

SUPREME COURT OF LOUISIANA

No. 00-C-795

PAUL GREEN

VERSUS

NEW ORLEANS SAINTS

**ON WRIT OF CERTIORARI
TO THE COURT OF APPEAL, FIFTH CIRCUIT,
OFFICE OF WORKERS COMPENSATION, DISTRICT 7**

CALOGERO, Chief Justice, concurring.

I agree with Justice Victory's critical analysis of paragraph 10 of the contract in question here when he finds:

[T]he language of paragraph 10 of the contract is in fact consistent with the language of La. R.S. 23:1225(D). Under paragraph 10, "[a]ny compensation paid to [Green] under this contract . . . for a period during which he is entitled to workers' compensation benefits . . . will be deemed an advance payment of workers' compensation benefits due [Green], and [the Saints] will be entitled to be reimbursed the amount of such payment out of any award of workers' compensation." The \$38,210.88 represents "compensation paid to [Green] under this contract . . . for a period during which he is entitled to workers' compensation benefits." Under paragraph 10, the Saints are entitled to be reimbursed the amount of such payment, \$38,210.88. The time period reflected in paragraph 10 merely categorizes payments made during that time period as an advance of workers' compensation benefits; it does not limit the employer to an offset against workers' compensation awards for the specified period of time during which the player was still under contract.

The contrary view that the period of time referred to in paragraph 10 in some way limits the Saints' rights to only a week-for-week offset during the term of the contract is simply unsupported by the language of paragraph 10. I also agree with the majority's blessing of the First Circuit's treatment of this issue in Dombrowski v. New Orleans Saints, 99-0008 (La.App. 1 Cir. 3/31/00), 764 So. 2d 980, and its disagreement with the Fourth Circuit's decision in Ricketts v. New Orleans Saints, 96-0760 (La.App. 4 Cir. 12/4/96), 684 So. 2d 1050, writ denied, 97-0020 (La. 3/7/97),

689 So. 2d 1373 (Calogero, C.J., and Knoll, J., to grant).

I am concurring to express the view that although § 1225(D) seemingly provides the Saints with a dollar-for-dollar offset of “any compensation” paid to Green at any time, I would not interpret the statute so as to apply it to an offset against pre-injury earnings. To do so, in my view, would violate the public policy of the state as well as the fundamental goals of the Workers’ Compensation Act because an interpretation which permits an offset against pre-injury earnings would allow the Saints to avoid a workers’ compensation obligation altogether in some situations. For example, a Player who plays for the Saints for a number of years under a lucrative contract would “build up” such a credit against a future workers’ compensation award that the prospect of any recovery is minimal or nonexistent following an injury. In such a situation, a Player with permanent and total disability, for instance, would not be able to recover any workers’ compensation award for that injury because of significantly large past earnings being applied as an offset to a workers’ compensation award.

Here, however, the Saints are only seeking to offset post-injury earnings against the workers’ compensation otherwise due Green.¹ Therefore, as the application of § 1225(D) to pre-injury earnings is not raised in this case, I agree with the majority’s conclusion that the New Orleans Saints are entitled to a dollar-for-dollar offset of the \$38,210.88 post-injury earnings against the workers’ compensation award to which Green is due.

¹ The \$38,210.88 is post-injury earnings because, under paragraph 9 of the contract, the Saints were required to continue to pay Green his weekly paycheck of roughly \$6,200 throughout the six weeks needed to recover from the injury.