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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

Record Nos. 780436
780455

DICK MEADOR TRUCKING COMPANY, INC.
AND/OR
BAGGETT TRANSPORTATION COMPANY
OF BIRMINGHAM, ALABAMA,

Appellants,

v.

DIXIE E. DILLON, BOBBY MILLARD DILLON,
JR., AND STEVEN LEE DILLON,

Appellees.

APPENDIX

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INDUSTRIAL COMMISSION OF VIRGINIA
P. O. Box 1794
Richmond, Virginia 23214

APPLICATION FOR HEARING

File No. _____

Employee BOBBY MILLARD DILLON RT. 1 BOX 340 DUBLIN, VA. 24084 (Address)

Employer DICK MEADOR TRUCKING CO. INC. P.O. BOX 338 DUBLIN, VA. 24084 (Address)

Date of Accident FEB. 19, 1977 Average Weekly Wage $ AVERAGE WEEKLY FOR 1976 WAS 261.84 (Paid Commission of Leads)

Place Where Accident Occurred ROCKBRIDGE COUNTY - I-81 NEAR FAIRFIELD (City or County), VIRGINIA (State)

Nature of Injury or Occupational Disease: GUN SHOT WHILE CHECKING EQUIPMENT. DEATH OCCURED ON INTERSTATE HIGHWAY 81

Date Disability Began: FEB. 19, 1977

Date of Return to Work: _____, 19____, and wage then earned $_____

The applicant requests a hearing before the Industrial Commission of Virginia on the grounds of:

(1) Accidental Injury ..... ( )

(2) Occupational Disease ..... ( )

(3) Death on FEB. 19, 1977 due to Accidental Injury ..... ✓

(4) Change in Condition ..... ( )

If application is based on a change in condition, state nature of change: _____

TICKET FOR Christiansburg
DATE OF LAST PAYMENT _____
APPLICATION FILED 4/28/77
ENTERED TO DOCKET 5/18/77
BY _____

Compensation was last paid at the rate of $_____ per week through the _____ day of _____, 19____.

COPY OF APPLICATION MUST BE SENT TO OTHER PARTY (SO INDICATE BY A CHECK) ☐ YES

Signature of Applicant: Dixie E. Dillon (Wife of Deceased)

Address: Rt. 1 Box 340
Dublin, Virginia 24084

Signed this 25 day of april, 1977.

Subpoenas for witnesses will be issued by the Industrial Commission on request or may be obtained at the Clerk's Office of the City or County where the hearing will be held (§65.1-21, Code of Va.). Medical reports are acceptable in lieu of physicians' personal appearances.

Opinion by WILHOIT
Deputy Commissioner

SEP 9 1977

Hearing before Deputy Commissioner WILHOIT at Christiansburg, Virginia, on August 10, 1977.

This case is before us upon an application filed April 28, 1977 by Dixie E. Dillon as surviving widow of Bobby Millard Dillon seeking death benefits for the death of Bobby Millard Dillon on her behalf and on behalf of their two children, Bobby Millard Dillon, Jr., born October 11, 1965, and Steven Lee Dillon, born September 24, 1973, alleging that Bobby Millard Dillon died February 19, 1977, as the result of an accident which arose out of and in the course of his employment with Dick Meador Trucking Company, Inc. of Dublin, Virginia, and/or Baggett Transportation Company of Birmingham, Alabama.

The parties stipulate that the above claimants are proper total dependents under the Workmen's Compensation Law of Virginia.

The parties stipulate an annual wage for 1976 earned by Dillon in the amount of $13,618.41. We find that the average weekly wage was $261.89.

Dick Meador Trucking Company, Inc. defends the case on

the ground that Dillon, nor the other drivers, were employees under the law for the purpose of workmen's compensation coverage but, instead, were independent contractors.

Baggett Transportation defends the case on the ground that Dick Meador Trucking Company was an independent contractor and Dillon was an employee solely of Dick Meador.

Baggett Transportation Company of Birmingham, Alabama is in the business of moving or carrying explosives and is licensed or permitted to haul same through many states including Virginia. Baggett has tractor trailer units of its own and employees of its own but frequently contracts with others to perform a portion of its business. Baggett has no place of business in the State of Virginia, nor does it have any employees in this state.

Dick Meador Trucking Company, Inc. is located in Dublin, Virginia, and the President of the corporation is A. H. Meador, Jr. This corporation was insured for workmen's compensation purposes up to January 7, 1977, but did not carry insurance nor was it self-insured from that date until June 2, 1977, when a subsequent policy was purchased. That policy is now in effect until June 2, 1978.

The agreement and contract entered into between the parties provided that Meador would carry proper workmen's compensation insurance.

Meador had in operation as of February 19, 1977, seven tractor trailer units; eleven drivers; an office which was operated by one male and one female secretary, and a mechanical shop to maintain his trucks which was operated by one mechanic. This makes a total of fourteen apparent employees regularly employed by Meador not including the officers of the corporation.

In 1972 Meador entered into an agreement by written contract with Baggett to furnish certain tractor-trailer units with drivers. The only requirement made by Baggett pertaining to the drivers was that they be qualified to meet the standards of the Department of Transportation referred to as D.O.T. Regulations. Meador had four drivers qualified for Baggett and he hauled for other businesses by use of the other drivers.

Meador maintained the trucks, paid the drivers a percentage based on weight or mileage taken in by the truck, paid expenses for the operation of the truck and frequently advanced money to the drivers for road expenses which was subsequently deducted from the amount of money ultimately paid to the driver for his work.

If Baggett requested use of a unit or more to haul in Virginia, the driver, or drivers, were directed by Meador where to pick up and where to deliver the load. Once the driver was on the road, especially outside the State of Virginia, after the delivery had been made, contact was made with Baggett's dispatcher in Birmingham, Alabama and from there the driver was instructed as to where he should proceed. This is the only contact the

drivers had with Baggett.

The drivers picked their own route of travel within the law.

It is obvious from the testimony of Meador at the hearing held August 10, 1977, that he felt Dillon and the drivers were, in fact, his employees. He withheld social security and income tax from the driver's pay.

The day prior to February 19, 1977, Dillon and another driver, Kenneth D. Farris, left Earle, New Jersey together operating one unit owned by Meador upon instructions from Baggett's dispatcher and proceeded to Martinsburg, West Virginia where they were to pick up a load at the DuPont plant. The two drivers in the unit left Martinsburg, West Virginia on February 19, 1977 at approximately 3:00 P.M. on route to the State of Arkansas. Both drivers were familiar with the route. Dillon was driving the truck and after a few minutes Farris fell asleep in the sleeper cab. Dillon proceeded into Virginia and south on Route 81 until he reached the vicinity of Lexington, Virginia, in Rockbridge County. On the west side of U.S. 81 is a rest stop in this area, but on February 19, 1977 the rest stop was closed and the entrance and exit blocked by barrels because of cold weather.

When Farris awoke in the sleeper at approximately 5:30 on February 19, 1977 he noted that the truck was stopped and parked off the west side of 81 on the south apron coming from

the rest stop. He noted that the driver, Dillon, was not in the cab and when he proceeded to leave the cab he found Dillon approximately three feet from the cab on the west side between the cab and the ditch or embankment lying on his back. Dillon was dead.

The investigation by the Virginia State Police revealed that Dillon had been shot in the chest with one round from a long 22 rifle. There was nothing to indicate that any effort was made to tamper with the truck or to remove any of Dillon's possessions. The reason for the shooting has never been determined nor has an arrest been made. The investigating police surmise that the death occurred somewhere between 4:30 and 5:30 P.M. on February 19, 1977.

Section 65.1-28, Code of Virginia, provides that an employer performing the type business Baggett and Meador were involved in the State of Virginia and has three or more employees regularly employed in said business must either be self-insured or carry a proper insurance for the payment of workmen's compensation benefits to an injured employee.

The Virginia Workmen's Compensation Act affords benefits only to an employee who is injured by accident arising out of and in the course of his employment. The employee-employer relationship must be established before the provisions of the Act become applicable. The relationship of employer and employee or master and servant must be established on common law principles

since the relationship is not established by statute.

Although numerous tests have been devised for determining the existence or non-existence of an employee-employer or master-servant relationship, generally four elements exist, viz: The authority to select and engage; the obligation to pay wages; the power of dismissal and the power of control of the servant's action. Of these, the power of control is the most essential element, the existence of the other elements not being essential. The paramount test is: Who has the power to control and direct the servant in the performance of his work? Craig v. Doyle, 179 Va. 526, 19 S.E. (2d) 675; Brown v. Fox, 180 Va. 509, 54 S.E. (2d) 109; Coker v. Gunter, 191 Va. 747, 63 S.E. (2d) 15; Phillips v. Brinkley, 194 Va. 62, 72 S.E. (2d) 339.

A review of the evidence convinces us, and we find, that Dillon was, in fact, an employee of Dick Meador Trucking Company, Inc. when killed on February 19, 1977. It is quite clear we think from the evidence that the power of control rests with Meador and any contact Dillon or any of the other drivers may have had with Baggett was for one specific act and that simply was to determine where the truck was to be used. Meador paid all expenses, withheld income tax and social security, and had the driver and vehicle return when proper to do so to his place of business in Dublin, Virginia. He also had the drivers qualify to meet the

regulations under which Baggett operated.

In addition to the above there is a theory in the Workmen's Compensation Law that control necessarily follows along with ownership of an expensive piece of equipment. This is to say that in Dilbn's case, or any other drivers so far as we can determine, Meador was at liberty to terminate their employment atany time or to have the unit returned to his headquarters.

We find, then, that Dick Meador Trucking Company, Inc. was subject to the Workmen's Compensation Law of Virginia, on February 19, 1977 and Bobby Millard Dillon was his employee when killed in that he had more than three employees regularly employed in the same business in this state.

If Dillon had been, in fact, a loaned employee to Baggett or a statutory employee pursuant to § 65.1-30, Code of Virginia, on February 19, 1977, it would be of no moment inasmuch as this Commission has no jurisdiction in this case over Baggett Transportation Company of Birmingham, Alabama.

Section 65.1-7, Code of Virginia, defines injury and reads as follows:

> "Unless the context otherwise requires, 'injury' and 'personal injury' mean only injury by accident, or occupational disease as hereinafter defined, arising out of and in the course of the employment and do not include a disease in any form, except when it results naturally and unavoidably from either of the foregoing causes."

The expressions "arising out of" and "in the course of the employment" are used conjunctively and are not synonymous. Both requirements must exist to bring the case within the Act. The words "arising out of" refer to the origin or cause of the injury, and the words "in the course of" to the time, place, and circumstances under which it occurred. To be considered as having arisen out of the employment an injury need not have been the foreseen or expected consequence of the work, nor the conditions of the work the sole proximate cause thereof; but, after the event, it must appear the injury can be fairly traced to the employment as at least a contributing cause, in the sense that workman was exposed to the causative hazard in a peculiar or abnormal degree by reason of his work. An accident occurs in the course of the employment when it takes place within the period of employment at a place where the employee may reasonably be, and while he is reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. Conner v. Bragg, 203 Va. 204, 123 S.E. (2d) 393 (rehearing denied); Alvis v. Southern Motor Lines, 200 Va. 168, 104 S.E. (2d) 735; Norfolk & Wash S. Co. v. Holladay, 174 Va. 152, 5 S.E. (2d) 486; Cohen v. Cohen's Dept. Store, 171 Va. 106, 198 S.E. 476; Bradshaw v. Aronovitch, 170 Va. 329, 196 S.E. 684; Dreyfus & Co. v. Meade, 142 Va. 567, 129 S.E. 336; Honaker v. Hartley,

140 Va. 1, 124 S.E. 220.

There is some indication by the evidence that Dillon stopped and parked his truck for the purpose of checking the oil. It is unknown exactly why he did stop but it is common knowledge that drivers of tractor-trailers frequently do so. We think it is clear, therefore, and we find that Dillon was in the course of his employment when he was killed by a bullet from a gun.

We further find pursuant to definitions of accidental injury laid down by the Virginia Court of Appeals that Dillon died as a result of an injury by accident.

The remaining question is whether or not the death resulted from an accident which arose out of his employment.

In Sullivan v. Suffolk Peanut Co., 171 Va. 439, 199 S.E. 504, we find:

> "The burden of supplying evidence from which the inference can be legitimately drawn that the injury arose out of and in the course of the employment, rests upon the claimant. An award based upon surmise or conjecture will be set aside. A finding that the injury is compensable, however, may be established by circumstantial evidence and in some cases claims are presumed to be within the meaning of the statute.
>
> "Where an employee is found dead as the result of an accident at his place of work or near by, where his duties may have called him during the hours of his work, and there is no evidence offered to show what caused the death or to show that he was not engaged in his master's business at the time, the court will

> indulge the presumption that the relation of master and servant existed at the time of the accident, and that it arose out of and in the course of his employment."

See also Alvis v. Southern Motor Lines, supra.

A fair interpretation of this rule we believe is that where an employee, as here, is found dead from accident, and there is no evidence offered as to why the death occurred, the court will presume that the accident causing the death was one that arose out of and in the course of theemployment. This is particularly true, as in this case, where the defendants have offered no evidence to rebut the presumption that the death was by accident arising out of and in the course of theemployment.

In the Commission's Files 481-571, Rasnake v. Kayo Oil Co. and 258-096, Jenkins v. George K. Houser t/a Houser's Esso, compensation was awarded and each case was affirmed on review by the full Commission. In each case we have a shooting death in a service station without any real indication as to the reason.

We further find, then, that Dillon died as the result of an accident on February 19, 1977, which arose out of and in the course of his employment with Dick Meador Trucking Company, Inc. leaving a widow, Dixie E. Dillon, and two children, Bobby Millard Dillon, Jr. and Steven Lee Dillon as dependents wholly dependent upon him at the time of his death.

Accordingly, an award shall enter.

AWARD

An award is hereby entered inbehalf of Dixie E. Dillon, Bobby Millard Dillon, Jr. and Steven Lee Dillon providing compensation at the weekly rate of $162.00 for the death of Bobby Millard Dillon against Dick Meador Trucking Company, Inc., beginning February 19, 1977, and continuing for a period of 500 weeks, or until conditions justify a modification thereof.

Compensation having accrued shall be paid in a lump sum and the remainder each four weeks thereafter to Dixie E. Dillon as mother and natural guardian of Bobby Millard Dillon, Jr. and Steven Lee Dillon for the sole and equal use of the three dependents.

Fifty percent of the compensation now due and fifty percent of each additional payment shall be made to Kendall O. Clay, Attorney, Radford, Virginia, for services rendered Dixie E. Dillon, Bobby Millard Dillon, Jr. and Steven Lee Dillon until a total amount of $5,000.00 has been paid.

The employer shall pay no more than $1,000.00 to the proper party or parties for burial expense and no more than $300.00 to the proper party or parties for transportation of the body.

The case is ordered removed from the hearing docket.

ORDER

REVIEW before the Full Commission at Richmond, Virginia, on October 4, 1977.

It appearing to the Full Commission that the record below is lacking in evidence regarding the number of employees which Baggett Transportation Company of Birmingham, Alabama, may have had regularly employed in the Commonwealth of Virginia, it is hereby

ORDERED that this claim be, and hereby is, restored to the hearing docket for the taking of additional evidence, regarding the number of employees of Dick Meador Trucking Company, Inc., or any other Virginia employer who were used on a regular basis in Virginia by Baggett Transportation Company of Birmingham, Alabama, in the course of their regular trade business or occupation.

Upon completion of the taking of this additional evidence, the claim shall be restored to the hearing docket for consideration of the Full Commission.

Entered this 25 day of October, 1977.

INDUSTRIAL COMMISSION OF VIRGINIA

Robert N. Jeffries

Chairman

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Radford, Virginia 24141
for the Claimant.

Stephen D. Rosenthal, Esq.
First & Merchants National Bank Building
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Andrew P. Miller, Esq.
P.O. Box 1122
Richmond, Virginia 23208
for Baggett Transportation Company of Birmingham, Alabama.

MAR 1 1978

Opinion by JOYNER,
Chairman

REVIEW before the Full Commission at Richmond, Virginia, on October 4, 1977.

This claim is before the Full Commission for review of the opinion of September 9, 1977, awarding compensation to the widow and infant children of Bobby Millard Dillon, who died as the result of injuries received in an industrial accident on February 19, 1977.

The claim is defended as to Dick Meador Trucking Company, Inc. [Meador] upon the ground that Bobby Millard Dillon was not the employee of that corporation.

The claim is defended as to Baggett Transportation Company of Birmingham, Alabama [Baggett] upon the ground that Bobby Millard Dillon was an employee of an independent contractor [Meador] and, therefore, was not an employee of Baggett.

The evidence established that Baggett was a general commodity carrier and as such was licensed to haul explosives in the contiguous 48 states and had intrastate authority to operate in Virginia. In order to carry out this business, Baggett owned and operated its own trucks and, in addition, contracted with some 76 independent carriers to transport explosives and other commodities for them [T-91]. Baggett contracted with Meador to lease four tractors and trailers together with 7 drivers who were qualified and properly licensed to drive trucks hauling explosives. [Sample Lease, Employer's Exhibit #1]. Bobby Millard Dillon was one of these 7 drivers. It was the testimony of his immediate

employer, Meador, that these 7 drivers spent approximately 95% of their total work hours hauling loads for Baggett. [Affidavit of H. A. Meador, Jr. of November 15, 1977, and T-53]. Records submitted by Baggett indicate that from February 1976 through February, 1977, 190 trips by the 7 Meador drivers originated in Virginia, usually in Radford or Dublin, but occasionally in Portsmouth, Yorktown, Quantico and Lexington. Dillon was a co-driver on 40 of these trips and apparently the sole driver on an additional 12 trips [Employer's Exhibit 1-A]. Meador drivers received the pay and other benefits provided for Baggett's acknowledged drivers pursuant to the provisions of Baggett's union contract.

The fatal trip apparently commenced on Saturday, February 11, 1977, at Toone, N. J. where Dillon and his co-driver, Kenneth Farris, were dispatched by Baggett to Earle, N. J. [Employer's Exhibit 1-A, p.5]. The drivers were then sent by Baggett's dispatcher on February 18, 1977, from Earle, N. J., to Martinsburg, West Virginia. From there the truck was dispatched by Baggett to Arkansas [T-30], which involved travel along Interstate Route 81 through Virginia. Farras was asleep in the truck when Dillon stopped at a wayside near Lexington, Virginia, at approximately 5:30 P.M. on February 19, 1977. The details of Dillon's death are not known. The evidence only establishes that Farris awoke, finding the truck stopped on the paved shoulder of the road and Dillon lying beside the truck on the passenger side, dead of a gunshot wound. Upon this evidence Deputy Commissioner Wilhoit found that Bobby Millard Dillon died as the result of an accident arising out of and in the course of his employment and compensation benefits were awarded to the widow and infant children to be paid by Meador.

Upon review, the full Commission adopts the findings of fact

and conclusions of law contained in the opinion of September 9, 1977.

The facts of this case clearly fall within the rule of Alvis v. Southern Motor Freight, 200 Va. 168, 104 S.E. (2d) 735. Dillon was about his employer's business at a place his work would reasonably take him and died as the result of an accidental injury. Therefore, a presumption arises that Dillon died as a result of an accident arising out of and in the course of his employment and the burden is thereby shifted to the employer(s) to rebut the presumption. There is no credible evidence to rebut the presumption that Dillon's death did not arise out of and in the course of his employment. Neither the person who wounded Dillon nor the murder weapon have been found.

Upon the Commission's Motion, the claim was restored to the hearing docket for the taking of additional evidence regarding the number of employees Baggett regularly used in Virginia. This evidence established that Baggett conducted its business through three independent common carriers in the state; Meador, Clifton Scruggs and Donald O. Smith. For the year February, 1976-February, 1977, Smith carried 63 loads for Baggett, 5 of which originated in Virginia; Scruggs carried 67 loads during the same period, 11 of which originated in Virginia. However, neither Smith nor Scruggs had other employees and, therefore, only the 7 employees of Meador, previously mentioned, could be considered statutory employees of Baggett. Section 65.1-29 provides:

> "When any person (in this section and §§65.1-31 and 65.1-32 referred to as "owner") undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (in this Section and §§65.1-31 to 65.1-34 referred to as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be

> liable to pay to any workman employed in the work any compensation under this Act which he would have been liable to pay if the workman had been immediately employed by him. (Code 1950, §65-26; 1968, c. 660).

It is clear from the record that 7 of Meador's employees, including Dillon, were used on a regular basis to conduct the trade and business of Baggett, and we so find.

Baggett, in order to protect itself from Workmen's Compensation claims, required in its lease that Meador carry workmen's compensation insurance. Meador had complied with this requirement for a time, but had allowed its insurance policy to lapse on January 7, 1977, thereby having no insurance in force on the date of Dillon's death. Our award will, therefore, enter jointly and severally against Meador, the immediate employer, and Baggett, the statutory employer. In so holding, we recognize, as counsel for Baggett argues, that an employer is being held subject to the Virginia Workmen's Compensation Act solely upon the basis of his having statutory employees in this state. However, to hold otherwise would be to apply one standard to employers with direct as well as statutory employees here and another standard to employers who conduct their business in this state from another jurisdiction entirely with statutory employees. In the final analysis, the purpose of the Workmen's Compensation Act is to provide coverage to those who are injured or killed while providing a service for their employer, whether he be their immediate employer or a statutory employer.

AWARD

An award is entered in favor of the claimants, Dixie E. Dillon, widow; Bobby Millard Dillon, Jr. and Steven Lee Dillon, infants, at the rate of

$162.00 per week, plus cost of living increase if applicable, for the death of Bobby Millard Dillon, against Dick Meador Trucking Company, Inc, and Baggett Transportation Company of Birmingham, Alabama, jointly and severally, beginning February 19, 1977, and continuing for a period of 500 weeks, or until conditions justify a modification thereof.

Compensation having accrued shall be paid in a lump sum.

From compensation there shall be deducted and paid to Kendall O. Clay, Esquire, the sum of $5,500.00 for legal assistance rendered the claimants herein.

The employers shall pay no more than $1,000.00 to the proper party or parties for burial expense and no more than $300.00 to the proper party or parties for transportation of the body.

BOBBY MILLARD DILLON (Deceased), Employee
DIXIE E. DILLON, Widow, et al, Claimants

v. Claim No. 539-447

DICK MEADOR TRUCKING COMPANY, INC., Employer
No record of Insurance
and/or
BAGGETT TRANSPORTATION COMPANY OF BIRMINGHAM, ALABAMA, Employer
No record of Insurance

Kendall O. Clay, Attorney,
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Radford, Virginia 24141,
for the Claimant.

Stephen D. Rosenthal, Attorney,
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Radford, Virginia 24141,
for Dick Meador Trucking Company.

Andrew P. Miller, Attorney,
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Richmond, Virginia, 23219
for Baggett Transportation Co. of Birmingham, Alabama.

Hearing before Deputy Commissioner WILHOIT at Christiansburg, Virginia, on August 10, 1977.

All witnesses having been duly sworn, the following testimony was taken.

DEPUTY COMMISSIONER WILHOIT:

The case is brought by Mrs. Dillon seeking death benefits as a widow for herself and three children.

THE CLAIMANT:

Two children.

#1 Statements

DEPUTY COMMISSIONER WILHOIT:

Two children.

Mr. Clay, could you give me the name and the date of the children, please, date of birth?

MR. CLAY:

Yes. There is Bobby Millard Dillon, Jr. His date of birth is October 11, 1965. The other child is Steven Lee Dillon, born September 24, 1973. There is one married daughter in addition but she is emancipate.

DEPUTY COMMISSIONER WILHOIT:

All right, Mr. Miller and Mr. Rosenthal, are you all willing to stipulate that Mrs. Dillon and these two children are proper dependents under the Law?

MR. MILLER:

Yes, sir.

MR. ROSENTHAL:

Yes, sir.

DEPUTY COMMISSIONER WILHOIT:

And the average weekly wage is to be calculated from a 1976 W-2 which reflects $13,618.41. Is that right, Mr. Clay?

MR. CLAY:

Yes, sir.

****

****

[TR 4]
DEPUTY COMMISSIONER WILHOIT:

All right, one other thing. I believe the alleged accident and death occurred on February 19, 1977. Is everyone in agreement on that point?

MR. MILLER:

Yes, sir.

****

[TR 22]
KENNETH D. FARRIS

BY MR. CLAY:

Q For the record, would you state your name, please?

A Kenneth D. Farris.

Q By whom are you employed, Mr. Farris?

A Dick Meador Trucking.

****

Q Have you worked with Mr. Dillon since he came to work for Mr. Farris?

A Yes, sir.

Q In what capacity have you worked with him?

A He and I rode double on the same truck.

[TR 23-24]

****

Q Do you remember-- I'm sure you do-- the date he was killed?

A February the 19th.

Q 1977?

A Right.

Q When did that trip first originate and where? Do you recall?

A Martinsburg, West Virginia, DuPont.

Q Had you been out on the road a few days before you went to DuPont to pick up?

A Yes, sir.

Q Do you know what day you were first dispatched?

A February 18th.

Q February the 18th. Who dispatched you?

A George Imbusch, Birmingham, Alabama. He's our dispatcher.

Q Where were you at the time that he dispatched you.

A I believe this was Earle, New Jersey. Yes, it was Earle, New Jersey.

Q What did he tell you to do, or what did he tell you?

A He dispatched us to DuPont, Martinsburg, West Virginia, for the next day.

****

Kenneth D. Farris

****

BY MR. CLAY:

Q Do you know what Mr. Imbusch told Mr. Dillon, or what did he tell you that was related to him?

A Well, he dispatches us after we finish one trip to our next destination for another load.

Q Had you unloaded something in New Jersey?

A Yes.

Q And after you unloaded that, did Mr. Dillon initiate a call to Mr. Imbusch?

A Right.

Q Why did he call him?

A For dispatch. In other words, we had completed our trip there and then we'd call Mr. Imbusch for further instructions

Q Where to go to next?

A Where to go to next, right.

Q Where had the load that you delivered to New Jersey come from?

A Originate? I'd have to go on my log book there. I can't--

Q My point is--

A I can't remember now.

Q You started this whole trip that may have taken you to a number of destinations in Dublin?

A This didn't originate at Dublin.

Q That load did not?

A Did not, no.

Q Do you remember the day that you last left Dublin before

this accident occurred?

A To the best of my knowledge, it was about Sunday and this was Saturday.

Q So you had been out on the road about a week?

A Right.

Q All right. Who dispatched you from Dublin at that time?

A We get ninety percent of our dispatches out of Birmingham. Now if a load originates at Dublin, Mr. Meador will dispatch us, in other words.

Q Do you remember on this particular occasion which place you were dispatched from?

A On this load that we finished in New Jersey?

Q The first load that you left out of Dublin with, that and perhaps made a number of loads.

A I'd have to go on my log book to be sure.

Q You don't have that with you, do you?

A I don't have that with me, no, sir.

Q Where did you pick up the truck when you started that trip?

A The week before, you mean, when we left out on the road?

Q Yes, on Sunday.

A Dublin.

Q At Mr. Meador's terminal?

A Yes, sir.

Q Did you go in and fuel the truck?

A Yes, sir.

Q And check the truck?

A We have our fuel at Dublin, oil. We always check everything out before we leave.

Q Getting back to the time that you were in New Jersey, Mr. Imbusch told you to go to Martinsburg or told Mr. Dillon to go to Martinsburg?

A Yes, sir.

Q He told you the place to go to?

A Yes, sir, DuPont.

Q Did he tell you what you would pick up there?

A Just a load and where the load was, the destination of that load that we were picking up.

Q What was that load?

A Some kind of explosives.

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Q Do you remember the time that you arrived in Martinsburg?

A Yes, sir, it was around midnight, February the 18th.

Q What did you do after you-- Did you deliver the truck to--

A We carried the empty trailer into DuPont and dropped it and then bobtailed to a motel at Williamsport which is just a few miles from DuPont in Martinsburg.

Q Were you advised when the truck was loaded?

A We were advised at that time it would be around three o'clock in the afternoon, yes, sir, or some time in the afternoon, which we checked back there and it was that afternoon we pulled out of DuPont.

Q What time did you leave DuPont?

A Approximately quarter to three.

Q In the afternoon?

A Right.

Q Did you fuel the truck before you left?

A No.

Q Did you check the truck before you left?

[TR 30-31]

A Yes.

Q Did you check the oil in the truck before you left Martinsburg?

A No, we knew what the oil was before we left Martinsburg.

Q You knew what it was?

A Yes, sir.

Q What was it?

A We checked the oil the last time when we came out of the motel at Williamsport and it was one gallon low.

Q Where were you taking the load from Martinsburg to?

A Arkansas.

Q Did anyone give you instructions on the route to take from Martinsburg to Arkansas?

A No, sir. We are supposed to--we are qualified to figure out our shortest distance.

Q That's left up to you as to how you go?

A Right. This particular load it was, yes, sir.

Q On some loads do they give you instructions?

A Some loads they do specify our routes, now like certain terminals you work out of.

Q Who determines the route that you would be taking?

A Your dispatcher.

Q On this particular occasion who did it?

A Mr. Dillon.

****

Kenneth D. Farris

Q If you knew the truck was a gallon low on oil, why did you elect not to fill it?

A Because it was cold there. The tractor had been setting for approximately eight hours and oil gets stiff in cold weather and we were waiting for it to heat up. We carry our oil in our cab, see, and we were waiting for it to warm up some before pouring it in and which it doesn't, the capacity of the tractor, it doesn't-- it wasn't mandatory to put it in at that time.

Q When you left Martinsburg, who was driving the truck?

A Bobby Dillon.

Q What were you doing?

A I was sitting up at the time. I was in the driver's, the passenger's seat.

Q Did you ride in the passenger's seat all the way to Harrisonburg?

A No, I got in the sleeper just before we left West Virginia, just before crossing into Virginia.

Q Mr. Dillon was driving the truck?

A Yes, that was just ten or twelve miles after we left DuPont. I had gotten sleepy. I had drove into DuPont that night before and so it was his turn to drive, see.

Q Were you awake at the time the incident occurred there

at Harrisonburg, at the time he was shot?

A You mean at Lexington.

Q Okay, at Lexington.

A No, sir.

Q Where did the shooting occur exactly, or where was the truck stopped at the time that Mr. Dillon was found?

A South of the rest area, on the shoulder.

Q At Lexington?

A Yes, sir, just north of Lexington, in the southbound lane.

Q This is a rest area that's provided by the Highway Department or someone?

A Yes, sir. This rest area was closed so just as he passed the rest area he swung to the right and on the shoulder, the shoulder of the driveway leaving the rest area.

Q The shoulder of the driveway leaving the rest area?

A Right.

Q And that's where the truck was parked at the time that he was found?

A Yes, sir.

Q Were you aware that he had stopped the vehicle?

A No, not until I woke up.

Q Until you woke up. Do you remember the time of day that

you woke up?

A Five-thirty, approximately five-thirty. After they were taking my report and all down we figured it was a little while after that, it was around five-thirty.

Q What did you find when you woke up?

A I came out of the bunk, of the driver's seat, opened the door and saw Mr. Dillon lying on the ground stretched out on his back.

Q How far was he from the truck?

A Approximately three to four feet, his head.

Q Where with respect to the truck was he, in front of the truck, on the right-hand side or the left-hand side?

A He was just about a foot or so behind the right door which is the driver's, the passenger's side.

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MR. CLAY:

I just want to show that he was in charge of the truck.

DEPUTY COMMISSIONER WILHOIT:

Nobody disputes that fact, do they?

MR. Miller;

I'll stipulate that.

MR. CLAY:

As long as everyone agrees that his responsibility under the rules and regulations required him to be in attendance of the truck at the time he was shot, then I can drop that line of questioning. Is that stipulated?

MR. MILLER:

I'll agree.

MR. ROSENTHAL:

Sure.

Q Do you know what Mr. Dillon was doing at the time he was shot?

A No, sir.

Q Do you know who did it?

A No, sir.

Q Do you know of anyone that would have had a motive to kill this man?

A No, sir.

DEPUTY COMMISSIONER WILHOIT:

Do you have any questions, Mr. Miller?

MR. MILLER:

No, sir.

DEPUTY COMMISSIONER WILHOIT:

MR. Rosenthal?

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Q Now about the murder, you say you were asleep. You woke up and you saw Mr. Dillon?

A Yes, sir.

Q Could you tell whether there was anything tampered with? In other words, did it appear to you there had been attempted robbery?

A No.

Q Nothing was stolen from the truck?

A No, sir.

Q Either the cargo or the inside of the truck, rather the inside of the cab?

A No, sir.

MR. ROSENTHAL:

I don't have any more questions.

BY DEPUTY COMMISSIONER WILHOIT:

Q Mr. Farris, who paid you for your labors?

A Dick Meador Trucking.

Q Did you consider yourself self-employed or were you working for someone?

A I worked for Dick Meador Trucking.

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BY MR. MILLER:

Q You mentioned Allentown. What were you talking about when you mentioned Allentown?

A Allentown, Pennsylvania, which we had a terminal there, and that is one place that I know he does have a routing. In other words, if we are dispatched to, we're in that vicinity

and we go into Allentown, that terminal, the dispatcher there will have an envelope with the routing instructions on it.

****

Q Now aren't there regulations as to the routes that can be taken by a tractor-trailer hauling explosives?

A Yes, sir.

Q In other words, some routes you can't take, correct?

A Yes, there is and there's some routes we have to have an escort, like bridges and so forth.

Q Did you ever talk to Mr. Imbusch yourself?

A Yes, sir.

Q In Birmingham?

A Yes, sir.

Q And why would you call him rather than calling Dick Meador?

A Well, it is run, the operation is run out of the main office, which is Birmingham and that, he is our chief dispatcher.

Q Mr. Imbusch tells you where a particular load is supposed to be taken, is that correct?

A Yes, sir, and where to get this load and what time to get it, when to be there and so forth.

Q Have you ever met Mr. Imbusch?

A Yes, sir.

Q In Birmingham?

A Yes, sir.

Q How many times would you say you talked to him?

A It would be hard to say, several, a bunch of times. I mean we run there. Sometimes we'll be in Birmingham all day long. We have-- That would be the first place we go i

up and talk with him when we get in Birmingham. Like if we unload around there anywhere within a hundred mile radius we would go to Birmingham and be dispatched out of there. Well, we'd go up and speak with him immediately after pulling in there.

Q And you'd do that because it would be more convenient talking to him than talking to Mr. Meador when you're in Birmingham, just as when you're in Dublin it's more convenient talking to Mr. Meador than it is talking to Birmingham. Is that correct?

A Well, Mr. Meador, see, he stays in touch with Mr. Imbusch and he just relays it on to us.

Q And so the reason you'd be calling Mr. Imbusch rather than calling Mr. Meador and have Mr. Meador call Mr. Imbusch, you'd call Mr. Imbusch direct, wouldn't you?

A Yes, sir.

Q To save time and expense?

A Yes, sir.

MR. MILLER:

I believe that's all.

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Q As far as dispatching, you would get your orders from Mr. Imbusch, generally speaking?

A Yes, sir. Mr. Imbusch, he runs the--

Q Okay, Mr. Imbusch would tell you where to go to pick up a load?

A Yes, sir.

Q He would tell you where to go to drop off a load?

A When I say some of my dispatching comes out of Dublin, it originally comes out of Birmingham but Mr. Meador would talk to Birmingham and then just relay it on to us.

Q So Mr. Meador was acting simply as a conduit from Baggett Transportation Company?

A Yes, sir.

Q Now Baggett Transportation would control where he went and where you would go to pick up a load and where you would go to drop off a load?

A One hundred percent.

Q One hundred percent. Did Mr. Meador have any control over you during this time that you were hauling, when dispatched by Baggett?

A No, sir.

Q No control whatsoever?

A No. The only control he'd have is if we'd call in for money to operate on. Otherwise, he wouldn't even know where we were at.

Witness stood aside.

ooo - ooo

A. H. MEADOR, JR.

BY MR. ROSENTHAL:

Q Would you state your name for the record, please?

A A. H. Meador, Jr.

Q Mr. Meador, what is your relationship with Dick Meador Trucking Company, Inc.?

A I'm President of the corporation.

Q What does your business do?

A Well, I have trucks that are leased to several different companies.

Q These are tractor-trailers?

A Yes.

Q And your function is simply to lease these trucks?

A Right.

Q Now do you have a lease with Baggett Transportation Company of Birmingham?

A Right.

Q How many drivers-- Do I understand, first of all, you also lease the drivers, so to speak? You have the drivers for the trucks?

A Yes.

Q Now how many do you have, how many employees?

A Well, with Baggett I would have right now seven drivers, four trucks.

Q What you mean is there are seven people who are qualified to drive for Baggett?

A Well, I have others qualified but these are the regular drivers. See, I have drivers with other companies, and I have them qualified just in an emergency.

Q Was Mr. Dillon one of those drivers who was qualified to--

A Well, he was a regular driver on my Baggett truck but I also had him qualified with another company.

Q Now explain to the Commissioner, if you would, since we've gotten into this, how it is that orders would come in for loads to be hauled and who directed the shipment and basically what function you had in relation to Baggett Transportation and the hauling of explosives.

A Well, it's pretty much just like it's been discussed here. If I get some loads out of Radford Arsenal, I'll call Mr. Imbusch and tell him how many loads I have and if I have trucks there available why, of course, we'll use those and then when they're out on the road, it's just like they said just now, then they'll call in, you know, to get their instructions.

Q Did you have any control whatsoever over the drivers once they were out on the road?

A Well, if they foul up with Baggett and I happen to have, you know, might just . . . them. It hasn't happened but then it could.

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MR. ROSENTHAL:

All right.

Q Did you direct -- What would be your relationship with Baggett Transportation Company when they had a load to haul? Did you direct where the drivers were to go?

A Well, no. It was our purpose to haul whatever Baggett offered us, you know.

Q You did not direct them where to go to pick up a load?

A Not directly, no.

Q Did you direct them where to take a load to to drop off?

A No. That was decided when it was picked up, where their destination would be.

Q Did you direct any routes they should travel?

A Well, no, whatever the company policy was, was what they went by.

Q And did you dispatch the drivers? Let me ask you this. Generally speaking, if a load is being hauled for Baggett Transportation Company, did you dispatch the drivers?

A Well, like I say, if it came out of this area, Radford or something, I did, you know.

Q But that was at the direction of Baggett?

A Well, yes.

Q Because the load was in Dublin?

A Yes.

Q Now if the load was not in Dublin--

A Well, then no. I really, after they left sometimes, I mean they didn't call me to see where to go. They would-- Because I had no idea where the loads were in the Baggett system, you see, so they would have to call Birmingham.

Q My understanding is that once they left, assuming they left from your terminal, once they had left you had no idea where they were unless you had a call?

A In a lot of cases that's right.

Q Now you did pay the drivers though, is that correct?

A That's correct.

Q And what was your method of payment?

A Well, I'd get paid by Baggett, so much per load and the drivers when I hire them, I usually pay them thirty percent of whatever the load pays and, of course, when there are two drivers, they split it right down the middle. Each driver gets the same.

Q Now did you carry workmen's compensation insurance on your truck drivers?

A No, and my reason was I considered them contract workers because I paid them-- If they didn't work, they didn't get paid. If they wanted to take the time off, you know, they took it off. They weren't dismissed for missing a day's work or missing a trip or something like this.

Q So basically you do not consider them your employees?

A Well, that's right. I figure they--

MR. MILLER:

Your Honor, I object to that question.

DEPUTY COMMISSIONER WILHOIT:

That's one of the things we're going to have to decide but I guess he can express an opinion.

Q So you did not carry workmen's compensation?

A No, sir.

Q Is this also why you did not file any reports with the Industrial Commission?

A That's right. I didn't know, you know, you couldn't get any information on the accident.

Q Why not?

A Well, the State Police Investigators did not release anything.

#50 A. H. Meador, Jr.

Q Do you know anything about the circumstances of the murder other than what has been testified to here today?

A No, no, I don't know anything at all.

****

BY MR. MILLER:

Q Mr. Meador, let me hand you Defendant Baggett's Exhibit No. 1 and ask you to identify that particular document.

A Yes, that's our lease on this particular unit.

Q When you say on this particular unit, what unit is it?

A Well, I mean the one that Mr. Dillon was driving. All of them have the lease. Each truck has an individual lease.

Q And when was the lease entered into?

A Well, it says here '72.

Q If you will turn to page 2 of the exhibit down on the bottom, the right-hand side, I see a signature. Can you

identify that signature?

A Yes, that's my signature.

MR. ROSENBHAL:

We'll stipulate it's a valid lease.

Q Have you signed any subsequent lease agreement with respect to this particular unit?

A Not to my knowledge.

Q Do you have this unit at the present time?

A Yes.

Q So this lease agreement is in full force and effect as far as that unit is concerned?

A Yes, sir. That's correct.

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Q As far as driver employees are concerned, what is the total as of the present time?

A Let's see, four, approximately eleven.

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Q As far as Mr. Dillon is concerned, there has been introduced into evidence as Plaintiff's Exhibit 1 a document which was alleged to be in your handwiting. Do you identify that document as being in your handwriting?

#55 A. H. Meador, Jr.

A Yes.

Q There is also introduced as claimant's exhibit 2 certain copies of W-2 forms. Do you identify those as having been prepared by you?

A Yes, sir.

Q Well, isn't it true, Mr. Meador that you considered Mr. Dillon your employee?

A Yes, I paid--

MR. ROSENTHAL:

I object. He objected when I asked that question, Mr. Commissioner, and he wouldn't let me use that word.

DEPUTY COMMISSIONER WILHOIT:

Well, I think Mr. Dillon did respond. Go ahead with the answer. I'll accept it, Mr. Miller.

A Yes. He was-- I did the tax withholding and all of that.

Q And the reason is, of course, you are required by Federal law to withhold income taxes and take out social security with respect to your employees?

A Yes, sir.

Q Now as far as maintenance on the tractor unit is concerned, who performed that?

A We have a maintenance-- If they're in Dublin they do

it at my shop and, of course, out on the road we'd have to take it to some garage, you know.

Q When you say "we", do you mean Dick Meador Trucking?

A Yes, sir. I'm responsible for the maintenance of the truck and all.

Q What about the expense of operation of the truck?

A Yes, I bear the expense.

Q Now does Baggett bear any of the expense?

A Not on the power unit, no.

Q On the tractor?

A Yes, that's right.

Q Does Baggett do any maintenance on the truck?

A No.

Q Isn't it true, Mr. Meador, that pursuant to the terms of the agreement which has been introduced here as Defendant Baggett's Exhibit 1, that you're required to furnish the employees to run the tractors, in other words, to run your equipment?

A Yes.

Q And pursuant to the terms of that agreement, did you supply Mr. Dillon to run the unit in question?

A That's correct.

Q And also Mr. Farris?

A Yes.

Q So the two of them were your employees that were assigned that particular duty by you?

A Right, and I had them qualified for Baggett.

Q What does the agreement provide with respect to claims and liabilities which might arise relating from the employment of Mr. Dillon and Mr. Farris, or for that matter, any other driver you might have?

A The claims?

Q Well, I refer you specifically to paragraph 3-b of the agreement. Would you read that first sentence there?

A Sure, I bear all the expense in maintaining the unit.

Q I specifically direct your attention to paragraph 3-b, Mr. Meador. Isn't it true that that paragraph requires that you furnish at your expense a complement of experienced and qualified employees?

A Yes.

Q And as far as Mr. Dillon is concerned, as far as Mr. Farris is concerned, you furnished them pursuant to the terms of the agreement, did you not?

A That's correct.

Q The Schedule A-- END OF TAPE

Q Mr. Meador, referring to Schedule A of the agreement

identified as Defendant Baggett's exhibit 1, how do you describe the basis on which you were paid? Was it based on mileage, based on weight, is it based on a combination of the two?

A Yes, weight and mileage.

Q And who computed what you were owing as to a particular trip that might be taken by one of your tractors driven by one of your employees?

A Well, I would-- Baggett would, like I say, pay me ~~what-~~ ever, say it's five hundred dollars for instance. I would in turn pay the driver 30% of whatever he paid.

Q Now the 30% figure, was that something that was agreed to by you and Baggett?

A No, that's standard--

Q Or was that something you decided--

A Everybody stays within about the same rate, around 30%.

Q But you could make it 28% if you wished?

A Yes, sir.

Q Or you could make it 32% if you wanted, right?

A Yes.

Q That would be your decision?

A Yes.

Q Baggett wouldn't have any control over that?

A No.

Q Let me ask you this. Supposing you had a trip somewhere and there wasn't any load to come back. In other words you were deadheading. Were you paid for deadhidding?

A No.

Q By Baggett?

A No.

Q That was on your own account?

A Yes.

Q Did Baggett advance money to you for expenses?

A No, but I could-- it could have been that way. Some of the operators do get advanced money from Baggett but I just always thought I could keep my records straighter if I sent the money to them, you know. I could set up a dollar figure--

Q When you say to them--

A To the drivers.

Q --you mean to the drivers?

A Yes, but there's occasions that we would get an advance, you know, from--

Q When things were tight?

A Yes.

Q But that would still be under the terms of the contract, right?

A Right.

Q Let's suppose that you got a call from Mr. Imbusch in Birmingham saying that there were two loads at the Arsenal that they wanted taken somewhere. Who would decide which unit went on which load? When you had two units here?

A Two of my own?

Q Right.

A If that two units was early, we'd get the load. There's a chance or possibility that I didn't have any units and we would have to send some units in Birmingham or, you know, near by that might be unloading. It's not always my trucks that load out there, you see.

Q Well, let's assume though that you had two units here--

A And they call and tell me to cover those two units, naturally I would cover them with my two trucks.

Q And which truck would you put on which load?

A Well, whoever came in first, you know, if it was a choice of a load.

Q Well, suppose you had two units there at the time, who would make the decision as to which unit went on which load?

A Well, it doesn't happen really that often, but a lot of times we'll work it out with the drivers. Maybe one driver would rather go to one place than the other one, you know, on one truck. It's usually by agreement between us.

[TR 62]

You don't bear the ax right down and say you can take this one and you can take that one.

Q In other words, in the situation I'm talking about, you would decide on the basis of conversation with the drivers as to who would take which load?

A Probably--

Q Under the terms of the agreement you have a right to refuse a load, do you not?

A Yes.

****

[TR 63]

DEPUTY COMMISSIONER WILHOIT:

****

Q The standard in the industry for paying the drivers is to pay them a percentage of the load, what the truck--

A Yes, in our type of leasing, that's the way it's been for about, for a number of years.

Q And you do this instead of paying them an hourly rate?

A Right.

Q Just another method of compensating?

A Yes. It's just something that's been going on for years. It works better because of the hours they're out. It's a little more incentive. The more he makes for the truck, the more I make.

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C. H. COLEMAN

BY MR. ROSENTHAL:

Q Would you state your name, please?

A C. H. Coleman.

Q Mr. Coleman, where are you stationed?

A Lexington, Virginia.

Q Did you have occasion on February 19th of this year to investigate or to-- yes, to investigate a murder that occurred on Interstate 81 right above Lexington?

A Yes, sir.

Q Do you know the name of the man who was murdered?

A Dillon, Bobby Dillon.

Q Would you please explain to the Commissioner how it was that you arrived at the scene?

A At approximately five-thirty-five on this date I was in my police car on routine patrol and our dispatcher called for

the location of several troopers and gave a call to Trooper Whitt to go to the rest area, which is in Rockbridge County located on 81 somewhere near mile post 199, that the subject had a heart attack. I also proceeded up there myself and arrived just a couple of minutes before Trooper Whitt arrived.

Q So you were the first Trooper on the scene?

A Yes.

Q Go ahead.

A When I arrived the Fairfield Rescue Squad was already present and they had covered Mr. Dillon with a yellow covering and they told me that he was dead and that it appeared that he'd been shot. I then raised the cover up and looked and there was-- He had on a T-shirt of some sort and there was blood on the T-shirt from here (indicating) coming down onto his stomach. I don't recall whether at that time I raised the T-shirt a lot but there was evidence of a small hole in the T-shirt. Later on we did raise the T-shirt up to where we could see the bullet hole in his chest. I then started to find out as to what witnesses were there and contacted the co-driver of the tractor-trailer unit that was parked there and two ladies that were there said that they had received the call on their CB. About this time, which was just-- I'd say just a couple of minutes had passed,

Trooper Whitt arrived on the scene and he took the witnesses to get the names and statements and there was, of course, a lot of people gathering around there and I was attempting to make some crime scene search and to keep spectators away from the area as much as possible.

Q And then, Trooper, while you were at the scene, was there any evidence that you uncovered that there was a possible hijacking of the truck?

A No, sir.

Q There was no attempt to steal the cargo from the truck?

A No, sir.

Q Was there any evidence of any attempt to rob either the driver or the co-driver?

A No, sir.

Q Could you in any way tell what Mr. Dillon had been doing before he was shot?

A No, sir. He was to the right of the tractor. The tractor-trailer unit was pulled off onto the ten foot emergency shoulder and he was to the right of the tractor between the tractor and the ditch line and just back slightly from the right door of the tractor. He was lying with his feet down toward the ditch facing up to this, an embankment there.

[TR 67]

Q So you do not know what the cause, the reason for this murder was?

A No, sir.

****

[TR 68]

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Q Are you aware of other incidents of similar nature that occurred previous to this incident?

A Yes, sir.

Q Would you please state what those incidents are that you're aware of?

A While I did not investigate these incidents I do know that approximately five years ago someone did shoot into the rest area.

Q And this is the same rest area--

C. H. Coleman
Statements

A Yes, sir.

Q --around which Mr. Dillon was murdered?

A Yes. Several shots. I don't know exactly how many and one shot did-- as I recall from talking to the other investigating troopers-- I think struck a water fountain and ricocheted and hit a person in the foot. As I said, that was approximately five years ago. I don't know exactly when it was and there was another incident.

Q Were there any shots fired during the same weekend at the same place at the rest area that you were aware of?

A Yes. Again I didn't investigate it and what I know I know from talking to other men that were investigating it. There was a shot into the rest area building. The back window, as I understand, was shot out.

MR. ROSENTHAL:

Okay, thank you Trooper.

DEPUTY COMMISSIONER WILHOIT:

Do you have any questions, Mr. Miller?

BY MR. MILLER:

Q Where was the tractor-trailer in question in relation to the rest area building to which you just referred?

A At this time the rest area had been closed and there were barrels up barricading the entrance to the normal parking

area for the rest area. Tractor-trailers had been parking actually to the south of the rest area itself at the ramp that comes out of the rest area that comes back onto the interstate. There's a regular width of lane there for the rest area plus the ten-foot shoulder and tractor-trailers had been parking there and this is approximately three hundred yards from the rest area building.

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Q When was the shooting out of the window at the rear of the rest area supposed to have occurred to the best of your information?

A Either Saturday or Sunday.

Q You don't know on which day?

A No, sir.

Q Do you know who did that shooting?

A No, sir.

Q How long were you on this particular homicide?

A Well, I-- That night we were there for probably three hours or so and, of course, I worked on it along with Investigator Daniels, and Trooper Whitt some after that but not a great deal.

Q Do you have any idea who committed the murder that we're talking about here?

A I have an opinion.

Q What is that opinion?

A It is my opinion that it was a local person.

Q Does that local person live in the vicinity of this rest area?

A Within a mile of it I would say.

Q Have any arrests been made at this point?

A No, sir.

Q Do you know why the shooting occurred?

A No, sir.

Q You have absolutely no evidence whatsoever that, of any involvement of Mr. Farris in this matter?

A No, sir.

MR. MILLER:

I believe that's all.

DEPUTY COMMISSIONER WILHOIT:

Mr. Clay.

BY MR. CLAY:

Q Where was Mr. Dillon's body with respect to the truck at the time you arrived?

A It was, as I said, his body was laying with the feet almost to the ditch line in the grass section to the right of the tractor and I think that he had fallen in that position because his pants, when he apparently hit the ground he had slipped inside of his pants and they were pulled up a little bit and so was the jacket or something that he had on, lying on his back.

Q How many feet was he from the truck?

A I didn't measure it. I would estimate that his head was probably no more than six feet from the right edge of the

tractor.

Q Did your investigation reveal that, any evidence that he was on a private mission other than his duties as a truck driver?

A No, sir.

Q With regard to the shooting that had occurred that weekend in that rest area, was the building occupied at that time?

A The rest area?

Q Yes, sir.

A As far as I know it was not.

Q No one reported that the shot was fired while they were in the building?

A No, sir. It was closed to the public.

Q The other shots that were fired in the vicinity of that rest area, do you know who they were directed at, if anyone?

A No, sir.

Q Was any property damaged by those shots, either State or private property to your knowledge?

A I really don't recall that much about it. As I said, I did not investigate those instances. As I recall from, of course, police officers exchanging information there, there were several shots fired at the first incident

Q With regard to the person that you think may, that you have referred to in Mr. Miller's examination, there's no probable cause to arrest this man or you do not have sufficient evidence?

A That's correct.

Q Plus your phone calls, merely suspicion?

A That's correct.

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W. J. WHITT

BY MR. ROSENTHAL:

Q Would you state your name for the record, please?

A My name is W. J. Whitt. I'm a trooper with the Virginia State Police.

Q In Rockbridge County?

A In Rockbridge County.

Q Did you have an occasion to investigate a murder on Interstate 81 on February 19th of this year?

A Yes, I did.

Q What were the results of your investigation?

A Well, it was first brought to my attention as a possible heart attack. Of course, when I arrived at the scene Trooper Coleman and myself were able to determine that a gun-shot wound was possibly the cause of the death. We were not able to locate any weapons or anything around the tractor-trailer that was at the scene. The deceased, none of his-- his wallet of anything had not been tampered with. The truck had not been tampered with. It still had the metal seals on the doors to the back part of the truck.

Q Did you determine any reason at all why this murder occurred?

A No.

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Q And do you have any idea who committed this murder?

A Well, there is a suspect and he was also a suspect in the shooting where the guy was hit in the foot but a search warrant was obtained at one time to search this man's residence for a particular weapon and it was not found.

Q You haven't been able to gather enough proof yet?

A Correct, just can't get anything on him.

BY MR. MILLER:

Q Do you know what caliber bullet was involved in the shooting into the rear of the rest area building?

A It was a 22 long rifle, Remington, what they call a gold point, a gold tip or something of that nature. It was the same type bullet that hit Mr. Dillon, but they weren't

able to put it with the same gun because it was blown up so bad when it went into the rest area.

Q What about the caliber of the weapon in the other incident you referred to, were there any--

A I do not know. Trooper Hines handled that. He kept the bullet fragment there for a long time and disposed of it. I cannot say whether he mentioned whether that was a 22 or what it was.

Q But as far as the incidents which occurred on the weekend of February 19, 1977, there was the same type of bullet involved in both incidents?

A Yes, it was.

Q But you weren't able to match the bullets because of the fact that, if I understood your testimony correctly, that when the bullets were fired into the rest area at the rear they impacted against the brick or the cinder block or whatever in such a way it was impossible to establish positive identity?

A Correct.

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Q You have no information which provides any basis for thinking Mr. Farris had anything to do with this particular incident?

A No.

Q The individual who is a suspect in the case, do you know of any relationship between him and the decedent?

A No, I do not.

Q Do you know of any relationship between him and Mr. Farris?

A No, I do not.

Q Where does he live in relation to where the incident took place?

A Okay, right behind the rest area and adjacent with Interstate 81 you have a large field back there and directly west from the interstate roughly a half a mile, three-quarters of a mile is where this boy lives. He has permission to ground-hog hunt and hunt in this particular field that adjoins-- It's adjacent with Interstate 81 at the location.

Q Let me ask you this. Talking about being west of the Interstate, is the rest area on the west side of Interstate--

A Yes, it is.

Q Interstate 81 at that point runs generally north and south, doesn't it?

A Correct.

Q So the field you refer to would be west of the rest area?

A That's correct.

Q And the residence of the individual in question would be to the west of that field?

A That's correct.

DEPUTY COMMISSIONER WILHOIT:

Mr. Clay.

BY MR. CLAY:

Q You really have no knowledge whether the bullet that was

fired into the rest area came from the same gun as the one in which the homicide resulted?

A No, we do not.

MR. CLAY:

I believe that's all the questions I have.

Witness stood aside.

ooo - ooo

DEPUTY COMMISSIONER WILHOIT:

Go ahead, Mr. Rosenthal.

T. B. DANIELS, JR.

BY MR. ROSENTHAL:

Q State your name and your occupation, please?

A T. B. Daniels, Jr., Investigator with the Department of State Police.

Q Investigator Daniels, are you the investigator that was primarily responsible for the investigation into the death of Bobby Dillon?

A That is correct, sir.

Q Will you please explain to the Commissioner what the results of your investigation have been thus far, IF ANY?

A To this point, we do have a suspect in the case. We have obtained a search warrant, searched his home and the general area, that we are looking for a specific gun. At this time

we have been unable to locate this gun. I say we have a suspect. This doesn't say for sure that this man is the person who is responsible for the shooting. All indications are that he is the gentleman and we are now trying to obtain additional information to warrant an arrest in the case.

Q Now, Investigator, were you at the scene of the incident?

A Yes, sir. I arrived there at approximately seven-thirty P.M.

Q This was several hours after it happened?

A Yes. The best we can determine it happened sometime between four-thirty in the afternoon and five-thirty-five P.M.

Q While you were at the scene, was there any evidence that the motive of this murder was hijacking or attempted robbery or assault, not assault but attempted robbery?

A No, sir, there was no evidence of this.

Q Basically then nothing had been tampered with either on the truck or the person of either of the two men?

A No, sir, there was not.

Q Now had there been similar related incidents previous to the incident here where there had been shootings in the area?

A There had been some incidents, yes. Prior to my going to Lexington in 1974, there was a truck driver that was, the windshield was shot out of his truck just south of where this

incident occurred and there is an overpass bridge. This occurred during the strike. I'm not sure of the date on it. And also there was an incident at the rest area where a gentleman and his son had stopped at the picnic area. Someone had shot into the roof of the picnic table and a ricochet hit the man in the foot. This was a 22, this incident. The one where the truck driver was, the windshield was shot out was a 38. The same day of this occurrence or we feel it was probably the same day-- we didn't get the call until the next day-- someone had shot through the window of the men's rest-room at the rest area just south of Fairfield.

Q Do you know what type of bullet that was that was shot through the window?

A We believe it was a 22. It was badly broken up, but we feel that's what it was. It was the same material as the other bullet.

Q You say the other bullet. Do you mean the bullet that killed Mr. Dillon?

A That's correct.

Q Investigator, I take it the first incident you refer to, the one that took place in '74, actually wasn't at the rest area. It was some distance down the road.

A Yes, just, oh, it's approximately five hundred yards

south of where this incident occurred that we've got now.

Q That would have been approximately a third of a mile away then?

A Yes, sir.

Q Now in your statement you talked about the same day. You're referring to an incident in which the window in the back of the rest area building had been shot out. You made that statement right after talking about the ricochet incident.

A I beg your pardon. This is--

Q I just wanted to clarify your testimony.

A Yes. The bullet about the ricochet that shot the man in the foot occurred, I would say approximately in the last five years but we have had incidents there of-- Now the bullet that was shot through the window in the rest-room either occurred the day of this or the next day. We're not sure. We didn't get the call until the next morning because the rest area was closed and when the custodian came by to check it the next day is when he found it.

Q Now the ricochet incident you talked about, did that involve a 22 caliber bullet?

A Yes, it did.

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Q What was the caliber of the bullet which was involved in the homicide in question here?

A Twenty-two long rifle.

Q Why were you not able to make any positive identification with respect to the identity of the firearm involved between the bullets fired into the rear of the rest area building and the bullet involved in the homicide in question?

A Yes. This, we could not determine this because of the damage to the bullet that was fired into the rest area.

Q So you are not in a position to say it was from the same weapon?

A No, sir, I am not.

Q But as far as you're concerned it was the same caliber?

A Yes, sir.

Q Have you been able to establish any motive whatsoever for the murder on February 19th?

A No, sir, I cannot.

Q Do you have any evidence whatsoever which would relate Mr. Farris to the incident in question?

A No, sir.

Q Do you know of any relationship between the individual who is a suspect in the case and Mr. Dillon?

A No, sir. I'm sure there is none.

Q Or Mr. Farris for that matter.

A No, sir.

BY MR. CLAY:

Q With regard to the bullet-- I want to clarify the question the way Mr. Miller asked it.

A All right, sir.

Q As I understand his question, you said you were not able to make a positive identification because the-- identity because it was damaged. Is it also possible you could not make a positive identification because it was not from the same weapon?

A That's possible, yes, sir.

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Q At the time the man was shot in the foot, do you know whether there were other people in the rest area at that time?

A No, sir, I do not. This was handled by another trooper so I--

Q You don't know.

A All I know is from the reports that I have saw, yes, sir.

Q So you don't know whether there were other, whether there were truckers in the vicinity that time?

A No, sir, I do not.

Q I believe it's in evidence already but do you know from your own knowledge that at the time of this homicide truckers were stopping just south of this rest area, the apron, I guess, the entranceway? They were using this to stop?

A You mean this particular day or--

Q During the time that the rest area was closed.

A Well, it's-- When you pass these places they, of course, park in the rest area. They park on the apron, and, of course, they park, which is a violation of law, on the side of the road. This day there was-- When I arrived there there was a gentleman from New Jersey that was northbound. I talked with him. Mr. Farris was there, several other people and prior to my arrival there had been a truck stopped just after this shooting incident and he had left when I got there; so--

Q Do you know from your own knowledge whether truckers were using the area to the south of the rest area since the rest area was closed?

A I would have to say I would assume that they were.

Q Your investigation revealed no private mission that he would have been on unrelated to his duties as trucker?

A No, sir.

BY MR. ROSENTHAL:

Q Well, did you find any evidence that would relate this murder to his employment as a truck driver?

A The only information I have on that is talking with the truck driver who was running with him. He had told him over the CB that he was stopping to check his oil.

Q But what I asked was whether the murder was related to him as an employee. In other words, Mr. Clay asked you whether

or--

DEPUTY COMMISSIONER WILHOIT:

I think he's already answered the question.

MR. ROSENTHAL:

I'll withdraw that question. That's all I have.

BY MR. MILLER:

Q The individual who was the victim in the other incident you referred to, where there was a ricochet, do you know who that person was?

A I do not have it with me. We have reports on it, yes, sir.

Q Was he a truck driver?

A No, sir, he was not.

MR. CLAY:

Let me-- I'm sorry.

BY MR. CLAY:

Q The gentleman that you talked to that had talked on the CB with Mr. Dillon, is that-- what you have just told the Commissioner-- the extent of what he told you?

A Yes, he stated to me that-- There was some information, to begin with, that there was an argument on the CB radio between Mr. Dillon and another individual. We checked into this and found this was not true. In talking with this gentleman this is, he stated that they had been chatting on

the CB as they were coming south on Interstate 81 and then when they got to this location that Mr. Dillon called him and told him-- I believe his name was Bedbugg? -- stated he was stopping to check his oil and he said there was no argument whatsoever.

Q Thank you, sir.

END OF TAPE

Witness stood aside.

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HOWARD E. DURDEN

BY MR. MILLER:

Q State your name, please.

A Howard E. Durden, D-u-r-d-e-n.

Q And by whom are you employed, Mr. Durden?

A Baggett Transportation Company.

Q What is your position with Baggett Transportation?

A Executive Vice President.

Q How long have you held that position?

A Along about two years. I've been with Baggett since 1945.

Q Just state briefly the general scope of Baggett's operation.

A Baggett operates in the southeast as a general commodity carrier between Atlanta, Chattanooga, New Orleans, points in Alabama, Gulfport?, Mississippi, as a general commodity carrier. We operate in the 48 states as an explosive hauler. We have

interstate authority in Virginia but we have no intrastate authority in the Commonwealth.

Q There has been reference made here to a lease agreement between Baggett and Dick Meador Trucking. That agreement has been identified as Defendant Baggett's Exhibit 1. Do you have a copy of that agreement in front of you?

A Yes, sir.

Q How many lease agreements does Baggett have with Meador?

A Four.

Q Does Baggett have lease agreements with other contractors?

A Yes, we do.

Q Do you have any idea how many such lease agreements are in effect?

A We have, I think, on explosives approximately 76.

Q The tractor in question covered by the lease agreement referred to, was that used exclusively in hauling explosives or was it also used in hauling other loads?

A Explosives only.

Q Does Baggett own its own tractors as well as entering into lease agreements for other tractors?

A Yes, we do.

Q As far as the tractors owned by the company, who operates them?

A Employees of the company.

Q Now as far as those tractors which are driven under the lease agreements, there has been some testimony as to the fact that Baggett had to approve the drivers furnished by the contractors under those agreements. What does that approval involve?

A We have to check to see that they meet all of the requirements of the Department of Transportation for a driver transporting hazardous materials and they are set out in this D.O.T. Regulations.

Q You just pointed to the red book that Mr. Clay made reference to earlier. Is that right?

A Yes, sir.

Q As far as the drivers provided by a contractor, such as Mr. Meador, are concerned, do you withhold any income tax or take out social security as far as they go?

A No, sir.

Q What about maintenance on the tractors in question, does Baggett perform any maintenance?

A No, sir.

Q What about expenses for operation of these units, does Baggett pay for such expenses?

A No, sir.

Q There has also been a reference as to dispatching. In that regard what is the relationship between the dispatcher and the contractors with whom Baggett has lease agreements as to what the dispatcher does, if you know?

A Our central dispatch is located in Birmingham. Mr. Imbusch has been referred to here. That's I-m-b-u-s-c-h. George Imbusch receives the calls from the customers.

Q Let me interrupt you just a moment. Does Mr. Imbusch work under your supervision?

A Yes, sir.

Q All right, go ahead, sir.

A He receives the call from the customer and says he has so many loads today at a certain point. It's up to Mr. Imbusch to assign a truck to handle it. In the instance of Mr. Meador's truck, I think the testimony here was correct that if the trucks are in Dublin, Mr. Meador would decide which truck was going to take which load and tell, work it out with the drivers and say you go get this load and take it so and so. When the driver unloads, whether he's a contractor's driver or whether he's a Baggett driver, he calls in at Birmingham to the central dispatch, says I've completed my mission, I've unloaded and then they say, well, we've got a load at Red Rover, Texas,to pick up or we've got one at Joplin, Missouri, going to a certain place and whether it's a -- tells

him where the load is and where it's going and he picks it up.

Q That's the result you're seeking to accomplish?

A Yes, sir, deliver the load.

Q Now as far as the contractor is concerned pursuant to the agreement which we referred to, does he have the right to reject any loads?

A Yes, sir.

Q State whether or not he has the right to decide what days his units are going to be operating?

A Yes, he does.

Q State whether or not he has the right to decide what lawful route will be followed in delivering the load.

A Well, he cantgo through tunnels with explosives and he has to stay out of congested areas and meet the requirements set down by the Department of Transportation.

Q Why are those restrictions imposed on units operating in this fashion?

A Because the restrictions are imposed on us as the carrier to see that we abide by the regulations.

Q Is that because the tractors in question are hauling explosives or is it for some other reason?

A Explosives.

Q As far as the D.O.T. Regulations as to routes are concerned

let's assume that a driver has two or three routes which could be taken from where he picks up a load to where he has been directed to take a load. Let's further assume that one of those routes is forbidden because of D.O.T. Regulations. As to the other two routes, who determines what route will be taken?

A The driver would determine it. The amount of pay that he would receive is determined by the lease. He's paid on cents per hundred pounds for miles traveled and the miles are computed from the Household Goods Carrier's Guide, which is on file at Interstate Commerce Commission. If he wanted to take a longer route because he thought the road was smoother or something, he could take it but the Household Carrier's Guide would determine the shortest route and the amount he'd be paid.

Q Well, when you say the amount he'd be paid, who are you referring to now, the contractor or the driver?

A The contractor. We have nothing to do with paying the driver. We pay the contractor and the contractor can drive it himself if he wishes.

Q What about such matters as points where the tractor would be serviced or repaired? Who would decide that?

A The contractor.

Q What about the rest stops where the driver of the tractor would lay over for a while?

That'd be up to the driver.

Q With respect to a contractor, such as Mr. Meador here, did Baggett determine when a particular unit would leave or did it determine when the load was going to be, should be delivered and leave it up to the contractor to decide when the unit would leave?

A Well, the shipper would decide when it was going to be shipped and then he would tell us he had a load at a certain date; for instance, at duPont at Martinsburg, West Virginia, said we'll have this shipment going to Lownoke, Arkansas. From the testimony here, Mr. Dillon called in and was told to go to the duPont Plant at Martinsburg, West Virginia, and I have no quarrel with that testimony, and they arrived with an empty trailer and put it on the duPont lot and were told that the load would be ready at approximately three o'clock the next day. They went to a motel and they knew when to go back and get the load and they knew it had to be in Lownoke, Arkansas, Monday at eight o'clock. That was on the bill of lading from the shipper. He set when he wanted it delivered.

Q So is it correct to say that as to when it was delivered, that was something that was established by the shipper as to the date and time? Is that right?

A That's correct. Some would have a date and time on it and

some would not. Some say as soon as possible.

Q What about workmen's compensation as to those units which were driven by Baggett's employees? Do you carry workmen's compensation on them?

A We are qualified as a self-insurer, have workmen's compensation.

Q As to employees of the contractors with whom you have these lease agreements, what provision is made for workmen's compensation coverage as to them?

A The contract provides that the contractor will furnish the workmen's compensation.

Q Now as to the drivers of units owned by Baggett, are they paid or not for dead-heading?

A Yes, they're paid on a mileage basis under our Union Labor contract.

Q You mentioned a Union Labor contract. What does that cover as far as personnel in the Baggett organization?

A It covers, we recognize Unions as the sole exclusive bargaining agent for all the road drivers, local drivers, city drivers and hustlers, checkers, dockmen and maintenance employees, who are employees of the company throughout its entire system, expressly excluding, however, drivers who are furnished under equipment lease or who operate their own equipment under a

equipment lease, which persons will not be considered employees for any purpose.

Q Now what are you reading from, Mr. Durden?

A The agreement between Baggett Transportation Company and the United Steel Workers of America. It covers the Baggett employees in those classifications.

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[TR 100-101]

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BY MR. ROSENTHAL:

Q Mr. Durden, as far as the dispatching angle of this operation goes, not only-- Well, let me ask you this. Does your dispatcher, the one that works for Baggett Transportation, does he tell the trucker what to pick up?

A Well, he tells him-- He wouldn't tell him what to pick up. He would tell him to--

Q Pick up a load at "X"--

A In this case he told him to go to duPont at Falling Waters, West Virginia, and get a load to go to Lownoke, Arkansas.

Q So he tells him where to pick it up and where to take it to?

A Correct.

Q So -- And Baggett Transportation is, in fact, the company or person who dispatches these drivers?

A When they call in, we dispatch them. As the testimony was here, sometimes Mr. Meador dispatches them but in this case our dispatcher did direct these two gentlemen to go to this point and pick up this load and take it to destination.

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Howard E. Durden

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BY MR. CLAY:

Q Did your husband frequent this rest stop to your knowledge, except for his duties as a truck driver?

A No.

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Case concluded.

:acm 8/31/77

#105 Dixie E. Dillon, Claimant, Recalled
Howard E. Durden, Recalled

357-L

AGREEMENT

This Agreement entered into this 27th day of December, 1972, between

(name) Dick Meador Trucking Co., Corp.

(Address) P. O. Box 338, Dublin, Va.

Hereinafter called the CONTRACTOR, and BAGGETT TRANSPORTATION COMPANY, Birmingham, Alabama, hereinafter called the CARRIER.

1. The CONTRACTOR as an independent contractor, hereby agrees to furnish the following described equipment owned by the CONTRACTOR, for the purpose of supplying motive power for CARRIER'S trailers:

Year	Equipment Make	Model No.	Serial No.	Motor No.	Type	
1973	P'bilt		49206N		Trac.	

2. (a) This Agreement shall be effective for a period of three (3) months from the date hereof, and from month to month thereafter unless cancelled by either party on ten (10) days notice prior to the end of any monthly period; provided, however, that in the event of the breach of any provision of this Agreement by either party, the other may forthwith cancel this Agreement by written, telegraphic or personal notice. However, the CONTRACTOR SHALL PAY TO CARRIER any and all indebtedness due CARRIER as a condition precedent to cancelling this Agreement.

(b) It is the intention of the parties and acknowledged by the parties that neither the CONTRACTOR nor any of its employees shall be deemed to be agents, servants, or employees of the CARRIER for any purpose whatsoever but the CONTRACTOR is and shall be an independent CONTRACTOR and is subject to the CARRIER merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

(c) The CONTRACTOR shall direct its operation in all respects including but not limited to such matters as rejection of any loads, days of operation, lawful routes, points of service or repair of equipment, rest stops, etc. except that CONTRACTOR shall fully and efficiently perform the results required by this Agreement.

(d) The CONTRACTOR shall comply with any and all applicable laws and requirements of Federal, State and local governments, including but not limited to the rules and regulations of the U. S. Department of Transportation, Interstate Commerce Commission and State Public Service and Utilities Commissions.

3. (a) The CONTRACTOR shall provide and continuously maintain said equipment in good, safe, serviceable and efficient operating condition in all respects, at its expense, and shall bear and pay all expenses of operation of said equipment, including particularly, but without limitation, the cost of all fuels, lubricants, oils, parts, repairs, accessories, tires, tubes, safety equipment, equipment and vehicle licenses, and any and all aforementioned governmental and regulatory bodies' taxes and permits required for said equipment whether based or assessed upon CONTRACTOR or CARRIER.

(b) The CONTRACTOR shall furnish, at its expense, a full complement of experienced and qualified employees, which may include the CONTRACTOR, sufficient to keep said equipment operating daily for the maximum number of hours and the maximum number of miles consistent with its proper and safe operation. The CONTRACTOR shall pay all the compensation of every character of said employees, and shall pay all taxes, charges, benefits, claims and liabilities of every kind which may arise by virtue of their employment by the CONTRACTOR and their acts and duties hereunder. The CONTRACTOR shall not operate said equipment until CONTRACTOR has been certified by CARRIER as qualified in meeting any and all the laws and requirements of aforementioned governmental and regulatory bodies, and the CONTRACTOR shall not cause or permit any one of its employees to operate said equipment until its employee has been certified by CONTRACTOR and by CARRIER as qualified in meeting said laws and requirements. CONTRACTOR shall furnish CARRIER copy of workmen's Compensation insurance policy, and copy of all other insurance policies required by any and all aforementioned governmental and regulatory bodies governing their employment by the CONTRACTOR.

(c) The CONTRACTOR shall effect and maintain, at its expense, insurance adequate for full fire, theft and collision insurance covering said equipment for the benefit of the parties hereto containing the provision that no right of subrogation shall arise against CARRIER on the part of the CONTRACTOR'S Insurance Carrier. The CONTRACTOR agrees that the CARRIER shall not be responsible for any loss, destruction or damage to said equipment for any cause whatsoever, including any acts of negligence, omission or commission by the CARRIER, its agents, servants or employees, and hereby agrees to indemnify and save harmless the CARRIER from any liability, actions, claims or demands for any such loss, destruction or damage.

(d) The CARRIER shall furnish and maintain, at its expense, bodily injury and property damage liability insurance while the CONTRACTOR'S equipment is being operated on CARRIER business. The CARRIER will not carry any fire, theft or collision insurance on said equipment at any time and the CARRIER will not be responsible for any damage to or theft of the CONTRACTOR'S equipment.

(e) The CONTRACTOR shall furnish and maintain, at its expense, so called "bobtail" insurance covering said equipment with minimum limits of $100,000/$300,000 bodily injury and $25,000 property damage and to furnish CARRIER copy of such insurance endorsement."Bobtail" insurance is defined as insurance affording bodily injury and property damage insurance as respects CONTRACTOR'S equipment when not operated in connection with CARRIER'S trailers.

4. The equipment aforesaid shall be operated as motive power for CARRIER'S trailers in order to satisfactorily and safely effect the carriage of products, and during the term hereof, shall be used only in connection with transportation performed by the CARRIER under its certificates as a motor common carrier.

5. The CONTRACTOR shall operate said equipment in such careful and safe manner as to protect and safeguard the CARRIER'S trailers and the cargo therein contained, and the CONTRACTOR shall be responsible to CARRIER for all losses of cargo that have occurred through CONTRACTOR'S or its employees' negligence. In the event the CONTRACTOR or its employees shall violate any applicable laws, rules and regulations of aforementioned governmental and regulatory bodies and as a result thereof the CARRIER is fined or assessed, the CONTRACTOR will reimburse the CARRIER for such fine or assessment and all expenses in connection therewith.

6. All identification plates required by aforementioned governmental and regulatory bodies shall be displayed on CONTRACTOR'S equipment during the term of this Agreement and upon termination hereof, said plates shall be removed and delivered to the CARRIER. All lettering, decals and painting of said equipment shall be at the CONTRACTOR'S expense. All lettering and decals shall be removed immediately upon termination of this Agreement.

7. In the event a CARRIER-owned trailer shall be damaged as the result of negligence on the part of the CONTRACTOR or its employees, the CONTRACTOR shall be responsible and liable to the CARRIER FOR such damage.

8. As CONTRACTOR'S full and complete consideration for furnishing the equipment and personal services, and obligations hereunder, CARRIER will pay to CONTRACTOR an amount which is more particularly described in Exhibit A, by this reference made part hereof.

Mileage will be computed by the use of Mileage Guide No. 6 MF-I.C.C. No. 71 (Household Goods Carriers Bureau, Agent), supplements thereto and re-issues thereof, and settlement shall be made with CONTRACTOR by CARRIER at Birmingham, Alabama on the fifth working day following the 1st and 15th day of each month.

9. It is agreed that if during the life of this Agreement CONTRACTOR becomes indebted to CARRIER for advancements, or payments for the benefit of the CONTRACTOR mady by CARRIER, or the CONTRACTOR becomes indebted to CARRIER in any other manner, then CARRIER shall have a lien on the herein described vehicle as security for the amount owed CARRIER by the CONTRACTOR. For the payment of all of his obligations set out in this Agreement, CONTRACTOR waives all rights of exemption under the Constitution and laws of the State of Alabama or any other state and agrees to pay a reasonable attorneys fee if the employment of an attorney is necessary to collect same.

10. The commodity to be transported on the vehicle in this Agreement while operating in the State of Texas shall be explosives and other dangerous articles and component parts

thereof, fruit juices, or commodities classified as exempt under the Interstate Commerce Commission regulations.

11. This Agreement contains the entire agreement between the parties and may not be modified or amended except by written agreement executed by one of the CARRIER'S officers and CONTRACTOR.

BAGGETT TRANSPORTATION COMPANY

By: Michael L. Johnson

Dick Hendor Trucking Co., Corp. by:
(CONTRACTOR)

Brenda Nolan
(WITNESS)

SCHEDULE A

1. Contractors using their own tractors to pick up and deliver Class A & B explosives from points in Alabama to points outside Alabama, from points outside Alabama to points in Alabama, or between points outside Alabama will be compensated in cents per hundred pounds for miles traveled under Column A of this Schedule.

2. Contractors using their own tractors to pick up and deliver explosives and components other than Class A or B explosives from points in Alabama to points outside Alabama, from points outside Alabama to points in Alabama, or between points outside Alabama will be compensated in cents per hundred pounds for miles traveled under Column B of this Schedule.

3. When Contractors furnish two drivers on the tractor for the above commodities shall receive an additional 2% above the charges provided for in Paragraphs 1 and 2 above.

   When the customer provides in writing on the bill of lading that the Contractor furnish additional labor for unloading items in Paragraphs 1 and 2 above, the Contractor shall be paid 5 cents per hundred pounds for all material unloaded.

   Contractors transporting commodities in Items 1 and 2 above will be paid 1% of their monthly gross earnings for each month in which they do not have a chargeable accident or safety violation, as a Safety Bonus. This 1% will be paid, if earned, on the first settlement 30 days after the month in which it is earned.

4. Contractors using their own tractors to pick up and deliver the above described commodities from or to points within the State of Alabama will be compensated at the rate of 23 cents per mile.

5. Contractors using their own tractors to pick up and deliver any commodity not otherwise covered herein will be compensated at the rate of 23 cents per mile.

6. Contractors using their own tractors to transport articles other than previously described herein, outside the State of Alabama will be compensated at the rate of 23 cents per mile.

7. Contractors using their own tractors operating between Carrier's terminal points will be compensated at the rate of 23 cents per mile.

8. Contractors transporting materials under paragraphs 4, 5, 6 and 7 shall receive an additional 1/2 cent per mile Safety Bonus for each month in which they do not have a chargeable accident or safety violation. The Safety Bonus will be paid, if earned, on the first settlement 30 days after the month in which it is earned.

9. Contractors using their own tractors and trailers to pick up and deliver iron and steel articles will be compensated at the rate of 75% of the earned revenue.

10. Contractors using their own tractor and Carrier's trailers to pick up and deliver iron and steel articles will be compensated at the rate of 65% of the earned revenue.

SCHEDULE A (Continued)

11. Contractors shall receive $7.50 per stop off delivery intermediate to final destination on all shipments of snythetic yarn and fiber moving from Pensacola, Florida, and Decatur, Alabama to states in which carrier is authorized to deliver these commodities direct.

12. Contractors using their own tractors and trailers transporting exempt commodities including canned fruit juices, will be compensated at the rate of 80% of the earned revenue.

13. Contractors using their own tractors and Carrier's trailers transporting exempt commodities, including canned fruit juices, will be compensated at the rate of 70% of the earned revenue.

X A. M. Meador Jr.
CONTRACTOR'S SIGNATURE

Effective X 12-29 1972

SCHEDULE "A"

Rate in Cents per hundred pounds for miles traveled
with a 20,000 lb. minimum

MILES	Column A	Column B
5 miles of less.	20	18
Over 5 miles but not over 10 miles	22	20
Over 10 miles but not over 15 miles.	23	22
Over 15 miles but not over 20 miles.	25	23
Over 20 miles but not over 25 miles.	27	24
Over 25 miles but not over 30 miles.	28	25
Over 30 miles but not over 35 miles.	29	26
Over 35 miles but not over 40 miles.	31	27
Over 40 miles but not over 45 miles.	32	28
Over 45 miles but not over 50 miles.	33	29
Over 50 miles but not over 55 miles.	35	29
Over 55 miles but not over 60 miles.	37	30
Over 60 miles but not over 65 miles.	38	31
Over 65 miles but not over 70 miles.	39	31
Over 70 miles but not over 75 miles.	41	32
Over 75 miles but not over 80 miles.	43	33
Over 80 miles but not over 85 miles.	43	34
Over 85 miles but not over 90 miles.	44	35
Over 90 miles but not over 95 miles.	45	35
Over 95 miles but not over 100 miles	46	36
Over 100 miles but not over 110 miles.	47	37
Over 110 miles but not over 120 miles.	48	38
Over 120 miles but not over 130 miles.	51	40
Over 130 miles but not over 140 miles.	53	41
Over 140 miles but not over 150 miles.	55	42
Over 150 miles but not over 160 miles.	57	43
Over 160 miles but not over 170 miles.	58	44
Over 170 miles but not over 180 miles.	59	45
Over 180 miles but not over 190 miles.	60	46
Over 190 miles but not over 200 miles.	61	47
Over 200 miles but not over 210 miles.	62	48
Over 210 miles but not over 220 miles.	63	49
Over 220 miles but not over 230 miles.	66	50
Over 230 miles but not over 240 miles.	67	51
Over 240 miles but not over 260 miles.	69	53
Over 260 miles but not over 280 miles.	71	55
Over 280 miles but not over 300 miles.	74	57
Over 300 miles but not over 320 miles.	76	58
Over 320 miles but not over 340 miles.	78	60
Over 340 miles but not over 360 miles.	81	62
Over 360 miles but not over 380 miles.	83	63
Over 380 miles but not over 400 miles.	85	65
Over 400 miles but not over 420 miles.	87	66
Over 420 miles but not over 440 miles.	90	68

SCHEDULE "A" (Continued)

SCHEDULE "A" (Continued)

MILES	Column A	Column B
Over 440 miles but not over 460 miles.	91	69
Over 460 miles but not over 480 miles.	Column A	Column B
Over 480 miles but not over 500 miles.	94	73
Over 500 miles but not over 520 miles.	971	769
Over 520 miles but not over 540 miles.	982	761
Over 540 miles but not over 560 miles.	994	773
Over 560 miles but not over 580 miles.	1017	794
Over 580 miles but not over 600 miles.	1028	806
Over 600 miles but not over 620 miles.	1069	821
Over 620 miles but not over 640 miles.	1081	839
Over 640 miles but not over 660 miles.	1092	880
Over 660 miles but not over 680 miles.	1102	862
Over 680 miles but not over 700 miles.	1113	882
Over 700 miles but not over 720 miles.	1124	889
Over 720 miles but not over 740 miles.	1135	897
Over 740 miles but not over 760 miles.	1137	898
Over 760 miles but not over 780 miles.	1148	899
Over 780 miles but not over 800 miles.	1120	101
Over 800 miles but not over 825 miles.	1124	103
Over 825 miles but not over 850 miles.	1125	104
Over 850 miles but not over 875 miles.	1127	106
Over 875 miles but not over 900 miles.	1129	107
Over 900 miles but not over 925 miles.	1130	109
Over 925 miles but not over 950 miles.	1132	110
Over 950 miles but not over 975 miles.	1133	112
Over 975 miles but not over 1000 miles	1135	113
Over 1000 miles but not over 1025 miles.	1138	116
Over 1025 miles but not over 1050 miles.	1139	117
Over 1050 miles but not over 1075 miles.	1141	119
Over 1075 miles but not over 1100 miles.	1343	121
Over 1100 miles but not over 1125 miles.	1345	123
Over 1125 miles but not over 1150 miles.	1346	124
Over 1150 miles but not over 1175 miles.	1448	126
Over 1175 miles but not over 1200 miles.	1450	127
Over 1200 miles but not over 1225 miles.	1452	129
Over 1225 miles but not over 1250 miles.	1454	131
Over 1250 miles but not over 1275 miles.	1555	132
Over 1275 miles but not over 1300 miles.	1557	133
Over 1300 miles but not over 1325 miles.	1559	135
Over 1325 miles but not over 1350 miles.	1560	138
Over 1350 miles but not over 1375 miles.	1562	139
Over 1375 miles but not over 1400 miles.	1563	141
Over 1400 miles but not over 1425 miles.	1566	143
Over 1425 miles but not over 1450 miles.	1567	144
Over 1450 miles but not over 1475 miles.	1569	146
Over 1475 miles but not over 1500 miles.	1571	147
Over 1500 miles but not over 1525 miles.	174	149
Over 1525 miles but not over 1550 miles.	175	150
Over 1550 miles but not over 1575 miles.	177	152
Over 1575 miles but not over 1600 miles.	178	153
Over 1600 miles but not over 1625 miles.	180	155
Over 1625 miles but not over 1650 miles.	182	156

SCHEDULE "A" (Continued)

MILES	Column A	Column B
Over 1650 miles but not over 1675 miles.	183	158
Over 1675 miles but not over 1700 miles.	185	161
Over 1700 miles but not over 1725 miles.	186	163
Over 1725 miles but not over 1750 miles.	189	164
Over 1750 miles but not over 1775 miles.	190	165
Over 1775 miles but not over 1800 miles.	192	167
Over 1800 miles but not over 1825 miles.	194	169
Over 1825 miles but not over 1850 miles.	195	170
Over 1850 miles but not over 1875 miles.	197	172
Over 1875 miles but not over 1900 miles.	199	173
Over 1900 miles but not over 1925 miles.	200	175
Over 1925 miles but not over 1950 miles.	202	177
Over 1950 miles but not over 1975 miles.	204	179
Over 1975 miles but not over 2000 miles.	206	180
Over 2000 miles but not over 2050 miles.	210	183
Over 2050 miles but not over 2100 miles.	214	186
Over 2100 miles but not over 2150 miles.	218	189
Over 2150 miles but not over 2200 miles.	222	192
Over 2200 miles but not over 2250 miles.	226	195
Over 2250 miles but not over 2300 miles.	230	198
Over 2300 miles but not over 2350 miles.	234	201
Over 2350 miles but not over 2400 miles.	238	204
Over 2400 miles but not over 2450 miles.	242	207
Over 2450 miles but not over 2500 miles.	246	210
Over 2500 miles but not over 2550 miles.	250	213
Over 2550 miles but not over 2600 miles.	254	215
Over 2600 miles but not over 2650 miles.	258	218
Over 2650 miles but not over 2700 miles.	262	221
Over 2700 miles but not over 2750 miles.	266	224
Over 2750 miles but not over 2800 miles.	270	227
Over 2800 miles but not over 2850 miles.	274	230
Over 2850 miles but not over 2900 miles.	278	233
Over 2900 miles but not over 2950 miles.	282	236
Over 2950 miles but not over 3000 miles.	286	239

R H Meadors Jr
CONTRACTOR'S SIGNATURE

A G R E E M E N T

AGREEMENT made this 17 day of May, 1975, by and between BAGGETT TRANSPORTATION COMPANY, an Alabama Corporation, or its successor, referred to as the "COMPANY", and UNITED STEELWORKERS OF AMERICA, on behalf of its affiliated LOCAL UNION No. 14085, hereinafter referred to as the "UNION":

ARTICLE I
RECOGNITION AND DEFINITIONS

Section 1. The Company recognizes the Union as the sole and exclusive bargaining agent for all Over-The-Road Drivers, Local Drivers, City Drivers and Hostlers, Checkers, Dockmen and Maintenance employees, who are employees of the Company, throughout its entire system (expressly excluding, however, drivers who are furnished under equipment leases or who operate their own equipment under equipment leases which persons shall not be considered "employees" for any purpose), pertaining to all matters of wages, rates of pay, hours of work and other working conditions.

Section 2. The term "employee" or "employees", as used herein, shall mean any and all of those employees of the Company for whom the Union is bargaining agent as set forth in Section 1, of this Article.

Section 3. The Company shall have and retain the right to manage the business, including, but not limited to, the right to control and supervise all operations and direct all working forces, to maintain discipline among employees to determine and change from time to time the methods, processes and working procedures to be used, to hire, promote, assign and transfer employees, to increase or decrease the number of employees, to assign work and duties to employees in accordance with the Company's determination of the needs of the respective jobs, to lay off employees, and to suspend, discipline or discharge employees for reasonable cause. This Section does not authorize the Company, in the exercise of the foregoing rights, to violate any provisions of this Agreement.

A F F I D A V I T

I, the undersigned A.H. Meador, Jr., do hereby make affidavit as follows: (1) that I am the president of Dick Meador Trucking Company, Inc.; (2) that I am the same A. H. Meador, Jr., that testified before the Industrial Commission at Christiansburg, Virginia, on August 10, 1977, in the claim of Dixie E. Dillon, widow of Bobby Millard Dillon in Claim Number 539-447; (3) that during the period of February, 1976 through February, 1977, there were ten drivers whom I leased, along with tractor trailer units, to hauling firms; (4) that seven of the aforesaid ten drivers hauled almost exclusively for Baggett Transportation Company of Birmingham, Alabama, to-wit: K.D. Farris, William Reynolds, Bobby Dillon, Don Albert, Doug Miller, James Mikels, T.J. Smith. The above seven drivers spent approximately 95% of their time hauling for Baggett Transportation Company. The only times that they hauled for a concern other than Baggett Transportation Company were when they were waiting for new dispatches from Baggett while in Dublin, Virginia. They rarely hauled goods for anyone other than Baggett Transportation Company. While the above seven drivers were working for Baggett Transportation Company, they hauled goods for no other concern; (5) that the three remaining drivers, to-wit: Jim Hollins,

Dan Bowers and George Ray, were qualified to haul for Baggett Transportation Company, and did so on many occasions, and also worked for other concerns; (6) that to the best of my knowledge there were two other concerns in the State of Virginia who hauled goods for Baggett Transportation Company, to-wit: Donald O. Smith and Clifton Scruggs.

A. H. Meador Jr. Pres.
A. H. MEADOR, JR., President of
Dick Meador Trucking Company, Inc.

STATE OF VIRGINIA

City/County of Radford, to-wit:

The foregoing affidavit was acknowledged before me, a Notary Public, this 15th day of November, 1977 by A. H. Meador, Jr., president of Dick Meador Trucking Company, Inc.

My commission expires: September 2, 1980.

Stephen N. Rosenthal
NOTARY PUBLIC

NOTICE
OF
APPEAL

The undersigned, Stephen D. Rosenthal, counsel for Dick Meador Trucking Company, Inc., hereby gives written notice as required by Rule 5:19 of the Rules of the Supreme Court of Virginia, that an appeal will be taken in this action by the filing within the time required by law of a Petition for Appeal to the Supreme Court of Virginia. Notice is further given that Dick Meador Trucking Company, Inc., challenges the sufficiency of the evidence to support the findings of the Commission, and contends that the award, entered on March 1, 1978, is unsupported by the evidence.

Of this you will take due notice this 7th day of March, 1978.

DICK MEADOR TRUCKING COMPANY, INC.

By: Stephen D. Rosenthal
Of Counsel

JEBO & ROSENTHAL
Attorneys at Law
P.O. Box 1089
Radford, VA 24141

C E R T I F I C A T I O N

I, Stephen D. Rosenthal, counsel of record for Dick Meador Trucking Company, Inc., do hereby certify that I have sent a copy of this Notice of Appeal to Kendall O. Clay, Esquire, 1217 Grove Ave., Radford, Virginia 24141, counsel of record for the Claimant, Dixie E. Dillon, and to Andrew P. Miller, Esquire, P.O. Box 1122, Richmond, Virginia 23208, counsel of record for the Employer, Baggett Transportation Company of Birmingham, Alabama, this 7th day of March, 1978.

Stephen D. Rosenthal
Stephen D. Rosenthal

LTON & JEBO
TORNEYS AT LAW
FORD, VA. 24141

NOTICE OF APPEAL

Notice is hereby given in accordance with Rule 5:19 of the Supreme Court of Virginia that Baggett Transportation Company of Birmingham, Alabama ("Baggett Transportation") appeals from an award rendered by the Commission on March 1, 1978, and will file its Petition for Appeal within the prescribed time period. Notice is further given that Baggett Transportation challenges the sufficiency of the evidence to support the findings of the Commission.

BAGGETT TRANSPORTATION COMPANY
OF BIRMINGHAM, ALABAMA

By _____
Of Counsel

Andrew P. Miller
Anthony F. Troy
Lewis T. Stoneburner
Mays, Valentine, Davenport & Moore
P. O. Box 1122
Richmond, Virginia 23208

Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal was mailed, postage prepaid, to Kendall O. Clay, Esquire, 1217 Grove Avenue, Radford, Virginia 24141, counsel for Bobby Millard Dillon [deceased], Employee, Dixie E. Dillon, Widow, et al., Claimants and to Stephen D. Rosenthal, Esquire, Jebo & Rosenthal, P. O. Box 1089, Radford, Virginia 24141, counsel for Dick Meador Trucking Company, Inc. this 7th day of March, 1978.

Lewis T. Gresham

ASSIGNMENTS OF ERROR OF DICK MEADOR TRUCKING

I. Error is assigned to the conclusion of law reached by both the Deputy Commissioner and the full Commission that Bobby Millard Dillon, at the time of his death, was an employee of Dick Meador Trucking Company, Inc.

II. Error is assigned to the conclusion of law reached by both the Deputy Commissioner and the full Commission that Bobby Millard Dillon's death arose out of his employment as a truck driver.

ASSIGNMENTS OF ERROR OF BAGGETT TRANSPORTATION

1. It was error for the Industrial Commission to find Baggett jointly and severally liable in this case since the Commission does not have subject matter jurisdiction over Baggett.

2. It was error for the Industrial Commission to award compensation to the claimants in this case since Dillon's death did not "arise out of" his employment as a truck driver.