

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Judge

Case No. 2014-002733

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SEP 02 2015

SC Court of Appeals

Samuel Washington, Jr.....Respondent,

v.

South Carolina Electric and Gas Company; and Emerson Electric Company d/b/a
Emerson Network Power, and/or Emerson Network Power, Defendants,

Of Whom South Carolina Electric and Gas Company.....Appellant.

APPELLANT'S FINAL REPLY BRIEF TO INITIAL BRIEF

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TABLE OF CONTENTS

APPELLANT'S REPLY TO RESPONDENT'S ARGUMENTS1

CONCLUSION5

TABLE OF AUTHORITIES

Cases

Glass v. Dow Chem. Co., 447 S.E.2d 209 (S.C. Ct. App. 1994).....4

Neese v. Michelin Tire Corp., 478 S.E.2d 91 (S.C. Ct. App.1996).....1

Raines v. Gould 343 SE2d 655 (S.C. Ct. App. 1986).....4

APPELLANTS' REPLY TO RESPONDENT'S ARGUMENT

- I. Major specialized repair work is part of SCE&G's trade or business; the demolition/repair work performed by SCE&G was an important, necessary, essential, and integral part of SCE&G's business; and SCE&G previously performed the work being done by Respondent.**

Respondent's arguments in his Initial Brief are "(A) major specialized repair work is not part of SCE&G's trade or business; (B) demolition/repair work performed by [SCE&G] was not an 'important' nor a 'necessary, essential, and integral' part of SCE&G's business of providing electricity to customers; and (C) the specific repair work being performed by the [Respondent] had not been done by SCE&G employees before." In reply, SCE&G would kindly remind this Court that it is not to apply the summary judgment standard to determine whether SCE&G is a statutory employer, but rather, it is actually to construe all factual doubts in favor of finding SCE&G a statutory employer. Neese v. Michelin Tire Corp., 478 S.E.2d 91 (S.C. Ct. App.1996).

- A. Contrary to what Respondent argues, major specialized repair work is part of SCE&G's trade or business.**

The following testimony supports a conclusion that the major specialized repair work is part of SCE&G's trade or business.

- Q. What if the record indicates it [major specialized repair work] had never been done before, would that help you to say it wasn't routine maintenance?
A. It's been done on other plants before.
Q. Okay. Upgrading?
A. Yeah.

(R. p. 216, lines 17-22)

- Q. All right. And can you think of a single instance when the demolition of the control system and the removal of the valves from the -- it's like the elbow's connected to the knee bone -- the

valves connected to the turbines connected to the -- had ever been done inhouse by SCE&G?

A. Yes.

(R. p. 239, lines 19-25)

Q. Tell me if you know if this same project, type project, demolition and upgrading to a modernized control system, had been done inhouse at another SCE&G facility?

A. Yes.

(R. p. 240, lines 7-11)

B. Despite what Respondent suggests, demolition/repair work is an important, necessary, essential, and integral part of SCE&G's business.

The following testimony demonstrates that demolition/repair work performed by SCE&G is an important, necessary, essential, and integral part of SCE&G's business of providing electricity to customers.

Q All right, Joe. Good afternoon. My name is Ryan Neville. I represent SCE&G; and you and I have spoke before, but just a couple of questions I wanted to follow up with. The electrical panel that Sam was working on the day that the accident occurred, what did that electrical panel control?

A It controlled, I believe, the Number 3 control valve on the turbine.

Q Okay. And then that valve -- and straighten me out here if I butcher the terminology -- but that valve, as I understood it, opened and closed and let steam into the turbine, correct?

A Correct.

Q And then that turbine in turn powered the generator, correct?

A Correct.

Q Which in turn produced power, correct?

A Correct.

Q All right. And so this control panel that Mr. Washington was working on was necessary to the production of power, correct?

A Yes, without -- without the control valves or the actuators or the control panels, there would be no electric generation whatsoever.

Q Okay. And so the work that Mr. Washington was doing was integral to the production of power, correct?

A Yes, it was.

Q Necessary to the production of power, correct?

A Yes, it was.

(R. p. 283, line 10-p. 284, line 13)

Q. Have you ever seen anybody else for SCE&G work on that panel before?

A. Yes.

Q. That was the panel that you all -- as far as what that panel controlled, that panel controlled what?

A. It controlled the reheat valve.

Q. And then the reheat valve in turn did what?

A. It opened to let your reheat steam pass through into the inside of the turbine.

Q. And then in return that did what?

A. Made the turbine spin.

Q. And the turbine spinning, is that what generates power?

A. Yes.

Q. And SCE&G is in the business of selling power to its customers?

A. Yes.

(R. p. 150, line 14-p. 151, line 7)

Q. And was the work that was done necessary to the production of power at the Canadys plant meaning that the turbine that was spinning as a result of the valve that was opening and closing which then operated the generator, was that necessary to produce power out of that generator?

A. Yes, because it was a turbine-driven feed pump.

Q. Okay. So the work that was being performed was necessary to the production of power?

A. Yes.

Q. Okay. It was integral to the production of power?

A. Yes.

Q. And it was essential to the production of power?

A. Right.

(R. p 237, line 15-p. 238, line 6)

With regards to this second argument of Respondent, his and the lower court's reliance on Glass v. Dow Chem. Co., 447 S.E.2d 209 (S.C. Ct. App. 1994) and Raines v. Gould 343 SE2d 655 (S.C. Ct. App. 1986) is severely misplaced. In those cases, the plaintiffs were performing construction work that was not a critical part of the defendants' the trade, business, or occupation (a chemical company in Glass and a battery company in Raines). Id. This is quite to the contrary in the case at bar where Mr. Washington is an electrician, working on SCE&G's electrical panel, on SCE&G's turbine, which produces electricity, that SCE&G is in the business of selling to its customers.

C. SCE&G previously performed the work being done by Respondent.

The following testimony supports a conclusion that the specific repair work being performed by the Respondent had been previously performed by SCE&G employees.

Q. Okay. During your time at SCE&G, were you ever assigned to perform any of the type of work that Mr. Washington was performing that day?

A. I've worked on that valve several times.

(R. p. 129, lines 20-24)

Q. Have you ever seen anybody else for SCE&G work on that panel before?

A. Yes.

(R. p. 150, lines 14-16)

Q. What if the record indicates it had never been done before, would that help you to say it wasn't routine maintenance?

A. It's been done on other plants before.

Q. Okay. Upgrading?

A. Yeah.

(R. p. 216, lines 17-22)

Q. All right. And can you think of a single instance when the demolition of the control system and the removal of the valves from the -- it's like the elbow's connected to the knee bone -- the valves connected to the turbines connected to the -- had ever been done inhouse by SCE&G?

A. Yes.

(R. p. 239, lines 19-25)

CONCLUSION

In addition to the Reply made herein, Appellant refers this Honorable Court to Appellant's Initial Brief for the arguments made therein, and requests this Honorable Court to rule accordingly.

Respectfully submitted,

August 31, 2015



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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appellant's Final Reply Brief to Initial
Brief complies with Rule 211 (b), SCACR.

August 31, 2015


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PROOF OF SERVICE

I certify that Appellant's Final Reply Brief to Initial Brief was served on Respondent Samuel Washington, Jr. via United States Mail, postage prepaid, on September 1, 2015, addressed to his attorneys of record, Margie Bright Matthews, Margie Bright Matthews, LLC, Post Office Box 499, Walterboro, SC 29488 and S. Kirkpatrick Morgan, Jr. and Charles T. Slaughter, Walker Morgan, LLC, Post Office Box 949, Lexington, SC 29071, and that the same was also served on Co-Defendant Emerson Electric Company d/b/a Emerson Network Power, and/or Emerson Network Power via United States Mail, postage prepaid, on September 1, 2015 addressed to its attorneys of record, H. Michael Bowers, Esquire, Smith Moore Leatherwood LLP, 25 Calhoun Street, Suite 250, Charleston, SC 29401.

September 1, 2015



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