



Case 20.4 Donita Taylor, Administratrix of Estate of Belford v. Comsat Corp.

2006 U.S. Dist. Lexis 81949 (S.D. WVA)

The issue is whether an employer failed to provide safety equipment to an employee, resulting in the employee's death from a known carcinogen.

COPENHAVER, JR., DISTRICT JUDGE.

This action arises out of the death of plaintiff's son, Matthew Belford, who worked on the construction of the National Radio Astronomy Observatory ("NRAO") facility in Green Bank, West Virginia.

According to plaintiff, the individual defendant, Harry Morton, is alleged to have been "employed by defendants as a supervisor," and Belford was "employed by [the corporate] defendants as a laborer who worked with designing, fabricating, erecting, and painting the National Radio Astronomy Observatory" facility at Green Bank. (Am. Compl. at PP 5,6.) More specifically, it appears that Belford was employed in the capacity of ironworker at certain times in 1998 and 1999. (Comsat Resp. Memo at 3.)

Plaintiff alleges "[t]he defendants knew that the paints it used contained benzene and that benzene was a known human carcinogen and presented a number of health hazards to Matthew S. Belford, including cancer." Plaintiff represents that the defendants (1) required Belford and other workers to work in an environment which involved inhalation and direct bodily contact with benzene and other paint related chemicals; (2) failed to provide Belford and other workers with proper safety equipment to assure adequate protection from benzene and other paint related chemicals; and (3) failed to warn Belford and other workers of the dangerous nature of benzene and other paint related chemicals to which they were exposed. Plaintiff maintains that as a result of the defendants' conduct Belford was repeatedly exposed to benzene while working on the project and this exposure caused Belford to develop acute myelogenous leukemia, a condition which ultimately claimed his life on April 16, 2004.

According to Comsat, the "gist of this action centers around' allegations of benzene exposure and whether the paint and painting processes required and monitored by the NRAO at Green Bank were causally related to the plaintiff's decedent's disease."

The court finds plaintiff's position to be persuasive. Comsat is being sued under West Virginia law for deliberately intending Belford's injuries, for failing to provide Belford with a reasonably safe work environment, and, arguably, for failing to warn Belford. Even assuming that Comsat acted under the direction of the NSF, the NRAO, or their officers, there is no evidence before the court that the federal agencies or their officers exercised direction and control in such a manner as to prevent Comsat from fulfilling its duties to Belford under West Virginia law.

Indeed, plaintiff has identified and interpreted contractual provisions, the interpretation of which Comsat does not dispute, that suggest the federal entities and their officers directed Comsat to act in a manner that was consistent with fulfilling its alleged duties to Belford under West Virginia law and further suggests that Comsat failed to act in accordance with the directives of the agencies and their officers. The contract provided, among other things, that OSHA regulations shall be followed, unless Associated's specifications conflicted with the OSHA regulations. The contract further provided that "[a]ppropriate safety precautions applicable to handling of toxic and flammable materials shall be observed during all operations." The safety advice sheet for Interlac 665, one of the paints used in the construction of the Green Bank facility, states that the sprayer and assistant should always wear a cartridge respirator. Other people who can smell paint should also wear a cartridge respirator or carbon mask unless they are sure the solvent concentration is below the national occupational exposure limit (OES). Cartridge respirators and carbon masks become less efficient with time and should be replaced periodically.

Plaintiff maintains that Belford was not provided with an appropriate respirator and has attached affidavits from workers who were employed in the construction of the Green Bank facility at the same time as Belford which represent that they were not provided with a respirator or were provided with an inadequate respirator while working on the construction of the Green Bank facility.

The "gist" of this action is not that Belford was exposed to a chemical which the federal government compelled to be produced to its detailed specifications. Rather, the "gist" of this action is that the harmful exposure to chemicals occurred as a result of the employer's conduct which purportedly violated both West Virginia law and the direction of the federal agency and its officers.

In view of the foregoing, the court finds Comsat has not demonstrated the required causal connection inasmuch as it cannot show that the actions giving rise to this suit were performed pursuant to federal direction.

It is accordingly ORDERED that plaintiff's motion to remand be, and it hereby is, granted.

Case Commentary

The Southern District Court of West Virginia decided that Comsat failed to provide a safe working environment for Belford in violation of OSHA.

Case Questions

1. Do you agree with the court's decision?
2. Why did Comsat neglect to supply Belford with the appropriate respirator?
3. Should there be criminal charges against Comsat for Belford's death?
4. Is there an ethical solution to this case?

