

MAY 16, 2000

SUPREME COURT OF LOUISIANA

No. 99-C-3264

MICHAEL TIMMONS AND WANDA TIMMONS

Versus

STACIE MICHELLE SILMAN, STATE FARM
MUTUAL AUTOMOBILE INSURANCE COMPANY

LEMMON, J., Dissenting

I cannot conclude that an employee on a trip ordered by the employer during regular working hours is outside the course and scope of employment because of a deviation that was entirely reasonable from an objective point of view and was insignificant in terms of time and distance.

Among the duties of the employee in this case, a clerical assistant, was the running of errands, including post office and bank runs. The errand at issue was a post office run from which the employee deviated, for a few minutes and a few city blocks in an urban area, to call at a bank that she frequently visited in performing her employment duties. Indeed, she went to the bank to cash a check that was related to employment — a Christmas bonus that had just been handed to her at a lunch sponsored by her employer.¹

The only thing that makes this case close, in my view, is the fact that the employer-ordered trip to the post office was itself brief in distance and duration. However, contrary to the majority's position, I believe that the reasonableness of the purpose of the personal deviation is a very significant factor in determining course and

¹The majority's result would be warranted if the employee had made a special trip to the bank to cash the same check during her lunch hour, rather than in connection with an employer-ordered trip during regular working hours.

scope of employment, particularly in a close case.² I would take a different view if the employee had taken the same brief deviation to drink an alcoholic beverage or to visit a gambling casino. But when the facts of this case are viewed from an objective standpoint, a reasonable employer surely would not have objected to this brief deviation by the employee to cash her employment bonus check.³ Under such circumstances, the employee has tacit approval for the reasonable deviation and remains in the course and scope of employment.

I would reverse the judgment of the court of appeal.

²In "close and troublesome cases," such as this one, "considerations other than the distance, direction and shape of the deviation are resorted to by the courts to resolve the difficulty." 1 Larson's Workers' Compensation Law §17.06 at 17-32-17-41.

One such additional consideration is whether the risks of the deviation are causally related to the accident. "If the incidents of the deviation itself are operative to producing the accident, this in itself will weigh heavily on the side of non-compensability." Illustrative is the "deviation-with-drinking" cases in which "the fact that the drinking usually combined with driving, in itself added a notorious hazard and has undoubtedly been a factor in some denials of compensation, whether specifically mentioned or not." Id.

Another such additional consideration is the nature of the employee's work and travel. An example, especially apt to this case, is an employee with "general permission to accomplish personal errands during his daily trip to the post office using the company automobile." Under the latter scenario, it has been held that "the employer's acquiescence in the practice, as in horseplay and athletic activities cases, extended the course of employment to include the personal errand." Id.

Applying these precepts, "the courts now generally recognize that human beings do not run on tracks like trolley cars. . . ." Id.

³The employer in this case admitted that she normally would not have objected to such a deviation. While she equivocated ("probably not") about this particular deviation because it was a heavy work day, the test should be an objective one based on a before-the-deviation standard rather than an after-the-accident one.