Who Pays Injury Costs for Worker Hurt at Another Employer's Premises?

SITUATION

A truck driver for Employer A makes a delivery to Employer B's premises on a snowy night. Once there, he exits his truck, slips on ice and falls, hitting his head and suffering an injury. Worker's comp covers his injury. But Employer A says Employer B should be responsible for the claim's costs because it negligently failed to sand its parking lot. Employer B says it properly maintained its premises and produces invoices for the snow removal services it used. But the invoices don't prove that any sanding was done prior to the driver's injury. And even some of Employer B's workers said the lot was really slick. Employer B argues that given the snowy conditions, the driver should've exercised caution when he got out of his truck to avoid falling. The workers' comp board rules that Employer A is solely responsible for the claim's costs so it appeals.

QUESTION

Who should be responsible for the costs'

A. Employer A
B. Employer B
C. Both employers should split the costs evenly.
D. Neither employer because the injury wasn't work-related.

ANSWER:

B. Employer B’s experience record should be charged with the costs of the driver’s injury.

EXPLANATION

This hypothetical is based on a decision by the Appeals Commission for Alberta Workers’ Compensation in which the Commission concluded costs should be charged to an employer’s experience record when another employer’s worker was injured after slipping and falling in its negligently maintained parking lot. The Commission explained that workers’ comp costs are allocated between negligent employers based on degree of negligence. The evidence showed it was reasonably foreseeable that a visitor could slip and fall in the employer’s parking lot because of the snowy weather conditions. So the Commission said the employer should’ve taken reasonable steps to address the slippery and icy conditions, such as sanding and having a supervisor monitor the lot’s conditions. Because the evidence didn’t demonstrate the employer took such reasonable steps, it was negligent and so should be responsible for the costs of the injury to the other employer’s worker. And because there was no evidence that the other employer or the injured worker were negligent at all, the Commission charged the full costs of the worker’s injury to the employer that owned the parking lot.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because an injured worker’s immediate employer isn’t always responsible for the workers’ comp costs related to his injury. For example, if the worker was injured due the negligence of a third party, that party may have to bear all or some of the related workers’ comp costs. In this case, although Employer A is the driver’s employer, it didn’t own or control the premises on which the driver was injured and didn’t negligently contribute to the conditions in the parking

lot that caused his injury. Thus, Employer A shouldn't be responsible for the claims' costs related to the driver's fall.

C is wrong because the workers' comp costs should be equally apportioned between employers only when the degree of negligence of each can't be determined. When two employers are involved in a worker's injury, the workers' comp costs are charged to the experience records of the employers who were negligent in proportion to the degree of negligence of each. If the degree of negligence can't be determined, then the costs are equally apportioned between the employers involved. In this case, Employer B had a duty to make its parking lot reasonably safe for visitors. It failed to sufficiently sand the parking lot or take other reasonable steps to address the slippery conditions and thus was negligent. But there was no evidence of any negligence on the part of Employer A. So the costs related to the driver's injury shouldn't be split but rather charged fully to Employer B.

D is wrong because the injury *was* work-related and thus is compensable. A compensable injury is one arising out of and occurring in the course of employment. An accident arises out of employment when it's caused by an employment hazard and occurs in the course of performing work duties. Here, the driver was in the process of making a delivery to Employer B's workplace and was injured when he slipped on the icy parking lot while exiting his truck. Thus, his injury did occur while he was performing his employment duties and was caused by a workplace hazard. So it's compensable.

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