ORIGINAL

In the Supreme Court of Ohio

A.M. CASTLE & CO.,	:	
Appellee,	:	Case No. 2015-0551
v.	:	Appeal from the Ohio Board of Tax Appeals BTA Case No. 2013-5851
JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO,	:	
Appellant.	:	

MERIT BRIEF OF APPELLEE A.M. CASTLE & CO.

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I. INTRODUCTION

For purposes of sales/use tax, Ohio draws a distinction between the leasing of employees who are merely substitutes, or who are temporary or seasonal, and leasing employees who comprise a permanent workforce. To that end, R.C. 5739.01(JJ)(3) excludes from taxation employment services provided under a contract of at least one year if that contract assigns the employees on a "permanent basis."

At issue is a contract (hereafter, the "Services Contract") under which employees of D.C. Transportation, Inc. work as truck drivers for Appellee A.M. Castle & Company. Appellant Tax Commissioner of Ohio does not dispute that the Services Contract covers a period of more than one year. And the Board of Tax Appeals correctly found that the Services Contract assigns drivers to A.M. Castle on a permanent basis. Indeed, most of the drivers in issue have been providing services to A.M. Castle for many years.

In his Merit Brief ("Appellant's Br."), the Commissioner disputes the Board's determination that the truck drivers in issue were assigned to A.M. Castle on a permanent basis. The Board's finding must be upheld unless this Court determines that it was unreasonable and unlawful. That is a burden the Commissioner cannot meet.

The Commissioner first argues that the language set forth in the Services Contract alone shows that the permanent assignment requirement is not met. As he asserted below, the Commissioner essentially contends that, unless the contract expressly states that employees are "permanently assigned," the services are taxable. But this Court has already rejected that argument and held there is no specific language that either establishes or precludes the application of R.C. 5739.01(JJ)(3). *See Bay Mechanical & Elec. Corp. v. Testa*, 133 Ohio St.3d 423, 2012-Ohio-4312, 978 N.E.2d 882, at ¶ 19-23. Where the contract assigns employees

indefinitely and without a specified end date, as the Services Contract does here, a finding that the employees are permanently assigned is appropriate. *H.R. Options, Inc. v. Zaino*, 100 Ohio St.3d. 373, 2004-Ohio-l, 800 N.E.2d 740, at ¶ 16-22.

Second, the Commissioner attacks the Board's "permanent assignment" finding by arguing that the Board improperly considered the facts and circumstances surrounding the parties' implementation of the Services Contract. Again, however, this Court has expressly held that the permanent assignment question should be resolved based on the specific facts and circumstances presented—precisely as the Board did. *See Bay Mechanical,* at ¶ 17-19.

Third, the Commissioner challenges the Board's analysis of the evidence presented on the permanent assignment issue. But the Board's findings are wholly consistent with the evidentiary record, which demonstrated that the D.C. Transportation drivers were indeed permanently assigned to A.M. Castle. As the Board's finding is based on its consideration and weighing of the evidence presented, it can be overturned only if the Commissioner demonstrates an abuse of discretion. He cannot.

For these reasons, described more fully below, the Commissioner cannot show that the Board's conclusions were unreasonable or unlawful. Thus, the Board's decision should be affirmed.

II. STATEMENT OF FACTS AND CASE

A.M. Castle is a specialty metals and plastics distribution company with headquarters in Oak Brook, Illinois and offices in various locations, including Ohio. (Hrg. Tr. (A-1) at 16 (Knopp)).[1] A.M. Castle ships products in trucks from its facilities—including facilities in Ohio—to customers in Ohio and elsewhere. The trucks are owned or leased by A.M. Castle. However, the truck drivers are employed by D.C. Transportation and leased to A.M. Castle

[1] Record citations are contained within documents included in the Appendix.

pursuant to the Services Contract. (Services Contract (A-90)). The Services Contract contains an "evergreen renewal" provision and has automatically renewed every year since its inception. Thus, the Services Contract was in effect during the years in issue. *Id*; (St. Tr. (A-118) at 15-16).

The Services Contract does not specify an end date for D.C. Transportation's provision of truck drivers to A.M. Castle. (Services Contract (A-90)). D.C. Transportation will only "remove [a] driver from service under this agreement upon request from [A.M. Castle] in writing." *Id.;* (Hrg. Tr. (A-1) at 26 (Knopp)). During the period in issue, A.M. Castle did not request that any drivers be removed from its account. (Hrg. Tr. (A-1) at 62-63 (Fink)).

A.M. Castle's transportation function (with respect to drivers) is completely outsourced to D.C. Transportation. (Hrg. Tr. (A-1) at 20 (Knopp)). A.M. Castle relies on D.C. Transportation to hire and train qualified drivers. (Hrg. Tr. (A-1) at 20 (Knopp)). Most of the D.C. Transportation drivers assigned to A.M. Castle have worked for A.M. Castle for many years. Not surprisingly, those drivers have built and maintained relationships with A.M. Castle customers that are important to the Company. (Hrg. Tr. (A-1) at 22, 27 (Knopp)).

The D.C. Transportation drivers assigned to A.M. Castle are full-time employees and with rare exceptions drive only for A.M. Castle. (Hrg. Tr. (A-1) at 25 (Knopp), 63 (Fink)). The drivers are not employed on a seasonal or temporary basis and are not used to substitute for drivers who do not show up for work as scheduled. (Hrg. Tr. (A-1) at 25 (Knopp), 63 (Fink)). Both A.M. Castle and D.C. Transportation consider drivers assigned to the A.M. Castle account to be permanently assigned; their assignment is of indefinite duration, with no specified end date. (Hrg. Tr. (A-1) at 26 (Knopp), 62 (Fink)). With *de minimis* exceptions, D.C. Transportation drivers were not assigned other than on a full-time basis during the period in issue and

A.M. Castle has never requested that a driver be assigned to its account on anything other than a permanent basis. (Hrg. Tr. (A-1) at 27-28 (Knopp)).[2]

Throughout the relevant timeframe, A.M. Castle was also party to a five-year agreement with Teamsters Local Union No. 407 and D.C. Transportation (the "CBA"). (CBA (A-96)). The CBA sets forth the terms and conditions of employment for all drivers assigned by D.C. Transportation to A.M. Castle. *Id.* It does not apply to drivers assigned to any of D.C. Transportation's other accounts. *Id.*

All D.C. Transportation employees that drive for A.M. Castle are full-time employees under the CBA. (Hrg. Tr. (A-1) at 29 (Knopp)). Pursuant to the CBA, all drivers assigned to A.M. Castle are guaranteed an eight-hour work day and a 40-hour work week. (Hrg. Tr. (A-1) at 23 (Knopp); CBA (A-96)). For each day that a driver reports for work, he or she is guaranteed eight hours' pay for the day, as well as 40 hours' pay for the week. (Hrg. Tr. (A-1) at 30, 40 (Knopp); Hrg. Tr. (A-1) at 65 (Fink); CBA (A-96)). That being the case, if a driver completes a route that takes less than a full day, A.M. Castle assigns additional work to the driver. (Hrg. Tr. (A-1) at 30 (Knopp)). These added tasks would include making additional deliveries, picking up raw materials, cleaning trucks, etc. (Hrg. Tr. (A-1) at 31 (Knopp)). Thus, although a driver's log might reflect less than eight driving hours in a day or 40 driving hours in a week, that does not mean that the driver did not work a full day or a full week; nor does it indicate that the driver was paid for less than an eight-hour day or 40-hour week. (Hrg. Tr. (A-1) at 31-32, 51 (Knopp)).

The Department of Taxation (the "Department") audited A.M. Castle for the 2008 and 2009 tax years and subsequently issued an assessment (the "Assessment") in the amount of

[2] These *de minimis* exceptions were detailed in an affidavit provided to the Department (and the Board) and related to three drivers that were assigned to another D.C. Transportation account and one D.C. Transportation administrative employee. (Fink Affidavit (A-186)). In a handful of instances, these four individuals performed substitute services for the A.M. Castle account for an aggregate total of 20 days during the period in issue, earning a combined $3,225.

$357,111.80, including $277,725.97 in use tax, $37,727.25 in interest, and $41,658.58 in penalty. (St. Tr. (A-118) at 19). The bulk of the Assessment was based on the Department's conclusion that the services provided by drivers assigned to A.M. Castle pursuant to its Services Contract with D.C. Transportation were taxable under R.C. 5739.01. *Id.*

A.M. Castle timely filed a Petition for Reassessment. (St. Tr. (A-118) at 21-24). The Commissioner conducted an administrative hearing on the Petition. *Id.* at 17. In the course of that hearing, the Department requested additional information related to the drivers in issue. A.M. Castle subsequently provided that information, which showed that the drivers assigned to A.M Castle pursuant to the Services Contract (1) do not have fixed end dates with respect to the services they provide to A.M. Castle, and (2) either continue (to this day) to perform services for A.M. Castle or performed such services for many years. (*See* St. Tr. (A-118) at 12-14).

Notwithstanding the information presented, the Commissioner issued a Final Determination upholding the Assessment. (St. Tr. (A-118) at 1-3). The Final Determination concluded that, although the Services Contract was for a period of at least one year, A.M. Castle had not shown that the drivers were assigned on a permanent basis and thus failed to meet the second prong of R.C. 5739.01(JJ)(3)'s test. *Id.*

A.M. Castle appealed the Final Determination to the Board. At trial, A.M. Castle presented testimony from Ronald Knopp, Vice President of Operations at A.M. Castle, and Thomas Fink, President and owner of D.C. Transportation. Both described in detail the contractual relationship through which truck drivers employed by D.C. Transportation are assigned to work for A.M. Castle. A.M. Castle also introduced a number of exhibits. The Commissioner presented no evidence. (Hrg. Tr. (A-1) at 86).

Based on the evidence before it, the Board concluded that the employment services in issue were exempt from Consumer Use Tax and thus reversed the Final Determination. (BTA Decision, p. 4). The Commissioner appealed the Board's decision to this Court.

III. LAW AND ARGUMENT

Appellee's Proposition of Law

Under R.C. 5739.01(JJ)(3), employment services are not taxable when provided pursuant to a contract of at least one year and on a permanent basis. When an employment services contract (of more than one year), along with the surrounding facts and circumstances, indicate that employees are assigned for an indefinite period and are not provided as temporary, seasonal, short-term or substitute employees, the services are not taxable regardless of whether the words "permanent assignment" or some other magic language is used in the contract.

A. Standard Of Review

A decision of the Board must be upheld if it is reasonable and lawful. R.C. 5717.04. A decision is reasonable and lawful unless a "material portion of a Board of Tax Appeals' decision is not supported by any probative evidence of record[.]" *Fed. Paper Bd. Co., Inc. v. Kosydar*, 37 Ohio St.2d 28, 28, 306 N.E.2d 416, 417 (1974). If the "record contains reliable and probative support for [the] BTA determinations" they will be affirmed. *Natl. City Bank v. Wilkins*, 111 Ohio St.3d 485, 2006-Ohio-6110, 857 N.E.2d 130, at ¶12. As this Court has stated repeatedly, "it is not [its] function . . . to substitute its judgment on factual issues for that of the Board of Tax Appeals. We are limited to a determination from the record whether the decision reached by the board is unreasonable or unlawful." *Citizens Fin. Corp. v. Porterfield*, 25 Ohio St.2d 53, 57, 266 N.E.2d 828, 831 (1971).

Moreover, judicial review of the Board's weighing of evidence and assessment of credibility is subject to the highly deferential abuse of discretion standard. *Bay Mechanical*, 133

Ohio St.3d 423, 2012-Ohio-4312, 978 N.E.2d 882, at ¶ 33-37. Applying these standards, the Board's decision should be affirmed.

B. R.C. 5739.01(JJ)(3) Excludes Certain Employment Services From Sales/Use Tax.

Employment services are generally subject to sales/use tax under Ohio law. R.C. 5739.01(B)(3)(k)-(l). Excluded from the definition of taxable employment services, however, is the provision of "personnel to a purchaser pursuant to a ***contract of at least one year*** between the service provider and the purchaser that specifies that each employee covered under the contract is assigned to the purchaser ***on a permanent basis***." R.C. 5739.01(JJ)(3) (emphasis added).

In *H.R. Options,* 100 Ohio St.3d. 373, 2004-Ohio-1, 800 N.E.2d 740, at ¶ 21 , this Court held that "assigning an employee on a permanent basis [for purposes of R.C. 5739.01(JJ)(3)] means assigning an employee to a position for an indefinite period," pursuant to a contract that "does not specify an ending date[.]" *Id.* The Court noted that a "permanently assigned" employee "is not being provided either as a ***substitute for a current employee*** who is on leave or ***to meet seasonal or short-term workload conditions***." *Id.* (emphasis added).

The Court further elaborated on the "permanently assigned" standard in *Bay Mechanical*. There, the taxpayer claimed that leased employees were "permanently assigned" because the governing contract used those exact words. Rejecting that argument, the Court ruled that the substance of the contract—rather than any specific words—controlled:

> In Bay's view, the mere presence of "permanent" and "indefinite" assignment terminology in its contracts is dispositive: no inquiry into facts and circumstances of the assignment of individual employees is necessary. . . . Bay is mistaken. In *H.R. Options*, 100 Ohio St.3d 373, 2004-Ohio-1, 800 N.E.2d 740, ***the claim for exemption was potentially viable even though the contracts did not contain the magic words*** . . . That was so because *H.R. Options* viewed contract language as merely one important element

> of establishing entitlement to the exemption . . . ***Just as the absence of magic words is not dispositive of a permanent-assignment claim, neither does the presence of those words establish entitlement to the exemption as a matter of law.***

133 Ohio St.3d 423, 2012-Ohio-4312, 978 N.E.2d 882, at ¶ 21-23. (emphasis added).

Thus, neither the presence nor the absence of "permanent assignment" or similar language in an employment services contract determines whether employees are permanently assigned for purposes of R.C. 5739.01(JJ)(3). "Instead of requiring that the contracts recite 'permanent' (or 'indefinite') assignment, [this Court] viewed the language of the contracts as one element that, along with the facts and circumstances of the individual assignments, established whether the provider was truly 'supplying personnel' in an exempt manner." *Bay Mechanical,* at ¶19.

In light of these controlling precedents, whether a contract assigns employees on a permanent basis depends upon (1) the substantive terms of the contract and (2) the facts and circumstances surrounding the services actually provided under the contract. While short-term, seasonal, temporary, or substitute workers are not exempt, a permanent workforce is.

C. The Board's Conclusion That R.C. 5739.01(JJ)(3)'s Exclusion Applies Here Should Be Affirmed.

1. The Terms of the Services Contract Support the Conclusion That Drivers Are Assigned to A.M. Castle on a Permanent Basis.

The Board's conclusion that the Services Contract assigns drivers to A.M. Castle on a permanent basis is supported by the terms of the contract itself. The Services Contract does not specify any end date for drivers assigned to the A.M. Castle account. (Hrg. Tr. (A-1) at 26 (Knopp)). In fact, most of the drivers in issue have been working for A.M. Castle for many years. (*See* St. Tr. (A-118) at 12-14). On this point, the Services Contract provides that D.C. Transportation will only "remove [a] driver from service under this agreement upon request

from [A.M. Castle] in writing." (Services Contract (A-90)). During the relevant period, not a single driver was removed from A.M. Castle's account pursuant to such request. (Hrg. Tr. (A-1) at 62-63 (Fink)).

Drivers assigned to A.M. Castle are not used on a short-term, seasonal, or temporary basis. Nor are they used simply to substitute for drivers who do not show up for work as scheduled. (Hrg. Tr. (A-1) at 25 (Knopp); Hrg. Tr. (A-1) at 63 (Fink)). Rather, the same drivers work for A.M. Castle day-after-day, week-after-week, month-after-month, and year-after-year.

Nonetheless, the Commissioner argues that, based solely on the language in the Services Contract, the Board should have concluded that the drivers in issue were not permanently assigned. (*See* Appellant's Br. at 10-15). In support of his assertion, the Commissioner first resorts to the "magic language" argument he made below. *See id* at 12 ("Mr. Knopp acknowledged in his hearing testimony that the 'word permanent is not in the contract.'"). But the Court soundly rejected that argument in *Bay Mechanical.*[3]

The Commissioner then suggests that the permanent assignment standard was not met because the Services Contract specified that drivers would be provided to A.M. Castle "'as required.'" *Id.* Nowhere does the Commissioner explain how agreeing to provide the number of drivers needed to perform A.M. Castle's transportation function on an ongoing basis is somehow inconsistent with the conclusion that drivers were assigned on a permanent basis. As the Board noted:

[3] The Commissioner claims he is entitled to deference regarding his construction of R.C. 5739.01(JJ)(3) to require that an employment services contract be excluded from taxation only if it expressly provides that the assignment is permanent. (Appellant's Br. at 15-17). While the Commissioner's construction of a statute is generally entitled to deference, that is not so when the Commissioner's position is inconsistent with this Court's interpretation of the statute. *See UBS Fin. Servs., Inc. v. Levin*, 119 Ohio St.3d 286, 2008-Ohio-3821, 893 N.E.2d 811, at ¶ 34-35; *State ex rel. Clark v. Great Lakes Constr. Co.*, 99 Ohio St.3d 320, 2003-Ohio-3802, 791 N.E.2d 974, at ¶ 10. In *Bay Mechanical* this Court expressly rejected any construction of R.C. 5739.01(JJ)(3) as requiring an employment services contract to use the phrase "permanently assigned" or some similar language in order to qualify for the exclusion. *See* 133 Ohio St.3d 423, 2012-Ohio-4312, 978 N.E.2d 882, at ¶ 23 ("the absence of magic words is not dispositive of a permanent-assignment claim").

> We find no requirement in R.C. 5739.01(JJ)(3), or caselaw interpreting it, that the number of employees, as set out in the contract authorizing employment services, must be a static, specific number, which cannot be varied or adjusted based upon extrinsic factors, such as changes in business/operating conditions or employee performance; such specificity would required a level of certainty, as to the provider's and recipient's future business requirements, that clearly would be difficult, if not impossible, to predict. Instead, we find such provision requires the taxpayer claiming the exemption to have the intent to maintain the employees provided to it, on an ongoing basis, for at least a year.

(Decision at 4).

The Board quite correctly recognized that, if an employment services contract assigns employees indefinitely and with no specified end date, the employees are permanently assigned even if, subsequent to executing the contract, unforeseen conditions arise that cause some change in employee assignment. If, for example, a particular employee performs poorly and must be removed (which never actually happened during the tax years at issue), that fact alone plainly would not refute that he/she had been permanently assigned. If, when the contract was executed, the parties did not intend to use such employee on a seasonal or other temporary basis, and specified no end date for the employee's assignment, the assignment was clearly permanent.[4]

Finally, the Commissioner suggests that the "permanent assignment" prong is not met because, although the Services Contract itself specifies no end date, it does not state as to each and every assigned driver that his/her assignment is indefinite, and because drivers could be removed at A.M. Castle's request. (Appellant's Br. at 12). As to the former, this Court has never held that an employment services contract must include specific language for each and every leased employee—an approach which would present an administrative nightmare,

[4] The Commissioner argues that the Board has somehow introduced a new "intent" standard for determining permanent assignment. (Appellant's Br. at 22-23). In fact, however, the Board has merely applied the substitute/seasonal/short-term test the Commissioner himself acknowledges controls. *See id.* at 23-24 (articulating as applicable standard that "the employee is not being provided either as a substitute for a current employee who is on leave or to meet seasonal or short-term workload conditions") (quoting *H.R. Options,* at ¶ 21).

particularly for larger employers. As to the latter, affording A.M. Castle the right to request the removal of a poorly performing driver is in no way inconsistent with conclusion that the driver was permanently assigned. To the contrary, A.M. Castle presumably wanted that provision because of the key role the drivers provide (including, for example, with respect to customer relationships)—only further supporting the notion that the drivers are part of a permanent workforce.

In short, while the Services Contract does not use the magic language the Commissioner errantly suggests is required, it is plainly consistent with the clearly expressed statutory requirements for exclusion set forth in R.C. 5739.01(JJ)(3).

2. As The Board Concluded, the Facts and Circumstances Surrounding the Services Contract Further Supports the Conclusion That Drivers Were Permanently Assigned.

Rather than look solely to the terms of the Services Contract, the Board followed this Court's instruction to review the contractual language in light of the surrounding "facts and circumstances" in determining whether drivers were being provided in an exempt manner.[5] For example, the Board discussed the testimony of Mr. Knopp, who noted that A.M. Castle does not itself employ any drivers, but relies solely on D.C. Transportation for its transportation function. (Decision at 3). The Board recited as relevant facts that the drivers were A.M. Castle's representatives to its customers, and that they "wear [A.M. Castle's] colors" and "drive [A.M. Castle's] logo trucks." *Id.* The Board also referred to the facts that the drivers are full-time employees, work only for A.M. Castle, and are not seasonal, temporary, short-term or

[5] The Commissioner argues it was improper for the Board to look at anything beyond the language of the Services Contract and the governing statute. (Appellant's Br. at 17-19). That argument flies directly in the face of *Bay Mechanical*. 133 Ohio St. 3d 423, 2012-Ohio-4312, 978 N.E.2d 882, at ¶ 19 (recognizing need to consider contractual language ***and*** accompanying "facts and circumstances") (emphasis added).

substitute employees. *Id.*[6] And the Board noted that the drivers were covered by the CBA between A.M. Castle and Teamsters Local Union No. 407. *Id.*; (*see also* CBA (A-96)). That collective bargaining agreement is for A.M. Castle drivers only and does not apply to drivers assigned to any of D.C. Transportation's other accounts. (CBA (A-96)).[7] As the Board concluded, these undisputed facts and circumstances further support a finding of permanent assignment.

The Commissioner now challenges the Board's assessment of the evidence (and related factual determinations), calling that evidence "limited" and "self-serving." (*See* Appellant's Br. at 26-30). But the Commissioner presented no contradictory evidence, and offers nothing to even suggest—much less prove—that the Board abused the discretion afforded it to weigh and consider evidence. For example, the Commissioner chastises the Board for accepting Mr. Knopp's (totally accurate) testimony that many of the drivers provided by D.C. Transportation had been working for A.M Castle for many years. (Appellant's Br. at 27). The Commissioner notes that, in an affidavit he had previously submitted to the Department of Taxation (prior to the appeal to the BTA), Mr. Knopp had not made that statement. *Id.* But Mr. Knopp never intended that affidavit to recite every relevant fact, and it says nothing that is inconsistent with Mr. Knopp's trial testimony.

The Commissioner then offers a red-herring, noting that the CBA covering the A.M. Castle drivers provides for "casual drivers." (Appellant's Br. at 27). As the Board noted,

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[6] These *de minimis* exceptions were detailed in an affidavit provided to the Department (and the Board) and related to three drivers that were assigned to another D.C. Transportation account and one D.C. Transportation administrative employee. (Fink Affidavit (A-186)). In a handful of instances, these four drivers performed substitute services for the A.M. Castle account for an aggregate total of 20 days during the period in issue, earning a combined $3,225.

[7] The Board also cited much of Mr. Fink's testimony, which corroborated the facts as related by Mr. Knopp. (*See* Decision at 3).

that term was fully explained at the hearing and in practice never referred to temporary or substitute drivers. (Decision at 3).[8]

Next, the Commissioner claims there was conflicting testimony regarding whether A.M. Castle drivers were ever "laid off." (Appellant's Br. at 28). First, slight variations in the recollections of witnesses is neither surprising nor unusual. And that is particularly so as to facts that have little or no bearing on the issue under consideration. That A.M. Castle might, during a significant economic downturn, have had to reduce the number of its drivers has nothing to do with whether the drivers constituted a permanent workforce. It is an unfortunate reality that companies are often required to cut employees. That does not mean that its employees (or, in this case, leased employees) should not be considered permanent. And that is precisely what the Board concluded. (Decision at 4 ("We find no requirement in R.C. 5739.01(JJ)(3), or caselaw interpreting it, that the number of employees, as set out in the contract authorizing employment services, must be a static, specific number, which cannot be varied or adjusted based upon extrinsic factors")).

Finally, the Commissioner points to purported inconsistencies in the evidence presented. Again, however, none of those inconsistencies go to the fundamental issue of whether the employees in issue were permanently assigned to A.M. Castle. For example, the Commissioner notes that hearing testimony on the number of drivers assigned differed somewhat from the information contained in previously provided documentation. (Appellant's Br. at 28). But any

[8] While to be sure the CBA references "casual employees," no driver assigned to A.M. Castle fell within that designation. (Hrg. Tr. (A-1) at 33 (Knopp), 65-66 (Fink)). The Board acknowledged that "'casual driver,' as referenced in the CBA, is a term . . . carried over from the Teamsters" and, as stated by A.M. Castle under oath, "Castle never had a temporary driver." (Decision at 3). Pursuant to the CBA, all drivers assigned to A.M. Castle are guaranteed an eight-hour work day and a 40-hour work week. (Hrg. Tr. (A-1) at 23 (Knopp); CBA (A-96)).

such variance has nothing to do with whether drivers were permanently assigned. This is a quest for justice and fairness—not evidentiary perfection.

IV. CONCLUSION

There is little doubt that the drivers in issue were permanently assigned to A.M. Castle. They were not substitute, temporary, seasonal or short-term employees. There is nothing in the record to suggest otherwise. The Board did not abuse its discretion in its weighing and consideration of evidence that it found to support permanent assignment of the drivers at issue in this matter. Accordingly, A.M. Castle respectfully requests this Court to uphold the Board's reasonable and lawful decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent by regular U.S. mail this 5th day of October, 2015, to upon the following:

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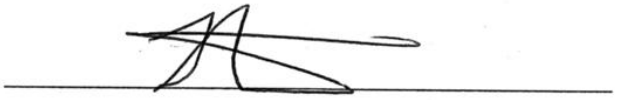

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