. Rice was not Mr. Mitchell's employee, then they were both employees of Logex. Logex held an

ICC permit. The Utah Supreme Court has stated that if the leasing company retains control over a vehicle it becomes the statutory employer of the driver. A number of cases from other jurisdictions have stated that federal law raises an irrebuttable presumption of control by the leaseholder and thus makes the leaseholder a statutory employer. As the statutory employer of both Mitchell and Rice, Logex had a duty to pay Workmen's Compensation benefits to both individuals. As such, the two individuals cannot sue each other.

ARGUMENT

POINT I

JERRY MITCHELL HAD THE RIGHT TO CONTROL JERRY RICE, THEREFORE JERRY RICE WAS MR. MITCHELL'S EMPLOYEE.

This litigation arises from a one-vehicle tractor-trailer rollover in which both occupants of the vehicle, Jerry H. Mitchell and Jerry L. Rice, were killed. The tractor was owned by Mr. Mitchell. It was leased under an independent contractor lease agreement to Logistics Express, Inc. dba Logex.

Mr. Mitchell's wife, Joanna, brought suit against the estate of Mr. Rice claiming that he was negligent in his operation of the tractor. The Estate of Jerry Rice claimed in its Fourth Defense that the plaintiff's claims against it were

barred by the exclusive remedy provisions of the Workers Compensation Act, Utah Code Annotated Section 35-1-60.

The Utah Supreme Court has decided a large number of cases in which the issue was whether a person or entity was an employee or an independent contractor. The key element in making this determination is the alleged employer's right to control the other worker's actions. A case involving this issue and dealing with a factual situation similar to the one at hand, is the Utah Supreme Court's decision in Kinne v. Industrial Comm'n, 609 P.2d 926 (Utah 1980). In Kinne, Charles Kinne entered into a leasehold agreement with Freeport Transport, Inc. Under the terms of the written agreement Kinne was to be responsible, *inter alia*, for the direction, control, salaries, and Workers Compensation coverage of his employees. Kinne hired Max L. Winn as a driver. Mr. Winn took Mr. Kinne's tractor home during an interruption in a trip from Colorado to California. He was in route from his home to Freeport's place of business in Clearfield, Utah, to pick up a trailer to complete the final portion of the trip when he was killed. Winn's widow filed a claim for Workers Compensation benefits. The administrative law judge ultimately found that Winn was both Freeport's and Kinne's employee.

On appeal it appears that Kinne argued that the lease agreement stated that he was an independent contractor and that Max Winn was not his employee. The Utah Supreme Court affirmed the Commission's order. In reaching its decision the court noted at 927 that the question of who is the employer under a truck lease "has been a recurring one before this court." The court looked at the express terms of Kinne's lease agreement with Freeport. It found that the agreement gave Kinne the "legal right of direction and control over Winn, even though such right may not have been exercised." Under the leasehold agreement Kinne had the right to hire and fire Winn, and was responsible to pay Winn's wages. Kinne also owned and leased the trailer used by Winn in the performance of his duties. The court cited these factors as supporting the Commission's findings and then stated at 928, that it is "the right of control that is the critical element underlying an employment relationship" in a truck leasehold case. The court held that there was no error in finding the employer/employee relationship between Kinne and Winn, and that Freeport Transport, Inc. was also Mr. Winn's statutory employer. The court noted that for purposes of Workers Compensation benefits a driver such as Mr. Winn could have two employers.

The situation in this case is very similar to that in Kinne. An independent contractor lease agreement was entered into by Jerry Mitchell and Logex, similar to the agreement between Kinne and Freeport Transport. This agreement gave the owner of the vehicle, in this case Mitchell, express control over the operation of his vehicle. As in Kinne, Mitchell had the right to hire and fire, he was responsible to pay wages, and he owned and leased the tractor used by he and Rice. This is not a unique situation, but as in Kinne, when the owner of a vehicle is present in a tractor-trailer, then the Utah Supreme Court has repeatedly decided that the driver is the owner's employee. As such, and since Workers Compensation benefits were available to both occupants of the vehicle, there can be no claim against the employee driver and Judge Glasmann was correct in dismissing this case.

The appellee does not argue with the appellant's statement of what the Utah Supreme Court ruled in Harry L. Young & Sons, Inc. v. Ashton, 538 P.2d 316 (Utah 1975). In Harry L. Young & Sons, the court stated that an employee is one who is paid a fixed rate and is subject to a comparatively high degree of control, whereas an independent contractor is paid a set total sum, but then may do a job his or her own way subject to only

minimum restrictions. The court noted at 318 that the four factors to be used to make this decision, are as follows:

1. The express or implied agreements concerning the right of direction and control over an employee;
2. The right to hire and fire;
3. The method of payment, whether in wages or fees compared to at completion; and
4. The furnishing of equipment.

In this case the express independent contractor lease agreement between Jerry Mitchell and Logex gave Mitchell express control over the operation of his vehicle. That express agreement stated that Mitchell had the right to control the hiring, discharge, training, payment of wages, hours, and working conditions of his employees. He could also determine the vehicle's routes of travel, its points of stop for rest, and the need for service to his equipment. Mitchell paid all of Rice's wages. He paid him by the mile and by the hour for waiting time. Mitchell did not contract with Rice for a set sum and then turn Rice loose on the road in his vehicle. Instead Rice was always under Mitchell's control.

Mitchell paid for Rice's Workers Compensation benefits. Mitchell was responsible to provide and maintain the equipment Rice used and was also responsible to furnish all necessary fuel, tires, tubes, services and repairs. Mitchell was required to pay all fuel costs, equipment use and basic license plate fees, driver's license costs, and any other taxes, fees, costs or

finer. Mitchell's activities therefore met all of the four elements discussed in Harry L. Young & Sons above. In summary, these are that there was an express agreement, Mitchell had the right to hire and fire, Rice was paid a wage or fee rather than a set sum, and Mitchell furnished all the equipment. Therefore, under the test proposed by the appellant, Mr. Mitchell was Mr. Rice's employer and therefore Judge Glasmann's ruling was correct.

The appellant attempts to argue that Mr. Mitchell did not have much control over his own vehicle because the trucking lease agreement does not leave much room for his discretion. This is exactly what the Utah Supreme Court focused on in Kinne when it noted that the fact that the owner of the vehicle is in the truck shows he has the right to control the vehicle. This right to control is what establishes the employer/employee relationship.

The appellant also argues that because Mr. Rice was less than a perfect employee, that this makes him an independent contractor. It is undisputed that Mr. Rice on several occasions was missing or refused to drive with Mr. Mitchell. However, when he did drive he was not allowed simply to take the vehicle and then be paid on his return by Mr. Mitchell, but instead he drove with Mr. Mitchell and Mr. Mitchell retained the right to control

the vehicle. The fact that Mr. Rice may at some times have decided that he wanted to stop for a break to eat or sleep does not show that he had total control over the vehicle and was acting as an independent contractor.

The document relied on by the appellant, the August 18, 1988 document signed by Jerry L. Rice and notarized by Joanna Mitchell, see Addendum 4, does state that Jerry Rice would be paid on a commission basis. However the document goes on to state that Mr. Rice will pay all court costs and lawyers' fees incurred to recoup money drawn back against the truck in excess of receipts if he should "quit" or be "terminated." This document affirms the fact that Mr. Mitchell had the ability to fire or terminate Mr. Rice. This is further support for the claim that Mr. Mitchell was in control of their working relationship.

The other documents discussed by the appellant support Judge Glasmann's ruling. The Logex owner/operator questionnaire signed by Jerry Rice, see Addendum 5, states in three different places that he previously "worked for" Jerry H. Mitchell. His listed reason for leaving each time was a reduction of force. This document does not state that he was an independent contractor who operated under his own initiative and authority.

Finally, Exhibit "C" to the Logex agreement signed by Jerry L. Rice on June 24, 1988, see Addendum 3, states that Rice acknowledges that he is an employee driver of Jerry Mitchell and that Rice will continue to be an employee of Jerry Mitchell in all regards concerning the connection and provision of contract services to Logex.

The only case cited by the appellant, that of Graham v. R. Thorne Foundation, 675 P.2d 1196 (Utah 1984) is factually distinguishable from the situation at hand. In Graham v. Thorne an individual made a claim for injuries he suffered as a worker who shingled roofs. The individual in question worked where and when he wanted, and used whatever method he felt best. The injured worker claimed he should receive Workers Compensation benefits because his alleged employer had supplied shingles and nails, had told him to install flashing, and had told him to wait until the houses' plumbing had been completed before working. However, he could choose the house he wanted to work on and could work at his own pace and pattern.

In this situation Mr. Rice could work or not work as he chose, but he then faced the prospect of being fired by Mr. Mitchell. He could not simply show up and take any vehicle when he felt like working for Logex. Instead, if he wanted to work he had to work under the control and supervision of

Mr. Mitchell, the owner of the vehicle. The fact that Mr. Mitchell was Mr. Rice's friend and therefore put up with Rice's unreliability does not change the legal working relationship between the two men.

There were no disputed material facts submitted to Judge Glasmann. Mitchell and Rice are both dead. There were various affidavits presented to the court which were not rebutted by the defendant\appellee. These affidavits, which were based on hearsay and a lack of first-hand knowledge, stated that Jerry L. Rice on occasion decided when to stop the vehicle for breaks, and on many occasions refused to drive with Mr. Mitchell. These affidavits did not show any change in Mitchell's right to control the vehicle, his obligation to supply equipment, his right to terminate or fire Mr. Rice, or the method of payment. Instead it was unrefuted that Mr. Mitchell had the right to control the vehicle, that he could fire Mr. Rice at any time, that Mr. Rice was paid by the mile and by the hour, and that Mr. Rice had no discretion on how to operate the vehicle. Therefore Judge Glasmann correctly ruled that the Mitchell/Rice working relationship, one that has been ruled on in many other truck lease situations, met all the elements of an employer/employee relationship and he correctly granted the defendant's motion for summary judgment.

POINT II

IF MR. RICE WAS NOT AN EMPLOYEE OF MR. MITCHELL, THEN IN THE ALTERNATIVE, BOTH INDIVIDUALS WERE EMPLOYEES OF LOGEX

The lease agreement between Jerry Mitchell and Logex states that Mitchell was an independent contractor. However, federal law, specifically 49 U.S.C. Section 11107, the Interstate Commerce Act, presumes he was a Logex employee.

The factual situation in this litigation is similar to the factual situation in Harry L. Young & Sons v. Ashton, supra. In Harry L. Young & Sons, Dennis Ashton drove a truck owned by Harry L. Young & Sons. Ashton and Young & Sons had a contractual agreement which provided for Young & Son's lease of the truck in return for its payment to Ashton on a per mile basis under certain prescribed conditions. The agreement also expressly stated that Ashton was not Young & Son's employee, but was an independent contractor. The trial court found that the truck was registered to Harry L. Young & Sons, and that Young & Sons had placed a sign on the truck indicating its ownership. All loads taken by Ashton had to be cleared with the Young & Sons supervisor. Ashton was not free to refuse a load. Ashton was obligated to check in at certain points on his route and at the time of his arrival. A company speed limit was enacted and Ashton was subject to penalties for exceeding the speed limit.

The Utah Supreme Court after reviewing these facts noted that the employer was seeking "the best of two possible worlds." On one hand it sought to maintain a high degree of control, and on the other hand it sought to establish an independent contractor relationship to avoid the legal responsibilities of an employee/employer relationship. This alleged fiction was ignored by the administrative law judge who awarded Workers Compensation benefits, and that decision was upheld by the Utah Supreme Court.

In this situation the undisputed facts are that the truck was registered to Mr. Mitchell, but was operated under Logex's ICC authority. Mitchell also placed a Logex sign on the truck. Loads were assigned by Logex. Mitchell could not refuse a load. Mitchell and Rice were obliged to check in at certain points on each route and to follow certain routes of travel. They were subject to fines and penalties assessed by Logex. Therefore, as in Ashton v. Young & Sons, although the agreement may have stated that Mitchell and Rice were independent contractors, in reality Logex had established an employee/employer relationship. As such, this court could find an employee/employer relationship existed between Mitchell/Rice and Logex and affirm the lower court's ruling.

Other jurisdictions have dealt with the issue of statutory employers in trucking cases. An example is the

Colorado appellate court's decision in Shell v. Navajo Freight Lines, 693 P.2d 382 (Colo. App. 1984). In Shell, Roy Lovato entered into a trip lease with Navajo Freight Lines. A vehicle was being driven by Bruce Brown, who was employed by Lovato as a driver, when it collided with a vehicle operated by David Shell. Shell filed suit against Navajo Freight Lines, alleging that its independent contract agreement did not shield it from liability to third parties because of the Interstate Commerce Act, 49 U.S.C. Section 11107 (1982 Ed.). The trial court instructed the jury that Brown was Navajo's employee. On appeal the Colorado Appellate Court affirmed this decision. The court noted that the ICC statute which provided for the carrier's exclusive possession, control, and use of the equipment for the term of the lease eliminated the defense of independent contractor by making the "owner/operator" of the equipment a statutory employee of the "carrier." The court made no distinction between owner/operator Lovato, and his employee, the vehicle's driver, Bruce Brown.

A similar situation existed in the New Mexico appellate court decision in Matkins v. Zero Refrigerated Lines, Inc., 602 P.2d 195 (N.M. App. 1979). In Matkins, Johnnie Lee Smith and Browning were employed by R&M Truck Company. R&M had entered into a lease agreement with Zero Refrigerated Lines, Inc. Zero held an ICC permit. Under a negotiated lease contract, R&M had

sole responsibility for hiring, firing, directing and training drivers, paying wages, and providing for unemployment and Workers Compensation benefits. Smith was killed while riding as a passenger in a leased truck driven by Browning. The administrators of Smith's estate brought suit against Zero and Browning. Summary judgment was granted in favor of Browning and Zero. The summary judgment granted to Browning was based on the New Mexico Workers Compensation Act. On appeal the New Mexico Court of Appeals affirmed. The appellate court noted that since R&M had paid Workers Compensation benefits that Browning was protected from liability. The court also addressed the issue of whether R&M was the factual employer of Smith and Browning. The court noted that R&M had the power to terminate drivers and choose routes, to control the number of drivers and helpers, the number of rest stops, and the points of service. Therefore it was found to be the employer.

Finally, a third decision is the Arizona Court of Appeals decision in Wilson v. Riley Whittle, Inc., 701 P.2d 575 (Ariz. App. 1984). In Wilson, Riley Whittle, Inc., an interstate trucking company, entered into an independent contractor agreement with independent trucker Meyer. Meyer was involved in an accident in which Wilson was killed. Wilson's estate brought a suit against both Riley Whittle and Meyer. The plaintiffs were

able to hold Riley Whittle vicariously liable for Meyers' negligence pursuant to 49 U.S.C. Section 11107. The court, in affirming this decision, noted that federal law creates an "irrebuttable presumption that the lessor is the employee of the motor carrier."

In this situation Logex held an ICC permit. The vehicle was operated under that permit. The federal Interstate Commerce Act, 49 U.S.C. Section 11107, creates an irrebuttable presumption that the lessor and his fellow worker are employees of the motor carrier. This federal protection is enacted to protect the public from truckers and to enforce the trucking company's obligation to pay Workers Compensation benefits. Logex, as a statutory employer, should be responsible to pay Workers Compensation benefits and the two co-employees, Mitchell and Rice, should not be allowed to bring suit against each other.

CONCLUSION


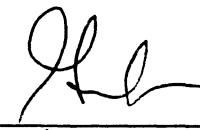
Summary judgment in this matter was appropriate. There were no disputed material facts. Mitchell and Rice are both dead. The lease agreement and other documents were all admitted and reviewed by the Court. They show that when Mr. Rice worked, he was working as Mr. Mitchell's employee. The fact that Rice, through his friendship with Mitchell could avoid being fired does

not change the legal working relationship between the two men.
Being a bad employee does not make one an independent contractor.

An evidentiary hearing as sought by the appellant would have brought out no new facts. The plaintiff's memorandum before the trial court tried to raise four paragraphs of allegedly disputed material facts. These were the method of payment, which was undisputed; comments about Mr. Rice's driving pattern in other vehicles, which was undisputed and irrelevant; and comments by Mr. Rice's ex-wife that Mr. Rice, on occasion, would determine when and how long to stop, which were undisputed. In addition to being undisputed these factors were also not material as they did not go to the right of control and did not address the elements listed in Ashton, supra and in the appellant's brief. Instead there was no dispute as to the facts that applied to the material elements as listed by the Utah Supreme Court, the facts and law were correctly applied by Judge Glasmann, and Judge Glasmann correctly granted the summary judgment to the defendant. The defendant/appellee seeks to have Judge Glasmann's order of dismissal affirmed.

DATED this 32nd day of December, 1993.

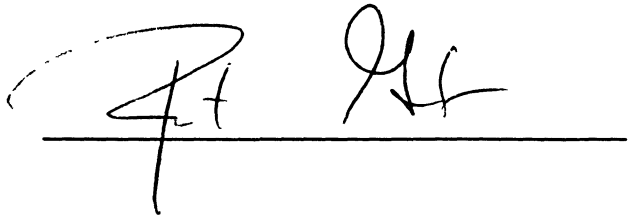
RICHARDS, BRANDT, MILLER
& NELSON

 
Robert G. Gilchrist
Attorneys for Appellee
Estate of Jerry L. Rice

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that four true and correct copies of the foregoing instrument were mailed, first-class, postage prepaid, on this 22nd day of December, 1993, to the following:

James R. Hasenyager
Patrick F. Holden
MARQUARDT, HASENYAGER & CUSTEN
2408 Van Buren Avenue
Ogden, Utah 84401



wrgg\MITCHEL1.BRF
9263-163
12/22/93

ADDENDUM

Revised Section	Source (U.S.Code)	Source (Statutes at Large)
11106(b)	49:324 (less 1st sentence).	

In subsection (a), the word "may" is substituted for "is authorized" for clarity. The words "under such rules and regulations as it shall prescribe" are omitted as unnecessary in view of subchapter II of chapter 103 of the revised title. The word "suitable" is omitted as surplus.

In subsection (b), the word "use" is substituted for "substitute, transfer, or use" to eliminate redundancy. The words "is prohibited and shall be unlawful" are omitted as surplus. The next-to-last sentence is omitted as surplus in view of section 484 of title 31.

§ 11107. Leased motor vehicles

(a) Except as provided in section 11101(c) of this title, the Interstate Commerce Commission may require a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title that uses motor vehicles not owned by it to transport property under an arrangement with another party to—

(1) make the arrangement in writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier;

(2) carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect;

(3) inspect the motor vehicles and obtain liability and cargo insurance on them; and

(4) have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary of Transportation on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.

(b) The Commission shall require, by regulation, that any arrangement, between a motor carrier of property providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and any other person, under which such other person is to provide any portion of such transportation by a motor vehicle not owned by the carrier shall specify, in writing, who is responsible for loading and unloading the property onto and from the motor vehicle.

(Pub.L. 95-473, Oct. 17, 1978, 92 Stat. 1420; Pub.L. 96-296, § 15(d), July 1, 1980, 94 Stat. 809.)

HISTORICAL AND STATUTORY NOTES

Revised Section	Source (U.S.Code)	Source (Statutes at Large)
11107	49:304(e)	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(e); added Aug. 3, 1956, ch. 928, § 1, 70 Stat. 983.

THIS AGREEMENT executed in triplicate is made and entered into on this 7-9-87 by and between LOGISTICS EXPRESS, INC. (dba LOGEX a California corporation located at 1890 South Chris Lane Anaheim California 92805 (hereinafter referred to as Logex') and JERRY H MITCHELL (hereinafter referred to as 'Owner')

WITNESSETH

WHEREAS Logex is a motor common and contract carrier authorized by the Interstate Commerce Commission and various State regulatory agencies to engage in the transportation of property for hire upon the public highways in the United States in as the case may be interstate and intrastate commerce and

WHEREAS Owner is now engaged in business as an independent contractor in connection with which it owns or has at its disposal the motor vehicle equipment described in Exhibit A hereto (hereinafter referred to as the equipment) and employs or contracts with experienced competent and qualified personnel to operate or personally operates said equipment and

WHEREAS Owner desires to operate said equipment in the service of Logex as an independent contractor and

WHEREAS Logex and Owner desire to enter into this Agreement under which Owner will lease said equipment with driver to Logex for use in connection with its operations pursuant to operating authority issued by the Interstate Commerce Commission and/or any appropriate State regulatory agency

NOW THEREFORE in consideration of the premises and the mutual covenants and conditions of the parties hereinafter set forth Logex and Owner agree that during the term hereafter stated and any extension thereof Owner will furnish Logex with such equipment as set forth in Exhibit A, and driver to operate same subject to the following conditions

TERMS AND CONDITIONS OF LEASE AGREEMENT

1 This Agreement is executed pursuant to the leasing regulations of the Interstate Commerce Commission and to the extent applicable such State regulatory agency having jurisdiction over any intrastate transportation which may be provided hereunder As used herein the masculine shall include the feminine and the neuter and the singular and plural in regard to the parties to this Agreement

2 This Agreement shall be for a term of thirty (30) days from the date hereof and shall continue in effect thereafter for successive thirty (30) day periods unless otherwise terminated by either party hereto upon written notice to the other party Said termination shall be effective thirty (30) days from and after delivery of such written notice to the other party at the address shown below Notwithstanding such notice period it is expressly agreed and understood by Logex and Owner that safety in operation including proper maintenance of the equipment provided hereunder as well as compliance with the proper methods for loading unloading and/or transporting any product transported by Owner its employees agents and servants are of the utmost concern to Logex its customers and the public interest so that this Agreement shall be immediately cancellable by Logex upon the failure of Owner to operate Owner's equipment in a manner consistent with the terms and conditions of this Agreement as well as any Exhibit attached hereto and/or Logex's Safety and Accident Procedures Manual including any amendments thereto a copy of which has been provided to Owner and which is by this reference specifically incorporated herein Said termination shall be effective upon written notice delivered to Owner at the address shown below In the event Logex violates any provision of this Agreement as well as the Exhibits attached thereto the Owner may immediately cancel and terminate this Agreement effective upon delivery of written notice of such termination delivered to Logex at the address shown below

3 Logex agrees during the term of this Agreement as herein provided to dispatch Owner and its equipment to transport such individual shipments as may be tendered from time to time by Logex to Owner and accepted by Owner for delivery in accordance with applicable dispatch requirements including when necessary the loading unloading and/or transfer of product all in a good safe and workmanlike manner and in all respects complying with all applicable regulations of the Interstate Commerce Commission and the United States Department of Transportation as well as all State and local laws ordinances and regulations as may be applicable to each shipment transported hereunder

4 During the performance of this Agreement the equipment provided hereunder shall be used in Logex's motor carrier service in a manner consistent and in accordance with regulations of the Interstate Commerce Commission the Department of Transportation and as the case may be any State or local law or ordinance and regulation which may be applicable to any given shipment transported by Owner hereunder Owner warrants and agrees that it shall have full and direct control and supervision over the operation of the motor vehicle(s) provided hereunder as well as the performance of all necessary transportation services provided by it in a manner consistent with the dispatch of each shipment whether Owner and/or Owner's employee(s) actually operates the equipment and performs the services provided for herein Further and subject to the provisions of Exhibit B, and any modification thereto which is by this reference incorporated herein and made a part hereof Owner may determine the routes of travel points of stop for rest and service to its equipment and shall in every respect direct and control its employees including their hire discharge training wages hours and working conditions It is the intent of the parties that Owner shall be and is an independent contractor and that at no time shall a master servant and/or employer employee relationship be created or arise between Owner and Logex as a result of the services performed by Owner for Logex under this Agreement and any amendments thereto Owner shall provide Logex in the form and manner prescribed by Logex with written acknowledgment by and from each of the Owner's employee drivers that he or she is not will not become and has never been an employee of Logex and is not therefore entitled to share or participate in any benefits Logex may provide to its own employees

5 Owner agrees and warrants that Owner as well as any employee driver and helper as the case may be employed by Owner are experienced properly licensed and qualified to perform the transportation and operate the equipment relative thereto provided hereunder Owner further agrees and warrants that Owner and any and all employees employed by Owner to operate the vehicle(s) provided hereunder are familiar with and shall operate the same in accordance with the safety regulations of the Interstate Commerce Commission and/or the U.S. Department of Transportation as well as any such rule or regulation of any State or local government Owner shall obtain and be solely responsible for Worker's Compensation insurance for Owner and Owner's employee(s) if any in addition Owner shall pay all withholding and employment taxes due to Federal State or local governments on account of Owner and/or Owner's employee(s) necessary for the performance of Owner's obligations under the terms of this Agreement Owner agrees to indemnify hold harmless and defend Logex from and against any and all claim(s) by Owner and/or any of Owner's employees or by any Federal State or local government agency on account of wage industrial accident and/or Worker's Compensation claim withholding and employment taxes or any other action arising from Owner's relationship with its employee(s) To fulfill its obligations under this Paragraph 5 Owner agrees and warrants to

- (a) Maintain in force at all times proper Worker's Compensation insurance covering Owner as well as any and all drivers drivers helpers and laborers used by Owner in the performance of this Agreement and shall provide to Logex upon execution hereof a certificate of such insurance
- (b) File all Federal State and local income withholding and employment and Federal Highway Use Tax form and returns which it may be required by law to file on account of itself and all drivers drivers helpers and laborers used by it in the performance of this Agreement at the time and place which may be specified in the applicable Federal State and local laws and to pay when due all taxes and contribution(s) reported in such forms and returns and
- (c) Furnish Logex with such evidence of compliance with the foregoing as Logex shall reasonably require

In order to assist Owner in obtaining the Worker's Compensation insurance coverage provided for herein with respect to any employee(s) employed by Owner for the performance of Owner's obligations under the terms of this Agreement Logex has arranged for insurance in which Owner may voluntarily at Owner's sole cost and expense elect to participate by signing and returning the written form provided by Logex Upon such election Owner assigns and directs Logex to pay that portion of any settlement due Owner hereunder to the applicable insurance carrier in an amount equal to the premiums for such coverage which shall be paid directly to such carrier on behalf of Owner

This Agreement shall immediately terminate upon cancellation of and/or failure of Owner to maintain Worker's Compensation coverage as herein provided and/or failure of Owner to comply with each of the provisions of this Paragraph

6 Owner agrees to furnish and operate equipment which is properly licensed and equipped in a manner consistent with the requirements of each shipment transported hereunder and is maintained in good running condition Owner agrees to maintain its equipment in proper working order to furnish all necessary oil fuel tires tubes services and repairs for the operation of said equipment and to pay any and all other expenses incident to such operation provided by Owner The equipment to be operated under this Agreement shall be subject to inspection by Logex in accordance with its Safety and Maintenance Program and the Motor Carrier Safety Regulations of the Department of Transportation Equipment which is not in full compliance with such regulations and/or any and all equipment specifications as may be established by Logex will not be accepted by Logex and Owner will not be tendered shipments until compliance has been achieved to the satisfaction of Logex in accordance with the provisions of Paragraph 2 above if Owner fails to keep the equipment in proper operating condition or in compliance with the Department of Transportation's requirements Logex shall be entitled to cancel this Agreement forthwith Owner agrees to send Logex reports of all vehicle repairs as may be required by the Department of Transportation as well as necessary fuel mileage maintenance and accident reports as required by the Interstate Commerce Commission

7 During the term of this Agreement and any extension(s) thereof the equipment leased to Logex hereunder will be identified or placarded to show that the same is being operated pursuant to certificates permits and/or other forms of operating authority issued to Logex by the Interstate Commerce Commission and/or any State agency having jurisdiction over the particular transportation provided by Owner hereunder Upon termination or cancellation of this Agreement as herein provided all services hereunder shall be immediately discontinued However upon request of Logex Owner shall complete the delivery of any load which it may then have in its possession Upon termination Owner shall deliver forthwith to Logex any and all equipment papers documents and any properties belonging to or furnished by Logex Owner shall also return any licenses registrations and/or permits to Logex and remove all placards signs and lettering pertaining to Logex from Owner's equipment Owner shall provide to Logex adequate and satisfactory proof and verification that all placards and other references to Logex have been permanently removed from Owner's equipment upon termination as herein provided If the placards are not returned to Logex or any reference to Logex is not removed from Owner's equipment within a five (5) day period after the notice of termination or cancellation Owner shall pay to Logex the sum of twenty five (\$25) dollars per day until the placards are returned to Logex or evidence of removal of all reference to Logex is furnished to Logex by Owner and also shall complete a certificate to be furnished by Logex stating in full the reason for the failure to return the placards

8 Owner shall not be required to purchase or rent any product equipment or service from Logex as a condition of entering into this Agreement

Initials

Logex

Owner

10 Owner acknowledges and expressly agrees that it is Owner's responsibility to pay as part of Owner's cost of applicable fuel costs, equipment use and basic license (plate) fees, driver's license costs, and any other taxes, fees, costs or fines that may be assessed against the equipment, operation, or the conduct of its business. Logex shall initially pay all prorated expenses attributable to the operation of said equipment, which Logex shall charge back to the Owner not later than the second settlement following the incurrence of such prorated expenses; provided, however, that should the Owner so elect, the entire amount of such prorated expenses assessed for the next succeeding taxable period may be amortized in equal installments over a four (4) month period prior to and after prorated registration renewal by Logex. In connection with the foregoing, Owner agrees to furnish Logex with such reports of fuel consumption, miles driven, driver logs and other information as required by Federal, State and/or other government agencies, in order to permit Logex to properly compute and verify payment of any taxes as set forth herein, which are applicable to Owner's operation pursuant to this Agreement.

11. Consistent with applicable law, and subject to Paragraph 12, Logex shall be responsible for and carry public liability and property damage insurance for the benefit and protection of the public pursuant to the regulations of the Interstate Commerce Commission under 49 USC 10927, and the requirements of the Department of Transportation. Notwithstanding the foregoing, and without limitation thereto, Owner agrees to indemnify, hold harmless and defend Logex and its subsidiaries, officers, directors, employees and agents against any and all claims, loss and/or damage on account of any injury to or death of person(s) and/or damage to property caused or alleged to be caused by or in any manner connected with the operation of equipment provided hereunder, including, but not limited to, the loading, unloading and/or transportation of any product transported hereunder, belonging to or used by Owner, or drivers engaged or employed by Owner, in the performance of this Agreement. Owner, at its own expense, shall maintain primary public liability and property damage insurance coverage in amounts and with insurance carriers satisfactory to Logex. For the purposes of this paragraph, it is agreed that "insurance coverage satisfactory to Logex" shall be understood to require combined public liability and property damage insurance coverage of a minimum amount of at least five million (\$5,000,000) dollars. Logex at its expense, will provide coverage over and above the \$5,000,000 minimum, as may be required by its customers.

Owner shall furnish Logex with copies of Owner's public liability and property damage insurance policies, together with an appropriate certificate of insurance, naming Logex as an additional insured on such policies, which will also provide that Logex will be notified, in writing, of any cancellation and/or modification of such coverages, not less than twenty (20) days thereof.

12. Logex shall be responsible for and carry cargo insurance as required by law and the Interstate Commerce Commission's regulations for the protection of the public. However, Owner agrees to assume primary responsibility for and indemnify, hold harmless and defend Logex from and against any and all cargo loss and damage proximately caused by Owner, its agents, servants and employees to the shipments that are transported under this Agreement. At Logex's request, Owner shall furnish Logex copies of its cargo insurance policies which Owner shall maintain at its expense and which shall provide for the following minimum limits: (a) \$100,000 for damages to cargo, (b) \$100,000 of settlement for lost or missing items, and (c) \$100,000 for settlement for damages. Prior to any such deductions, Logex will provide Owner with a written explanation and itemization of any deductions for cargo loss or damages. Owner's cargo insurance policies shall provide that Logex will be notified, in writing, of any cancellation or modification of such coverage, not less than twenty (20) days prior thereto, and shall name Logex as additional insured under the policies.

13. Owner agrees to be responsible and pay for any collision, fire, theft and comprehensive insurance coverage on and for its equipment, and Logex shall not be liable for or be obligated to pay or reimburse Owner for the insurance coverage or from any loss or damage to Owner's equipment. Owner shall also maintain physical damage coverage on any and all vehicles and/or equipment leased from or furnished by Logex. Physical damage insurance coverage shall include collision, fire and theft. The costs of towing, storage, emergency repairs or actions necessary to protect equipment or cargo shall be the responsibility of Owner, and if these expenses are paid by Logex, they shall be deducted from Owner's settlement as hereinafter described.

14. With respect to each of the foregoing paragraphs Eleven (11), Twelve (12) and Thirteen (13), inclusive, regarding applicable insurance coverage, Owner, at its option given in writing in the manner prescribed by Logex may elect to participate, at Owner's sole cost and expense, in appropriate policies of insurance arranged for by Logex. In the event that Owner elects to so participate in such insurance program, the Owner shall assume and be responsible to pay each, as the case may be, of the following: (a) the first \$1,000 of loss to any tractor provided hereunder; (b) the first \$1,000 of loss to any trailer pulled by Owner; (c) the first \$1,000 of damage to property owned by third parties; and (d) the first \$1,000 of product loss, resulting from the operation of and/or any fire, collision, upset, accident, theft and/or overturning to any equipment provided hereunder. Owner agrees that Owner's obligation to pay such sum(s) attaches and accrues on the date of any such loss, and Owner agrees that Logex may forthwith deduct and withhold from any settlement then or thereafter due and payable to Owner any sum Owner may be obligated and required to pay hereunder. It is further agreed that payment for any and all costs and expenses related to Owner's participation in the insurance policies arranged by Logex shall be the sole responsibility of Owner and Owner authorizes Logex to deduct from any remuneration settlements provided to Owner herein any and all costs related to such insurance policies.

15. Pursuant to the provisions of 49 CFR Parts 1057.12 (e), (g) and (h), which are hereby acknowledged by Logex, as the entire remuneration to be paid by Logex to Owner for providing transportation services, Logex agrees to pay, and Owner agrees to accept payment in accordance with the "Owner Revenue Schedule," incorporated by reference as Exhibit B hereto and any amendments thereto, subject to any deductions and offsets provided for herein as follows:

(a) All settlement payments to which Owner is entitled shall be made by Logex as follows:

(1) On the 25th of each month, settlement will be made for all trips completed through the 15th of the month. Deductions will be made for any advances or purchase orders issued, insurance charges for the current month and fuel charges computed in accordance with Exhibit B.

(2) On the 10th of each month, a full settlement will be made for all revenues earned the prior month. Deductions will be made for any advances or purchase orders for insurance costs and fuel charges.

(b) The following necessary delivery documents and other paperwork must be submitted to Logex no later than five (5) days prior to the settlement dates referred to above for trips made within the relevant time period:

(1) Completed bill(s) of lading, including date of delivery and signature acknowledging receipt of shipment,

(2) executed addendum to bill(s) of lading, if applicable;

(3) completed weight tickets, reflecting gross and tare weights and bill(s) of lading numbers, and

(4) any documents required for Department of Transportation and any other government agencies.

(c) Owner agrees that, if within thirty (30) days after receipt of each settlement statement provided by Logex, Owner does not submit to Logex at Owner's assigned terminal any objection to the statement, the amount payable therein, as well as any deductions shown thereon, then each such statement shall be deemed approved and accepted by Owner as full, complete, and correct payment of any remuneration due Owner for the period represented by such statement.

16. This Agreement is made and entered into in the State of California and shall be governed by the laws of the State of California. Any lawsuit related in any manner to or which seeks to enforce any provision of this Agreement may only be initiated, depending upon the jurisdictional amount of any such lawsuit, in either the Municipal Court or the Superior Court of the State of California in and for the County of Orange.

17. Any and all notices between the parties hereto provided for or permitted under this Agreement of by law shall be in writing and shall be deemed duly served when personally delivered to a party or, in lieu of such personal service, when deposited in the United States mail, certified, postage prepaid, addressed to such party(ies) at the addresses shown below.

18. This Agreement shall bind and inure to the benefits of the respective heirs, personal representatives, successors and assigns of the parties hereto.

19. This Agreement may not be assigned by either party without the prior written consent of the other, except that when appropriate Logex shall have the right to sublease the equipment provided hereunder to another motor carrier for use by such company, and, in such event, Owner shall receive that remuneration provided for in a trip lease supplement to be provided by Logex for each such sublease.

20. This Agreement shall supersede, replace and take precedence over any prior oral or written agreements of similar character between the parties hereto which agreement(s), if any, is/are in consideration of the execution of this Lease Agreement, expressly cancelled hereby and is, therefore, of no further force and effect.

21. Should any paragraph, section, sentence, clause or phrase of this Agreement be held to be illegal, such determination of illegality as to such paragraph, section, sentence, clause or phrase shall not affect the validity or binding force and effect of the remaining portions of this Agreement.

22. This Agreement is the entire contract between the parties and there are no promises, understandings, representations or warranties that were made and entered into, either oral or written, by either party, which are not contained herein. This Agreement shall be binding on the heirs, successors or assigns of either party hereto.

23. By signing this Agreement, the parties hereto acknowledge that they have read, understand and approve each of the foregoing paragraphs thereof, including, but not limited to, all of the responsibilities and obligations thereof, as well as any and all Exhibits thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

7-9-87

at Centerville
(CITY) Ut
Management approval: [Signature]
(STATE)

LOGISTICS EXPRESS, INC
dba Logex

By Kelly Jensen
Address
1890 S Chris Lane
Anaheim CA 92805

OWNER

Jerry H Mitchell
By Jerry H Mitchell
Address: 655 N Garmerey Av
Orange Ut 84404

NOV - 5
EXHIBIT C

The undersigned being an employee driver of Jerry
Mitchell hereby represents and certifies that I
am not now, nor have I ever been, nor will I consider myself
to be an employee of Logistics Express, Inc., dba Logex, its
successors, affiliates or assigns, and, therefore, I am not
entitled to nor have I any right, claim or interest in any of
the employment benefits or considerations Logex may provide
to its own employees. Rather, I am and will continue to be
an employee of Jerry Mitchell for any and
all purposes in connection with the contract services provided
by LOGEX

Dated: June 24 - 1988

Jerry L Price

I, Jerry L. Rice AGREE TO WORK ON A COMMISSION BASIS
AND TO TAKE CARE OF MY OWN INCOME TAX, ~~UTAH EMPLOYMENT TAX~~, AND SOCIAL SECURITY
TAX. I ALSO AGREE THAT ANY DAMAGES DONE TO THE TRUCK THROUGH NEGLIGENCE WILL BE
AT MY OWN EXPENSE. I ALSO AUTHORIZE TO HAVE ~~\$500.00~~ DEDUCTED FOR RESERVE FUND
FOR ANY PUBLIC LIABILITY DAMAGES THAT MIGHT OCCUR, DUE TO DRIVER ERROR.

THIS MONEY WILL BE REFUNDED AT THE TIME OF TERMINATION IF THERE ARE NO INSI
CLAIMS. I ALSO ACKNOWLEDGE THAT THERE IS NO INSURANCE TO COVER ME WHILE RUNNING
BOBTAIL AND NOT UNDER DISPATCH. I ALSO AGREE TO PAY ALL COURT COSTS AND LAWYER
FEES TO OBTAIN EXPENSE MONEY BACK DRAWN AGAINST THE TRUCK IN EXCESS OF RECEIPT
SHOULD I QUIT OR I AM TERMINATED.



Joanna M. Mitchell
August 18, 1988

DRIVERS SIG. Jerry L. Rice
DATE 8-18-88
S/S# 528-42-548

1890 Chris Lane
Anaheim, CA 92805

OWNER OPERATOR AND OWNER OPERATOR DRIVER QUESTIONNAIRE

The following information is required by I.D.T. Regulations of all owner operators and their employee drivers. We appreciate your cooperation in supplying the information.

Name (Last) PIPER (First) JERRY (Middle) LARRY Soc. Sec. No. 528-42-5148
Present Address (Number & Street) 1445 CAPITAL (City) OGDEN UT (State & Zip) 84401 (801) 371-1370 Telephone
Address for the past 3 years (Number & Street) 900 CONIFUR DR #36 (City) OGDEN UT (State & Zip) 84404 How Long? 10 years
Address for the past 3 years (Number & Street) (City) (State & Zip) How Long?

Each sheet if more space is needed.

Place of birth OGDEN UTAH (City & State) Date of birth Sept. 25th 1937 (Month, Day, Year)

State	License #	Class	Expiration Date
UTAH	934-9807	E	Sept 25 1987

Driving Experience Record

Class of Equipment	Type of Equipment (Flat, Van, Tank, Etc.)	Dates From - To	Approx. Miles (Total)
Freight Truck	Flat & Tank	55-57	30,000
Tractor & Semi-Trailer	Flat & Van - Tank	60 to 87	700,000
Tractor & Two Semi		1960 to 87	1,000,000
Truck & Trailer			
Other			

Work Record (Past 3 years minimum. List last job first.)

Name of Company	Address City State	From - To	Reason for Leaving
Low H. Mitchell	655 North Broadway Ogden Utah	1986 - Present	—
FEEX	Centerville Utah	Feb 26 - May 1985	Discharged

DEPOSITION
EXHIBIT
4

DRIVING EX-LE SNCH

Long S Rice have driven Commercial Motor
Name
vehicles for 50 years only. I have no other commercial experience other than listed above.

SIGNATURE