

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**1994 MTWCC 84**

**WCC No. 9304-6771**

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**LORRAINE ANDERSON**

**Petitioner**

**vs.**

**UNINSURED EMPLOYERS' FUND**

**Respondent/Insurer for**

**CHEYENNE ENTERPRISES**

**Employer.**

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

This case comes to the Court on stipulated facts and exhibits and a deposition of James M. Robinson, Jr. The parties deemed a trial unnecessary.

Having considered the deposition, exhibits, the parties' proposed findings of fact and conclusions of laws, and briefs, the Court makes the following:

Findings of Fact

1. Cheyenne Enterprises (Cheyenne) is a trucking firm engaged in hauling logs and wood chips. It is owned and operated by James M. Robinson, Jr. (Robinson), as a sole proprietorship. The Northern Cheyenne Tribe has no ownership interest in the firm.
2. Robinson is an enrolled member of the Northern Cheyenne Tribe and lives in Busby, Montana, which is within the boundaries of the Northern Cheyenne Reservation (Reservation).
3. In January 1990 Cheyenne had a fleet of approximately six trucks. One was a truck for hauling wood chips. The other trucks were logging trucks.
4. When not in use the trucks were parked on property owned by Robinson which was located outside the Reservation boundaries in Ashland, Montana. Maintenance on the trucks was performed at the Ashland property or in Billings, Montana, which is also outside the Reservation. An above-ground gasoline storage tank was also located on the Ashland

property and was used by Cheyenne employees to fill up the trucks. (Refueling was also done on the Reservation.)

5. Cheyenne's trucking operations were not limited to the Reservation. It conducted substantial business activities outside the Reservation and within the State of Montana. Logging trucks transported logs from logging sites inside the reservation to sawmills outside the Reservation. The company regularly hauled chips from the Northern Cheyenne Pine Company, a sawmill located outside Reservation boundaries in Ashland, Montana, to Forsyth, Montana, which is also outside Reservation boundaries. The usual route between Ashland and Forsyth traverses the Northern Cheyenne Reservation. The total driving distance between the two towns is 80 miles, of which 35 miles are on the Reservation. Of the 35 miles through the Reservation, most of the miles are on U.S. Highway 212, the remainder on State Highway 39. A Montana highway map shows that the route is the shortest one over improved roads.

6. In January 1990 Cheyenne did not maintain a trucking terminal within the Reservation. However, Robinson considered the office where his bookkeeping was done to be Cheyenne's office. That office was in Lame Deer, Montana, which is within the Reservation, but was owned or rented by the bookkeeping service. Robinson did manage his business primarily from the Reservation. He typically delivered paychecks to his employees while on the Reservation but at times he delivered them in Ashland.

7. Cheyenne hired both Indians and non-Indians. It utilized Montana Job Service to secure employees. Montana Job Service did not maintain an office on the Reservation.

8. Robinson provided some of his employees with lodging at a house which was located on his Ashland property.

9. William C. Anderson (Anderson), the deceased husband of the petitioner, was hired by Cheyenne in February 1989. Anderson was notified of the job opening through the Montana Job Service.

10. Over the next eleven months Anderson was a driver for Cheyenne. While he occasionally drove a logging truck, he was primarily responsible for transporting wood chips from the sawmill in Ashland to a rail site in Forsyth. On one occasion he also picked up a trailer in Kansas and brought it back to Montana.

11. Robinson also performed some mechanical work on trucks. The mechanical work performed by Anderson was done at Robinson's Ashland property.

12. During Anderson's employment, the truck used for hauling wood chips was kept at Robinson's Ashland property when not in use.

13. During Anderson's employment, and as part of Anderson's compensation, Robinson provided Anderson with a place to live rent free at his house in Ashland.

14. On January 16, 1990, Anderson died from a heart attack while he was transporting a load of wood chips between Ashland and Forsyth. He died within the boundaries of the Northern Cheyenne Reservation just after chaining up his truck.
15. At the time of his death, Anderson was working in the course and scope of his employment with Cheyenne.
16. At the time of his death, Anderson was married to Lorraine Anderson, the petitioner herein.
17. At the time of Anderson's death, Cheyenne was not covered by a workers' compensation insurance policy.
18. Lorraine Anderson timely filed a beneficiary's claim for compensation with the Uninsured Employers' Fund (UEF).
19. On February 7, 1991, the UEF issued an order determining liability of the uninsured employer, Cheyenne Enterprises. The UEF thereby accepted liability for the claim and initiated payment of death benefits under the Montana Workers' Compensation Act.
20. On August 11, 1992, the UEF notified Mrs. Anderson that it was terminating death benefits because "[a] recent hearing held by the Department of Labor has determined the Uninsured Employers' Fund does not have jurisdiction over Indian businesses operating on the reservation; nor does the Fund have jurisdiction over injuries that occur on the reservation to employees of these employers." (Ex. 1.)
21. Petitioner and the UEF complied with the mediation requirements of the Workers' Compensation Act.
22. On April 19, 1993, Mrs. Anderson filed a petition for hearing seeking reinstatement of death benefits.
23. Mr. James E. Torske has appeared in this case on behalf of Cheyenne Enterprises and Robinson. However, he has done so under a reservation of rights to contest the Court's jurisdiction over Robinson and the subject matter
24. William C. Anderson was not a Native American.

#### CONCLUSIONS OF LAW

1. The provisions of the Montana Workers' Compensation Act applicable to this case are the provisions in effect at the time of William Anderson's death. ***Buckman v. Montana Deaconess Hospital***, 224 Mont. 318, 730 P.2d 380 (1986). The last legislative revision of the Act prior to Mr. Anderson's death was in 1989.
2. The purpose of the UEF is "to pay to an injured employee of an **uninsured employer** the same benefits the employee would have received if the employer had been properly

enrolled under compensation plan No. 1, 2, or 3 . . . ." 39-71-502, MCA (1989) (emphasis added). The UEF is required, within the limits of available funds, to "pay all proper benefits to injured employees of **uninsured employers**." 39-71-503(1), MCA (1989) (emphasis added).

3. An "**uninsured employer**" for purposes of UEF liability "means an employer **who has not properly complied with the provisions of 39-71-401**." 39-71-501, MCA (1989) (emphasis added).

4. Section 39-71-401(1), MCA (1989), specifies the employments required to carry Montana workers' compensation insurance. Subject to enumerated exceptions, it requires an "employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written," to obtain and maintain workers' compensation insurance coverage. "Employer" is broadly defined and includes persons operating businesses as sole proprietors. 39-71-117(1), MCA. While current law has a coverage exemption with respect to "a person who is employed by an enrolled tribal member who operates **solely** within the exterior boundaries of an Indian reservation," section 39-71-401 (2)(m), MCA (1993)(emphasis added), the 1989 statutes did not provide this exemption. Moreover, the exemption would not apply to this case in any event since Cheyenne's business activities transcended reservation boundaries.

5. The requirement that an employer maintain workers' compensation insurance coverage arises from the employer doing business within the State of Montana.

6. The UEF's termination of death benefits was based not on any statutory exclusion applicable to Robinson, but on its legal conclusion that an application of Montana Workers' Compensation Act to Robinson was preempted by federal law. **If** on account of federal preemption, Robinson was not subject to the requirement that he maintain workers' compensation insurance coverage, then he was not "an employer **who has not properly complied with the provisions of 39-71-401**," section 39-71-501, MCA (1989) (emphasis added), and the UEF would not be liable to pay death benefits to Anderson's widow.

Initially, this case does not involve a tribal business or a business conducted by a tribal subsidiary or enterprise. Robinson was in business for himself. Therefore, the concept of tribal immunity, *In re Greene*, 980 F.2d 590 (9th Cir. 1992), is not at issue. Similarly, *Steele v. Fort Peck Tribal Health Project and Uninsured Employers Fund, Montana Department of Labor and Industry Case No. 003-89 (May 1, 1992)*; *White Mountain Apache Tribe v. Industrial Commission*, 696 P.2d 223 (Ariz. App. 1985); and *Tibbetts v. Leech Lake Reservation Business Committee*, 397 N.W. 2d 883 (Minn. 1986) are similarly inapposite because they concern the application of State workers' compensation laws to tribally operated businesses doing business exclusively or primarily on a reservation.

State regulation of Indian affairs in Indian Country<sup>(1)</sup> has been the subject of numerous decisions of the United States Supreme Court. The Court has declined to adopt a "per se rule" or "definitive formula" for determining when a State may regulate tribal members or reservation activities. **California v. Cabazon Band of Mission Indians**, 480 U.S. 202, 215 (1987); **Ramah Navajo School Board v. Bureau of Revenue of New Mexico**, 458 U.S. 832, 837 (1982). State authority to regulate commercial activities on a reservation may be precluded because it is preempted by federal law, or because it interferes with the tribe's ability to exercise its sovereign functions. **Ramah Navajo School Board** at 837. Preemption analysis requires "particularized examination of the relevant state, federal, and tribal interests." **Id. at 838**. "[S]tate jurisdiction is pre-empted . . . if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority." ' **Cabazon Band of Mission Indians**, 480 U.S. at 216 (quoting **New Mexico v. Mescalero Apache Tribe**, 462 U.S. 324, 333-34)(omitted material in the original).

However, "absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State." **Mescalero Apache Tribe v. Jones**, 411 U.S. 145, 148-49 (1973). It is this principal which controls the result in this case.

While UEF and Robinson argue that the determinative event for State jurisdictional purposes was the death of Mr. Anderson, which concededly occurred on the reservation, they are wrong. The requirement for workers' compensation coverage arises out the employer's business activities within the State of Montana. A substantial part of Robinson's business operations occurred outside of the Northern Cheyenne Reservation and within the State of Montana. In fact, the decedent's principal job -- that of driving a truck between Ashland and Forsyth -- had no connection with the Northern Cheyenne Reservation other than the fact that 35 miles of the main road between Ashland and Forsyth crossed the Reservation. That connection was fortuitous and does not change the fact that Cheyenne's business was a single continuous enterprise that did substantial business outside the Reservation and within the State of Montana. By employing Anderson in its Montana business operations, it became subject to the requirement that it provide workers' compensation insurance covering Anderson. The fact that the death occurred on the Reservation was fortuitous; it could just as easily occurred outside the Reservation.

Robinson and UEF have not identified any federal law which expressly precludes Montana from applying its worker's compensation insurance coverage requirement to Indian employers who do business outside reservation boundaries and send their employees into the State to conduct business operations. Robinson was subject to the same non-discriminatory workers' compensation laws as other employers, and was required to maintain workers' compensation insurance coverage protecting William C. Anderson.

Robinson (Cheyenne) was therefore an uninsured employer within the meaning of section 39-71-501, MCA (1989), and the UEF is liable for death benefits.

Robinson recites, as he characterizes it, the "well-founded principle in Indian country that when a non-Indian brings an action against an Indian, and the action arises in Indian country, state courts do not have jurisdiction to adjudicate the action." brief of employer at 4. He cites ***Kennerly v. District Court***, 400 U.S. 423 (1971); ***Williams v. Lee***, 358 U.S. 217 (1959); ***Hot Oil Service Inc. v. Hall***, 366 F.2d 295 (9th Cir. 1966); ***Shantz v. White Lightning***, 502 F.2d 67 (8th Cir. 1974); ***Crow Tribe of Indians v. Deer Nose***, 487 P.2d 1133 (1971); ***Blackwolf v. District Court***, 493 P.2d 1293 (1972); ***Geiger v. Pierce***, 758 P.2d 279 (1988); and ***Milbank Mutual Insurance Company v. Eagleman***, 42 St. Rep. 1393, 705 P.2d 1117 (1985). Those cases, however, are inapposite. In each case not only was at least one party an enrolled Indian but the transaction upon which liability was premised occurred on the reservation. Specifically, the cited cases involved an action against an enrolled tribal member to collect a debt incurred on the reservation (***Kennerly***); a debt action for goods sold and delivered on the reservation to enrolled tribal members (***Williams***); an action involving tribal land leased by enrolled tribal member (***Hot Oil Service***); an action against enrolled tribal members arising out of an automobile accident which occurred within the reservation (***Shantz***); a real estate foreclosure on Indian trust land (***Crow Tribe***); a juvenile delinquency action involving alleged delinquent acts committed by an enrolled juvenile on the reservation (***Blackwolf***); a civil action arising out of a commercial transaction occurring on the reservation and involving an enrolled tribal member (***Geiger***); and an action for damages by an insurer for damages caused to an insured vehicle on the reservation by an enrolled tribal member (***Milbank***).

As we have already discussed, in this case the activity which gave rise to the obligation to carry workers' compensation insurance was Cheyenne's employment of persons in business operations conducted outside the Reservation. Since the obligation, and any liability arising out of that obligation, is founded on non-reservation activities, the Montana Workers' Compensation Court has jurisdiction over this matter.

7. While the Court has rejected the UEF's arguments in this case, its conduct was not unreasonable and petitioner is not entitled to a penalty or attorney fees. While distinguishable, the factual situation in this case is similar in some important respects to that in ***Steele***, the case on which the UEF relied. As in this case, the injured worker in ***Steele*** was a driver who drove both on and off the reservation. Moreover, cases involving Indian jurisdiction are often fact specific, and there is no "per se rule" or "definitive formula" for determining Indian jurisdiction issues.

#### JUDGMENT

1. The Court has jurisdiction of the subject matter and the parties.

2. To the extent provided in section 39-71-703 (2), MCA (1989), the petitioner is entitled to death benefits retroactive to the date those benefits were terminated by the UEF.
3. The petitioner is entitled to her costs in an amount to be determined by the Court.
4. Petitioner shall submit an affidavit of costs within 10 days of this decision. The UEF will then have 10 days in which to object to any cost item so submitted.
5. Petitioner is not entitled to attorney fees.
6. Petitioner is not entitled to a penalty.
7. The JUDGMENT herein is certified as final for purposes of appeal pursuant to ARM 24.5.348.
8. Any party to this dispute may have 20 days in which to request a rehearing from these Findings of Fact and Conclusions of Law and Judgment.

DATED in Helena, Montana, this 16th day of September, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. James G. Edmiston  
Mr. Daniel B. McGregor  
Mr. James E. Torske

1. "Indian Country" is the "operative legal term" in cases involving State jurisdiction on Indian reservations. The term includes reservations. Hansen, Survey of Civil Jurisdiction in Indian Country 1990, 16 Am. Indian L.R. 319, 324 (1991).