Calculation of Average Weekly Wages for Temporary Employees in North Carolina

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On December 16, 2014, the North Carolina Court of Appeals issued an informative decision in *Tedder v. A & K Enterprises*, 2014 N.C. App. LEXIS 1280. The case addressed the proper method of calculating the average weekly wages for temporary employees.

In *Tedder*, the Plaintiff injured his back after working only one week of a seven-week temporary position with A&K Enterprises. The job paid $625 per week. There was no chance that the position would be converted into a permanent position because the plaintiff was only substituting for another employee who was undergoing surgery. Prior to working in this position, Plaintiff was mostly unemployed for two years with only a few months of work in a low-paying seasonal job. In his most recent periods of employment, the plaintiff earned a maximum of $260 per week.

The Industrial Commission calculated the plaintiff's average weekly wage to be $625 despite also finding that:

- the plaintiff could not expect to earn that wage full time, and
- the $625 calculation was "unfair" to A&K Enterprises.

The Court of Appeals overturned the Commission's decision, ruling that the Industrial Commission must consider the number of weeks an employee would have been employed in a temporary position compared to a 52-week time period when calculating the average weekly wage of temporary employees. In this case, the short duration of employment necessarily would have resulted in an average weekly wage less than $625.00. While leaving room for flexibility and discretion, the Court of Appeals suggested that one proper approach for calculating the average weekly wage of temporary employees is to "calculate the total amount the employee would have earned in the temporary position and divide that amount by 52."

In reaching its decision, the Court of Appeals stated that the purpose of average weekly wage calculations are meant to most nearly approximate what the employee would be earning if he or she had not been injured. Average weekly wage calculations cannot be used to provide an earnings safety net for the consistently unemployed or underemployed, and the method of calculation cannot provide a temporary employee with a financial windfall by treating him or her like a permanent employee.

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