No. 5–10–0377WC

Order filed ______________.

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

B.T. TRUCKING,	)	Appeal from the Circuit Court
	)	of Madison County, Illinois
Appellant,	)	
	)	
v.	)	No. 09–MR–554
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION *et al.* (Roger Clendenen,	)	Clarence W. Harrison II,
Appellee).	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice McCullough and Justices Hoffman, Hudson, and Stewart concurred in the judgment.

ORDER

Held: The Commission's finding that an employment relationship existed between the claimant and BTT at the time of the claimant's injury was not against the manifest weight of the evidence.

The claimant, Roger Clendenen, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2004)) seeking benefits for injuries he claimed to have sustained while working as an employee of appellant B.T. Trucking

(BTT). Following a hearing, an arbitrator denied benefits because he found that the claimant was an independent contractor and not an employee covered under the Act. The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission reversed the arbitrator's decision, with one Commissioner dissenting. The Commission found that the claimant was BTT's employee at the time of the accident and that his claim was otherwise meritorious. Accordingly, the Commission awarded the claimant temporary total disability (TTD) and permanent partial disability (PPD) benefits and ordered BTT to pay certain outstanding medical bills incurred by the claimant.

BTT sought judicial review of the Commission's decision in the circuit court of Madison County, which confirmed the Commission's decision. This appeal followed.

FACTS

The claimant is a 52-year-old over-the-road truck driver who lives in Eldridge, Illinois. BTT is a family-owned common motor carrier with its principal place of business located in Broadview, Illinois. The claimant hauled and delivered freight for BTT's customers pursuant to written agreement executed by the parties in 1998. On January 5, 2005, the claimant injured his back while attempting to pull the pin of a tandem trailer during a stop in Missouri. At the time of his injury, the claimant was returning home to Illinois after making a delivery in Texas. The claimant contends that he was working as an employee of BTT at the time he was injured. BTT maintains that the claimant was an independent contractor who was self-employed.

During the time that he delivered freight for BTT's customers, the claimant owned and operated his own truck and BTT provided the trailers. The claimant was responsible for the truck purchase, financing, and payments, as well as all truck maintenance, repairs, gas, tolls, weighing, washing, and insurance.[1] The claimant's business name, "Clendenen Trucking," appeared on the side of the truck. Pursuant to Department of Transportation (DOT) requirements, the claimant's truck also bore BTT's logo. The claimant chose where to place BTT's logo on his truck and BTT did not require him to place its logo on any particular spot on the truck. BTT did not prevent the claimant from decorating and detailing his truck, and the claimant placed the words "Bear Den" over his truck's bunk. However, the permits and license plate for the claimant's truck were in BTT's name. Moreover, pursuant to DOT regulations, BTT tested the claimant for alcohol and drugs approximately three times per year and required the claimant to keep driving logs and to inspect his truck and trailer before driving.

During the arbitration hearing, the claimant acknowledged that he could decline a load for any reason. He was not required to do a set number of runs per week, month, or year. Rather, he called in whenever he wanted work. There were no penalties for refusing loads too often or limiting one's driving to a certain geographical area. The claimant testified that he chose loads based upon their profitability and that he often turned down shorter, less lucrative routes.

When he did accept a load, the claimant received his assignment from BTT's dispatcher. The dispatcher provided the address where the load was to be picked up and also the delivery address. The claimant would determine his own route between those addresses. However, the claimant testified that he would select the shortest route because BTT imposed time of delivery requirements and the claimant anticipated being fired if he took an overly circuitous route. In addition, the claimant testified that if a driver failed to make a grocery delivery on time, BTT would require the driver to "sit on the load" unpaid (*i.e.*, wait until BTT would assign the driver

[1] One of BTT's directors recommended the insurance carrier for the truck to the claimant.

another time to make the delivery). Michael Irwin, BTT's owner and president, testified that all delivery times were set by the shipper or consignee and that BTT had no policies pertaining to delivery times. Irwin testified that drivers learned of the consignees' delivery times through BTT's dispatcher.

The claimant testified that he had to check in with BTT twice per day from the road while driving, with the first call by 9 a.m. However, Irwin testified that BTT preferred to be called only once per day, that there was no set time at which a driver had to call BTT from the road, and that such calls were "more of a common sense and courtesy thing" that helped BTT arrange for a return load for the driver. When driving, the claimant chose where to get gas and where to stop and rest, and he paid for his own gas, tolls, and weigh station charges.

The claimant did not have a mandatory work uniform. However, BTT gave the claimant hats, shirts, and/or jackets bearing BTT's logo. Although BTT did not require the claimant to wear these clothes, the claimant testified that BTT encouraged its drivers to do so, and Irwin testified that he assumed BTT gained commercial benefits through providing clothing to its drivers. The claimant testified that he wore the clothes BTT gave him 50 percent of the time when he drove.

The claimant admitted that he could have simultaneously worked for other companies in addition to BTT without obtaining BTT's permission. According to Irwin, only courtesy would require the claimant to notify BTT he was taking outside work. However, during his entire seven-year relationship with BTT, the claimant never drove for any other company.

Although the claimant was free to hire other drivers, any such drivers had to be pre-approved by BTT. If the claimant hired another driver, he would have bought the insurance to cover that driver. BTT had a "no rider policy" which barred the claimant from taking passengers with him while driving for BTT. BTT refused to provide insurance to cover riders.

According to Irwin, BTT hired the claimant as an independent contractor, not as its own employee. Irwin testified that, at the time of the claimant's injury in January 2005, BTT contracted with approximately 100 drivers but only employed one driver. Irwin noted that the claimant had signed an agreement with BTT that identified the claimant as an "independent contractor" and an "owner/operator," not an employee.

Irwin testified that BTT did not withhold income or social security taxes for the operators who drove for BTT because such withholdings were not required by law for independent contractors. Rather, each operator would pay his own taxes, along with licensing fees and all other expenses of operating the truck. The claimant filed taxes as a self-employed business owner on behalf of the entity "Clendenen Trucking Company." He received a form 1099, not a W2, from BTT. In his 2004 tax return, which BTT introduced into evidence, the claimant disclosed income from Clendenen Trucking but not BTT.

Irwin testified that, while an operator could purchase a license plate through BTT as a convenience, there was no requirement for them to do so. Similarly, Irwin testified that although the claimant and others purchased workers' compensation and property damage insurance through BTT, BTT provided this option only as a courtesy, and operators were free to obtain insurance on their own. BTT does not contribute to the premiums of these insurance policies, and the policies are between the insurance carriers and the operators. The claimant testified that he understood that he was not required to purchase an insurance policy through BTT and was free to obtain insurance on his own. According to Irwin, 70 to 75 percent of operators purchased insurance through BTT, and approximately 50 to 60 percent of operators obtained license plates through BTT.

According to Irwin, BTT had no minimum work requirements for the operators. Likewise, there was no set time at which operators were supposed to report to BTT for work. The assigning of loads was based on a "first in, first out" system, and the operators always initiated the process by calling BTT. Operators were not required to call a certain number of times and were not required to accept any proposed loads. An operator had "every right in the world" to refuse a load, to "pick[] and choose[] what he want[ed] to do ***." Irwin recalled the claimant refusing loads often, and there was no penalty for doing so. Irwin testified that these factors distinguished the operators from BTT's employees, who had specific start times and could not refuse work assignments or choose when they wanted to work.

Irwin testified that, pursuant to DOT regulations, BTT's operators were required to keep logs, inspect the trailers they used, and submit to drug tests. He also testified that the DOT required BTT to purchase insurance to cover any damage to others caused by the operators[2] and that BTT's "no rider" policy was actually a requirement of BTT's insurer. Irwin stated that BTT might terminate an operator for excessive accidents, for untimely deliveries, or for delivery to a wrong address.

The written agreement between the claimant and BTT was presented into evidence by BTT.[3] The agreement is entitled "BT Trucking, Inc. Independent Contractor agreement for

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[2]Irwin confirmed, however, that the operators purchased insurance to cover any damages to their own trucks.

[3]The agreement provides that it was effective for only one year following its execution on

Owner/Operators." The first recital of the agreement states that the claimant "declares that [he] is engaged in an independent business as an <u>INDEPENDENT OWNER/OPERATOR</u> ***." Section XVIII of the agreement, which is entitled "Independent Contractor," provides that the claimant "acknowledges and agrees that [he] has been engaged as an independent contractor and not as an employee." Section XX provides that the claimant "further understands and agrees that [he] is not entitled to any employee benefits normally granted to [BTT's] employees, and [he] shall indemnify and hold [BTT] forever harmless from any and all liabilities *** arising from employee compensation or benefits *** or any employee benefits including, but not limited to, *** workers' compensation claims ***." Section XX further states that, although BTT is required by Interstate Commerce Commission (ICC) regulations to carry cargo and public liability insurance, the parties agree that BTT is not obligated to carry workers' compensation insurance and that the claimant "shall be responsible for the payment of premiums on any health or accident insurance carried by [him] for [his] protection." Moreover, the agreement specifically precludes BTT from withholding taxes for the claimant.

March 16, 1998. Thus, by its terms, the agreement was not in effect at the time of the claimant's injury in 2005. However, the claimant continued to work for BTT for almost six years after the agreement expired in 1999, and there is no evidence of any superceding agreement in the record. Thus, although the matter is uncertain, it appears likely that the parties continued to operate under the terms of the March 16, 1998, agreement after it expired. In any event, like the Commission, we will consider the agreement as evidence of the parties' intent regarding their relationship.

The agreement provides that the claimant would be paid "per job" in recognition of his status as an independent contractor. It further states that the claimant, "in [his] sole discretion, shall direct, in all respects, the operation of the equipment used in the performance of this agreement," including "[w]hen a load is to be picked up, unless designated by the shipper," and the "[t]ime and date of delivery (except when the time and date has been previously set by the consignee or consigner) ***." The agreement also provides that the claimant "shall determine the method, means and manner of performing this agreement and shall be responsible to consignors and consignees for the proper performance of this agreement ***."

The agreement emphasizes that there is "NO EXCLUSIVITY/NO PRIORITY" between the parties, noting that the claimant "as an independent contractor is able to work for others under this agreement and hold [himself] out to the public generally ***." Similarly, the agreement permits the claimant "at [his] sole discretion" to refuse to accept any haul, "consistent with [the] status" of "an independent contractor," and allows the claimant to "sublease to other carriers, at times, the equipment that is not being utilized by [BTT], provided [the claimant] returns all of [BTT's] signs and other equipment identification."

The agreement allows the claimant to hire his own employees, including drivers. It provides that the claimant shall determine his own working hours and his employees' working hours (subject to compliance with all federal and state regulations), that the claimant "shall be solely responsible for the direction and control" of any drivers that he hires, and that the claimant will be responsible for taxes, pay, and workers' compensation coverage for his employees.

However, the agreement permits employees hired by the claimant to drive loads for BTT's customers only if they "have received clearance from Company." Moreover, the agreement requires the claimant to satisfy any requirements established by the DOT, the ICC, and any other federal or state regulatory agency "in its selection of employees for the performance of this agreement," and it provides that BTT "may inspect the records of [the claimant] periodically to assure compliance with said requirements or regulations." The agreement further states that "[i]t shall be the duty of [BTT] to make certain that the [claimant] or [the claimant's] employees are familiar with, and that their services as drivers will not result in violation of, any provision of the Motor Carrier Safety Regulations or the Federal Highway Administration or the [DOT]." Moreover, the agreement provides that BTT "will provide all identification required by all governmental bodies which shall be affixed to the equipment *** and which shall be removed and returned to the Company upon termination of this agreement."

The agreement provides that it may be terminated upon a breach of the agreement by either party or "[b]y five (5) days written notice by either party."

BTT provided the claimant with a "Driver's Handbook & Safety Manual" (Handbook) which set forth BTT's company policies. Section III of the Handbook outlined BTT's operating procedures. Subsection 1 set forth the responsibilities of drivers. Among other things, that subsection required drivers to: (1) "comply at all times with company operating procedures and policies"; (2) "conduct himself/herself in a businesslike fashion" and "present himself/herself at all times as clean and with clean attire so as to foster the proper image of the company"; (3) "load, transport, and unload each shipment from origin to destination without delay in route unless otherwise directed by dispatch"; (4) "report all accidents and/or injuries to the home office immediately, regardless of how minor they seem"; and (5) "submit all paperwork required by [BTT] completely and accurately at the completion of each trip and mail it or turn it into [the] home terminal." Subsection 1 also provided that "ONLY AUTHORIZED PASSENGERS ARE PERMITTED," and it defined "authorized passengers" as "[a]nother qualified [BTT] driver." It also barred drivers from consuming alcohol and from carrying or consuming drugs in any vehicle. Moreover, subsection 1 stated: "You [the driver] are responsible for the legal weight of the load. WEIGH IT! And in all instances have it axled out before you proceed." It also instructed drivers to "[a]lways check your bills against your load, or if your load is sealed, match the seal number with your bills."

Subsection 2 of the Handbook set forth the responsibilities of contractors. That subsection required contractors to "comply with all procedures contained in [Subsection 1]." In addition, it required contractors to: (1) "furnish a competent operator who may be hired by the contractor to drive the contractor's vehicle only after he or she is "screened and qualified by [BTT]"; (2) "supply road equipment complying with DOT regulations and standards and meeting company equipment specifications"; and (3) "supply and maintain the necessary safety equipment to ensure compliance with [DOT] and all state requirements." Subsection 1 also required contractors to obtain BTT's permission before changing any approved operator or adding an additional operator to make a two person team, and it instructed contractors "[n]ot to issue any instructions to operators that conflict with [BTT] rules and regulations."

The Handbook also required contractors to make their tractors and/or trailers available once every three months for inspections "as required by [BTT] at those points designated as inspection stations." It specified that inspections were due to BTT's maintenance department by the 10th of April, July, October, and January and that "[i]nspections can only be done by authorized persons designated by [BTT]." The Handbook also required contractors to prepare monthly summaries of any repairs or service performed on their equipment and to send "properly completed" summaries to the company office via trip envelopes by the 10th of the following month. Drivers also had to present their hours of service and sleep logs for inspection by BTT. Respondent provided progressive discipline for drivers who violated federal requirements regarding hours of service or failed to comply with the record keeping requirements.

The Handbook also provided detailed guidelines regarding a driver's obligation to report traffic accidents and the actions that a driver should perform when he or she is involved in an accident. For example, drivers were required to report the accident to a designated BTT representative, complete a "Preliminary Accident Report" form prepared by BTT, and take one roll of 10 Polaroid photographs at the accident scene. (BTT provided the drivers with cameras and film.) A driver's failure to observe any of these requirements would result in the driver's being "placed on 9 month [p]robation, [s]uspension, with a [w]arning letter, and/or [d]ischarge," depending on the severity of the incident. All drivers who witnessed an accident or assisted in any accident scene were cautioned to "make a note of the incident in your log or daily report" and were advised not to make out their logs in public places. Drivers were also advised to "set warning flags or flares after parking well off the roadway" and to "stay at an accident scene only as long as your help is actually needed." Drivers were advised not to pull vehicles out of snowbanks and were instructed not to "talk too freely about what [they saw] at an accident scene."

Moreover, the Handbook instructed drivers to take care of any injured persons at an accident scene and provided that drivers "must get every possible bit of information about the accident and *** must transmit this information to the safety department of [BTT], through

Dispatch, as quickly as possible." The Handbook stressed that is was "essential" for a driver to gather all of the pertinent information for BTT and its insurance company because the driver "may be the only representative of the company on the scene of the accident." It required drivers to "drop off the film and the accident report in [BTT's] safety office" when they returned to the home office and encouraged drivers to discuss the incident with BTT's safety director in person. The Handbook also provided detailed instructions regarding the procedures that drivers should follow when assisting injured persons, protecting the accident scene, contacting and interacting with the police, photographing and documenting the accident, and reporting the accident to BTT.

After considering this evidence, the arbitrator found that the claimant had failed to prove that he was an employee of BTT. The arbitrator found it significant that the parties had "entered freely into an agreement with well defined terms designating the [claimant] as an independent contractor and not as an employee." The arbitrator read the agreement as providing that the claimant retained "essentially exclusive control," including "all right of control and direction over the operation of equipment and the performance of the jobs with the exception of compliance with DOT regulations." The arbitrator also noted that the claimant owned the truck, paid all expenses and operating costs, paid his own insurance, chose his own routes, made his own schedule, paid his own taxes as a private business, was able to choose or refuse any load for any reason without penalty, and was free to contract with other carriers without asking BTT for permission. Considering the "totality of the circumstances," the arbitrator concluded that "[t]he relationship between the [claimant] and [BTT] lacks the elements of exclusivity and control necessary to an employer/employee relationship," and the arbitrator denied the claimant's request for benefits in its entirety.

The claimant appealed the arbitrator's decision to the Commission. The Commission reversed, with one Commissioner dissenting. The Commission found that the claimant was BTT's employee at the time of the accident. It noted that, while several factors are relevant to establish an employment relationship and no single factor is determinative, the employer's right to control the work is the most important consideration. The Commission concluded that "[BTT] retained significant control over the manner of [the claimant's] performance of his work[.]" For example, in the Handbook, BTT "demanded that [the claimant] 'axle out' the loads he carried for [BTT]" and "match his bills and/or seals against the loads." In addition, in both the agreement and the Handbook, BTT "retained the right to approve or disqualify any driver [the claimant] might propose to operate his truck," and the Handbook provided that BTT reserved the right to approve or deny team driving. BTT also required drivers to "present their tractors and service records for BTT's inspection," to "comply with all DOT regulations," and to "take specific actions in the event of an accident, including completing a reporting form provided by [BTT]." In light of this evidence, the Commission concluded that BTT "maintained the requisite control over [the claimant's] work for him to be considered its employee" and that BTT's "significant degree of control of [the claimant's] work overrides the contractual provisions purporting to render him an independent contractor." In so ruling, the Commission relied upon the Illinois Supreme Court's decision in *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159 (2007), which reached the same conclusion when presented with facts that the Commission found to be similar to the facts presented in the claimant's case.

Having resolved the employment issue, the Commission observed that "there [was] little else in dispute." The parties stipulated that the claimant was temporarily totally disabled from

January 6, 2005, through June 11, 2006 (*i.e.*, for 74 2/7 weeks). Thus, the Commission awarded TTD benefits for that time period. Because BTT stipulated that the claimant's average weekly wage was $715.37 and the claimant provided no proof of a different wage, the Commission employed that figure in determining the claimant's rate of compensation for TTD benefits. The Commission rejected the claimant's claim for permanent total disability but awarded the claimant permanent partial disability benefits based on a 40 percent loss of the claimant's person as a whole. Finally, because the claimant presented two unpaid medical bills and BTT did not challenge the reasonableness or necessity of the medical services reflected in those bills, the Commission ordered BTT to pay the bills according to the Act's "Fee Schedule."

Commissioner Lindsay dissented. Commissioner Lindsay concluded that the evidence supported a finding that the claimant was an independent contractor and found the claimant's case distinguishable from *Roberson* and other cases wherein courts found an employment relationship. In particular, Commissioner Lindsay noted that the claimant was "completely free to work for other trucking companies" and "there was no policy in effect requiring him to advise [BTT] if he was doing so." Moreover, "[t]here was no evidence of [BTT] keeping a personnel file or otherwise closely evaluating [the claimant's] work." Commissioner Lindsay concluded that the arbitrator's decision contained a "thorough and well-reasoned discussion of the reasons why [the claimant] was an independent contractor."

BTT sought judicial review of the Commission's decision in the circuit court of Madison County. The circuit court confirmed the Commission's finding that the claimant was BTT's employee. The court found that BTT asserted control over the claimant by providing him with its Handbook, which required the claimant to "comply at all times with company operation rules and procedures." Those procedures included requirements that the claimant report accidents in a particular manner, submit to quarterly maintenance inspections performed by BTT's maintenance department, and present himself in a certain fashion so as to promote a positive image of BTT. The court found it significant that the claimant could be terminated for failing to follow some of these procedures. It also stressed the fact that the claimant's permits and licenses were in BTT's name. The court concluded "Given the competing inferences arising from these facts, it was the Commission's province to determine the driver's employment status."

This appeal followed. BTT appeals only the Commission's determination that the claimant was its employee. It has not raised any other issue regarding the Commission's award of benefits under the Act.

ANALYSIS

An employment relationship is a prerequisite for an award of benefits under the Act. *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 174 (2007). For purposes of the Act, the term "employee" should be broadly construed. *Ware v. Industrial Comm'n*, 318 Ill. App. 3d 1117, 1122 (2000). However, the question of whether a person is an employee remains " 'one of the most vexatious *** in the law of compensation.' " *Roberson*, 225 Ill. 2d at 174 (quoting *O'Brien v. Industrial Comm'n*, 48 Ill. 2d 304, 307 (1971)). The difficulty arises from the fact-specific nature of the inquiry. *Roberson*, 225 Ill. 2d at 174. No rule has been, or could be, adopted to govern all cases in this area. *Roberson*, 225 Ill. 2d at 174-75; *Ware*, 318 Ill. App. 3d at 1122. Instead, our supreme court has identified several factors that help determine when a person is an employee, namely: (1) whether the employer may control the manner in which the person performs the work; (2) whether the employer dictates the person's schedule; (3) whether the employer pays the person hourly; (4) whether the employer withholds income and social security taxes from the person's compensation; (5) whether the employer may discharge the person at will; and (6) whether the employer supplies the person with materials and equipment. *Roberson*, 225 Ill. 2d at 175.

Another relevant factor is whether the employer's general business encompasses the person's work. *Roberson*, 225 Ill. 2d at 175. "[B]ecause the theory of [workers'] compensation legislation is that the cost of industrial accidents should be borne by the consumer as part of the cost of the product," our supreme court has held that "a worker whose services form a regular part of the cost of the product, and whose work does not constitute a separate business which allows a distinct channel through which the cost of an accident may flow, is presumptively within the area of intended protection of the compensation act." *Ragler Motor Sales v. Industrial Comm'n*, 93 Ill. 2d 66, 71 (1982); accord *Roberson*, 225 Ill. 2d at 175; see also *Peesel v. Industrial Comm'n*, 224 Ill. App. 3d 711, 713 (1992); *Earley v. Industrial Comm'n*, 197 Ill. App. 3d 309, 315 (1990).

The intent of the parties evidenced in their contractual agreement is yet another relevant factor. *Earley*, 197 Ill. App. 3d at 317-18. Although the label that the parties place on their relationship is a factor of "lesser weight" (*Ware*, 318 Ill. App. 3d at 1122) which does not determine an individual's employment status as a matter of law (*Earley*, 197 Ill. App. 3d at 317-18), the employment status designated in a contract "may swing the balance" in a close case by aiding in establishing the true intent of the parties. *Earley*, 197 Ill. App. 3d at 318.

Whether an employment relationship exists rests on the totality of the circumstances, and no single factor is determinative. *Roberson*, 225 Ill. 2d at 175; see also *Earley*, 197 Ill. App. 3d at 314-15. However, the right to control the manner of the work is the most important consideration. *Roberson*, 225 Ill. 2d at 175; *Ware*, 318 Ill. App. 3d at 1122; *Peesel*, 224 Ill. App. 3d at 713.

The existence of an employment relationship is a question of fact for the Commission. *Roberson*, 225 Ill. 2d at 173-74, 187; *Ware*, 318 Ill. App. 3d at 1122. It is solely within the province of the Commission to draw inferences from the facts, weigh the evidence, and determine where the preponderance of the evidence lies. *Roberson*, 225 Ill. 2d at 173; *Wagner Castings Co. v. Industrial Comm'n*, 241 Ill. App. 3d 584, 594 (1993); *Earley*, 197 Ill. App. 3d at 314. A reviewing court will not set aside the Commission's factual determinations unless they are against the manifest weight of the evidence. *Roberson*, 225 Ill. 2d at 173. That occurs only when "no rational trier of fact could have agreed with the agency." *Roberson*, 225 Ill. 2d at 173-74.

Accordingly, where the evidence is "well balanced," it is the Commission's province to weigh the evidence and decide among competing inferences (*Roberson*, 225 Ill. 2d at 186-87; see also *Earley*, 197 Ill. App. 3d at 318), and the Commission's decision must be upheld. *Earley*, 197 Ill App. 3d at 318 (holding that "[b]ecause the facts of th[e] case were susceptible to either interpretation, it was the *** Commission's province to determine the claimant's employment status," and confirming Commission's determination where it was not against the manifest weight of the evidence); *Area Transportation Co. v. Industrial Comm'n*, 123 Ill. App. 3d 1096, 1099 (1984) ("[w]here elements of both the relationship of employer and of independent contractor are present, the *** Commission alone is empowered to draw the inferences either way and its decision as to the weight of the evidence will not be disturbed on review"); see also

Area Transportation Co., 123 Ill. App. 3d at 1101 ("where reasonable inferences from the facts may be drawn either in favor or against an employment relationship, the award of the Commission must be upheld").

In this case, there are facts suggesting that the claimant was an independent contractor and other facts suggesting that he was BTT's employee. Both BTT and the claimant had the right to control various aspects of the claimant's work. For example, the claimant set his own hours, chose his own routes for the most part, and was free to decline loads without penalty. Moreover, the written agreement between the parties repeatedly identified the claimant as an independent contractor with the power to direct and control his own employees, and both parties testified that the claimant was free to work for other carriers without obtaining BTT's permission. These facts suggest that the claimant had substantial control over the manner of his own work performance in some respects.

However, other evidence demonstrates that BTT exercised a significant level of control over the claimant's work performance in several important respects. BTT gave the claimant a Handbook that required the drivers to "comply at all times with company operating procedures and policies." For example, the Handbook required the claimant to "conduct himself *** in a businesslike fashion" and "present himself *** at all times as clean and with clean attire so as to foster the proper image of the company." It also instructed the claimant to weigh and "axle out" each load before delivering it and to "[a]lways check [his] bills against [his] load," or if the load is sealed, to "match the seal number with [his] bills." Moreover, although the claimant owned and operated his own truck, the Handbook required the claimant to make his truck available for quarterly inspections to be performed by BTT-designated inspectors at BTT-designated inspection stations. The Handbook also required contractors to prepare monthly summaries of any repairs or service performed on their equipment and to send "properly completed" summaries to the company office. Drivers were also required to present their hours of service and sleep logs for inspection by BTT. BTT provided progressive discipline for violations of these requirements. The Handbook also provided detailed guidelines regarding a driver's obligation to report traffic accidents and the actions that a driver should perform when he or she is involved in an accident or assists others at an accident scene. In addition, although the claimant chose his own routes, the Handbook required him to "load, transport, and unload each shipment from origin to destination without delay in route unless otherwise directed by dispatch," and the claimant testified that he feared he would be fired if he took an overly circuitous route.

Moreover, although the claimant was free to hire his own employees, both the Handbook and the parties' agreement imposed significant restrictions on the claimant's ability to control his employees. For example, the agreement permitted employees hired by the claimant to drive loads for BTT's customers only if they "have received clearance from Company." Similarly, the Handbook provided that an employee hired by the contractor to drive the contractor's vehicle must be "screened and qualified by [BTT]." In addition, the Handbook required the claimant to obtain BTT's permission before changing any approved driver or adding an additional driver to make a two-person team, and it instructed the claimant "[n]ot to issue any instructions to operators that conflict with [BTT] rules and regulations." Further, the agreement required the claimant to satisfy any requirements established by the DOT, the ICC, and any other federal or state regulatory agency "in its selection of employees for the performance of this agreement," and it provided that BTT may inspect the claimant's records periodically to ensure compliance with these requirements. The agreement also stated that it was BTT's duty to ensure that the claimant and his employees were familiar with the applicable federal regulations and that neither the claimant nor any of his employees violated these regulations. Pursuant to DOT requirements, BTT also required the claimant to keep service logs, submit to drug tests, and display BTT's logo on his truck.[4] In addition, BTT imposed a "no rider" policy that barred the claimant or any of his employees from transporting passengers while delivering loads for BTT's customers.

Taken together, these facts strongly suggest that BTT exercised sufficient control over the manner of the claimant's work performance to justify the Commission's finding of an employment relationship. See, *e.g.*, *Roberson*, 225 Ill. 2d at 184-85 (affirming the Commission's finding of an employment relationship between claimant truck driver and respondent motor carrier, even though the claimant owned his own truck and chose his own routes and the parties' contract identified the claimant as an independent contractor, where, *inter alia*, the respondent took action to ensure the claimant's compliance with regulatory requirements); see also *Ware*, 318 Ill. App. 3d at 1123-24 (finding that respondent motor carrier exercised "substantial control" over claimant truck driver's work activities and finding an employment relationship where, *inter alia*, the respondent "forbade [the claimant] from carrying passengers" and required him to "inspect his *** trailer prior to starting a trip," "display [respondent's] logo on his [truck],"

[4]The fact that these and other requirements that BTT imposed upon the claimant were mandated by federal or state regulations does not negate their tendency to demonstrate BTT's control over the claimant's work. See, *e.g.*, *Roberson*, 225 Ill. 2d at 178-79, 184-85; *Ware*, 318 Ill. App. 3d at 1123; *Earley*, 197 Ill. App. 3d at 314.

contact the respondent if an accident occurred, and comply with various federal and state regulations).

BTT argues that the requirements that it imposed upon drivers in the Handbook and elsewhere do not demonstrate BTT's "control" over the drivers because these requirements were mandated by ICC regulations. For example, BTT notes that ICC regulations required BTT to display its company name and its ICC number on any truck operating on BTT's behalf and to ensure that any driver who operated any such truck complied with ICC safety requirements. Relying on our appellate court's decision in *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 450-51 (2009), BTT argues that "[a]dherence to [these ICC] regulations does not make the driver of a licensed vehicle an employee of the trucking company" under the Act. During oral argument, BTT claimed that all of the requirements it imposed upon the claimant in this case were mandated by ICC regulations. Thus, BTT argued that finding an employment relationship in this case would require the finding of such a relationship in all cases in which a trucking company uses the services of an independent driver. According to BTT, this would make it impossible for any trucking company to avoid creating an employment relationship with an independent driver.

We disagree. First, contrary to BTT's argument, both our supreme court and our appellate court have held that enforcing a driver's compliance with ICC regulations is evidence of a trucking company's control over the driver which may support a finding of an employment relationship under the Act. See *Roberson*, 225 Ill. 2d at 184-85; *Ware*, 318 Ill. App. 3d at 1123-24 (ruling that an employer's responsibility for ensuring compliance with regulations is evidence of control); *Early*, 197 Ill. App. 3d at 315 (holding that "the rules and regulations of the ICC are a factor to be considered as indicating that the respondent had the right to control the claimant's work, and is indicative of an employee status between the claimant and the respondent"); *Area Transportation Co.*, 123 Ill. App. 3d at 1102 ("The responsibility assumed by Area under the ICC regulations has *** been recognized as a substantial factor in considering a party to be an employer.").

Moreover, although BTT baldly asserts that "all" of the requirements it imposed upon the claimant in this case were mandated by the ICC, it does not cite to specific regulations mandating each of the requirements it imposed upon the claimant, and at least some of these requirements do not appear to be ICC requirements. For example, the Handbook required the claimant to "conduct himself *** in a businesslike fashion," to "present himself *** at all times as clean and with clean attire so as to foster the proper image of the company," and to "comply at all times with company operating procedures and policies." In addition, Irwin testified that BTT's "no rider" policy was a requirement of BTT's *insurer*. Moreover, the claimant testified that he feared that BTT would fire him if he took an overly circuitous route. None of these requirements appear to be imposed by the ICC or by any other federal or state regulations. Thus, BTT apparently exercised more control over the claimant than the ICC regulations required.[5]

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[5]Accordingly, we reject BTT's argument that finding an employment relationship in this case would make it impossible for a carrier to avoid creating an employment relationship with an independent driver. A carrier seeking to avoid creating such a relationship could, for example, impose no requirements on the driver beyond what is mandated by the governing regulations. Alternatively, the carrier could hire only drivers who are themselves licensed carriers under the ICC. That would relieve the carrier of the responsibility to ensure the drivers' compliance with ICC regulations. In any event, it is not the case that a carrier's compliance with

Further, *Lindsey* is inapposite and does not support BTT's argument. In *Lindsey*, an employee of a company named Open Kitchens was killed by a truck driven by Lindsey, one of the decedent's coworkers. The truck was owned by defendant Carmichael Leasing Co. (Carmichael), which leased the truck to Open Kitchens. At the time of the accident, the truck bore Carmichael's ICC number and corporate name. The decedent's estate sued Carmichael, arguing that the company was vicariously liable for Lindsey's negligence under the doctrine of "logo liability."[6] Carmichael argued that it was entitled to immunity under section 5(a) the Act, which makes workers' compensation benefits the exclusive remedy of an injured employee whose injuries were caused by the negligence of a coemployee acting in the course of his of her employment and which therefore bars tort claims by any such employee against his or her employer. *Lindsey*, 397 Ill. App. 3d at 445-50. Carmichael argued that because it was vicariously liable for Lindsey's conduct, and because Lindsey and the decedent were coemployees, the Act barred the decedent's claim against Carmichael. *Lindsey*, 397 Ill. App. 3d at 445-50. It also argued that it was entitled to immunity under the Act because the decedent and

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ICC regulations, standing alone, will always result in the creation of an employment relationship.

[6]Under the doctrine of "logo liability," interstate carriers operating pursuant to a grant of authority evidenced by an ICC license number and a company name displayed on a truck are vicariously liable for the negligent actions of their drivers. See, *e.g.*, *Lindsey*, 397 Ill. App. 3d at 447. The doctrine "operates to hold federally authorized carriers, such as Carmichael, that are licensed by the United States Department of Transportation (USDOT) and display their USDOT certificate number on their trucks[] vicariously liable for the negligence of drivers operating under a lease." *Lindsey*, 397 Ill. App. 3d at 447.

Lindsey were considered "statutory employees" of Carmichael under ICC regulations. *Lindsey*, 397 Ill. App. 3d at 450-51. The court rejected Carmichael's arguments. It held that Carmichael was not entitled to invoke the immunity reserved to employers under the Act. *Lindsey*, 397 Ill. App. 3d at 445-50. It also held that the "employment relationship" between Lindsey and Carmichael which arose solely from the ICC's regulations governing logo liability was a "legal fiction" that existed only to ensure Carmichael's responsibility to the general public. *Lindsey*, 397 Ill. App. 3d at 450-51. The court concluded that this "legal fiction" did not grant Carmichael any rights afforded to "employers" under the Act. *Lindsey*, 397 Ill. App. 3d at 450-51.

Lindsey has no application in this case. *Lindsey* merely stands for the proposition that "logo liability," standing alone, cannot create an "employment relationship" that would entitle a trucking company to immunity under the Act. It does not address whether a trucking company's enforcement of ICC regulations and its imposition of other requirements on a driver could constitute evidence of the company's "control" over a driver that could support a finding of an employment relationship under the Act. Thus, *Lindsey* is inapposite. As shown above, there is sufficient evidence of BTT's control over the claimant in this case to support the Commission's finding of an employment relationship.

Moreover, although certain other relevant considerations suggest that the claimant was an independent contractor (for example, the claimant owned his own truck and was paid a percentage of the gross revenue on a per-job basis, BTT did not withhold social security or income taxes from his compensation, and the claimant paid his own insurance premiums and filed income taxes as a self-employed business owner on behalf of "Clendenen Trucking Company"), other relevant factors point strongly to an employment relationship. For example, BTT provided the trailers that the claimant used to haul freight. See *Ware*, 318 Ill. App. 3d at 1125 (ruling that the fact that carrier supplied trailers to claimant truck driver "weigh[ed] in favor of [a claimant] being an employee"). In addition, the agreement between the parties could be terminated absent a breach by either party upon five days' written notice. See *Ware*, 318 Ill. App. 3d at 1126 (the fact that the parties' lease could be terminated absent a breach by either party upon written notice suggested an employment relationship).

In addition, the claimant's work fell entirely within the scope of BTT's business. BTT's business is hauling freight for various customers, and the claimant's job was hauling freight for BTT's customers. For seven years, the claimant had an ongoing, exclusive relationship with BTT and he never worked for any other carriers during that time. As our supreme court noted in *Roberson*, " 'there is a growing tendency to classify owner-drivers of trucks as employees when they perform continuous service which is an integral part of the employer's business.' " 225 Ill. 2d at 186 (quoting 3 A. Larson & L. Larson, Workers' Compensation Law §61.07(5), at 61-21 (2006)). Accordingly, both the supreme court and our appellate court have found an employment relationship where, as here, a truck driver hauled freight exclusively and continuously for one carrier. See *Roberson*, 225 Ill. 2d at 186; *Ware*, 318 Ill. App. 3d at 1124-25 (finding an employment relationship where claimant truck driver "had no customers of his own," "worked exclusively for [respondent carrier]," "served customers designated by [respondent], and was paid a percentage of what [respondent] received from these customers").

In sum, the evidence in this case was evenly balanced, with certain evidence suggesting that the claimant was an independent contractor and other evidence suggesting that he was an employee. There is ample evidence to support the Commission's finding that BTT exercised substantial control over the claimant's work activities, which is the most important factor in the analysis. Although other evidence supports the opposite conclusion, it was the Commission's province to weigh the evidence and choose among competing inferences. *Roberson*, 225 Ill. 2d at 186-87; *Earley*, 197 Ill. App. 3d at 318; *Area Transportation Co.*, 123 Ill. App. 3d at 1099, 1101. While some other facts might suggest that the claimant was an independent contractor—such as the parties' label of their relationship in the agreement, the claimant's tax filings, and the fact that BTT did not withhold income or social security taxes from the claimant's compensation—these factors are accorded less weight than the right to control the claimant's work activities. See *Roberson*, 225 Ill. 2d at 175 (ruling that the right to control the manner of the claimant's work is "the most important consideration"); see also *Ware*, 318 Ill. App. 3d at 1125-26 (characterizing the label that the parties apply to their relationship as a "minor consideration" and noting that "[w]hether income tax is withheld has not been found to be a significant factor"); *Peesel*, 224 Ill. App. 3d at 716, 718 (ruling that statements made on a claimant's income tax returns are not given substantial weight). Moreover, as noted above, other relevant evidence further supports the Commission's finding of an employment relationship, including the agreement's termination provision, the fact that BTT provided the trailers, and the fact that the claimant's business was intimately and exclusively related to BTT's business.

Thus, because the evidence cuts both ways and supports either inference, the Commission's finding of an employment relationship was not against the manifest weight of the evidence and must be upheld. *Area Transportation Co.*, 123 Ill. App. 3d at 1101 ("where reasonable inferences from the facts may be drawn either in favor [of] or against an employment relationship, the award of the Commission must be upheld"); see also *Roberson*, 225 Ill. 2d at 186-87; *Earley*, 197 Ill. App. 3d at 318.

CONCLUSION

The Commission's finding that an employment relationship existed between the claimant and BTT at the time of the claimant's injury was not against the manifest weight of the evidence. We therefore affirm the judgment of the circuit court of Madison County, which confirmed the Commission's decision.

Affirmed; cause remanded to the Commission.