

## Claim Dismissed During Physical Altercation: Employee not Engaged in the Direct Performance of Assigned Duties

In *Benimadho v. Somerville Borough Fire Department.*, the employee sustained serious injuries when he intervened while two co-employees were engaged in a physical altercation. Despite his good intentions, the employee's claim for benefits was denied in an unpublished Decision rendered by the Appellate Division on April 10, 2017.

On the date of injury, the employee arrived at the Somerset County Emergency Services' Training Academy for a scheduled test. He along with other volunteer fire fighters including Mr. X and Mr. Y, were required to attend. Upon arrival, the employee observed Mr. Y putting Mr. X into a headlock from which Mr. X could not break free. The employee knew Mr. Y to frequently wrestle and "rough house" with his peers. Although no punches were being thrown nor was Mr. Y attempting to injure Mr. X other than the headlock, the employee considered this a "violent altercation" and not mere horse play.

The employee grabbed Mr. Y around the waist to pull him off of Mr. X. Mr. X then placed the employee in a headlock. Mr. Y testified that wrestling was not unusual for their relationship. Mr. Y asked the employee while in the headlock if he was "done" and the employee nodded and said, "I'm good". Mr. Y released the employee who stood up but passed out while doing so and fell backwards sustaining a skull fracture, subarachnoid hemorrhage, subdural hemorrhage, and traumatic brain injury. When he testified, the employee stated that he was acting as a firefighter should and that is to protect a fellow citizen. He stated that he was also attempting to enforce the employer's rules against horseplay. The employee believed the mission statement of the department imposed a duty upon him to stop the bullying and he did not need permission from his employer to do so. Several witnesses described the interaction as horseplay. There is a written policy against horseplay.

In denying the claim, both the Workers' Compensation Judge and the Appellate Division focused on the provision of Section 36 defining employment when the employee is required to be away from the employer's premises (as was the case here) and noted: "the employee shall be deemed in the course of employment when the employee is engaged in the direct performance of duties assigned or directed by the employer." The Court was not persuaded that the employee's decision to intervene was in any way a serious rescue attempt born from a real or perceived danger to Mr. X. She felt that his actions were not mandated, compelled or directed by the employer and that there was nothing to support the assertion that his intervention was required. Although the employee may have had the best of intentions, it was necessary that there be more than this for the incident to be compensable. The Appellate Division went on to compare the situation to the facts in *Jumpp v. City of Ventnor*, 351 N.J. Super. 44, 50 (App. Div. 2002), Aff'd, 177 N.J. 470 (2003) and felt that the testimony supported the fact that the employee was engaged in a "personal activity" rather than the direct performance of duties assigned or directed by the employer.

**Comment:** This Decision appears to be somewhat harsh, however, on the other hand should be utilized by employers to enforce workplace rules regarding horseplay. The Decision could certainly dis-incentivize one employee from coming to the aid of another but should incentivize work place rules eliminating any such behavior.

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