State of Wisconsin

Labor and Industry Review Commission

Quentin Mosby, Complainant **Hribar Bros.**, Respondent ERD Case No. CR202301769 EEOC Case No. 26G202301086	**Fair Employment Decision** **Dated and Mailed:** July 8, 2026 mosbyqu_err.doc:111

The decision of the administrative law judge is **reversed**. Accordingly, the matter is **remanded** for a hearing on the issue of probable cause and for such further proceedings as may be warranted.

By the Commission:

/s/
Katy Meter Lounsbury, Chairperson

/s/
Michael H. Gillick, Commissioner

/s/
Marilyn Townsend, Commissioner

Procedural Posture

The complainant filed a complaint with the Equal Rights Division of the Department of Workforce Development (hereinafter the "Division") alleging the respondent discriminated against him based upon his race and color and because he had opposed discrimination in the workplace, in violation of the Wisconsin Fair Employment Act (hereafter "Act"). The respondent argued in a position statement in response to the complaint that the Division does not have jurisdiction over this matter because the complainant did not work for it as an employee during the time period at issue. The Division issued an initial determination dismissing the complaint because it found no probable cause to believe that the respondent discriminated against the complainant, but without deciding the jurisdictional issue raised by the respondent. The complainant appealed and the administrative law judge held a hearing regarding the jurisdictional issue. Following the hearing, the administrative law judge issued a decision dismissing the complainant's complaint based on a conclusion that the complainant worked for the respondent as an independent contractor and the Division therefore lacked jurisdiction over the complaint. The complainant filed a timely petition for commission review of that decision.

The commission has considered the petition and the positions of the parties, and it has reviewed the evidence submitted at the hearing. Based on its review, the commission makes the following:

Findings of Fact

1. The respondent, Hribar Bros., is a business that contracts with "owner operator" truck drivers to provide trucking services. Hribar Bros. is owned by the same ownership group that owns four other affiliated companies. They are:

a) Hribar Transport - a trucking company that employs truck drivers who drive trucks owned by the company,
b) Amston Supply - a dealership that sells, leases, and services trucks,
c) Hribar Logistics - a logistics company that employs dispatchers who communicate with truck drivers (both Hribar Bros. and Hribar Transport drivers), assigns or offers them loads, and informs them where and when delivery should be made, and
d) Matrix Enterprise - a management company that provides management services to Amston Supply, Hribar Bros., Hribar Transport, and Hribar Logistics.

All of these companies are located in the same building in Caledonia, WI.

2. The complainant, Quentin Mosby, began working for Hribar Transport in August of 2019. As a company driver for Hribar Transport, Mr. Mosby was an employee. He was not able to reject loads assigned to him by dispatch (without discipline) or have anyone else complete a load for him. Mr. Mosby was eligible for health insurance, among other benefits, and taxes were deducted from his paychecks.

Mr. Mosby was provided with a truck and was not responsible for costs associated with the operation or maintenance of the truck. Hribar Transport obtained and paid for all necessary insurance associated with Mr. Mosby's services.

3. Mr. Mosby resigned his position with Hribar Transport on May 4, 2020 to work with Hribar Bros. as an "owner-operator." He established a company, Mosby's Fifth Wheel, and his company entered into an agreement with Hribar Bros. in which Mosby's Fifth Wheel leased a truck to Hribar Bros. Along with the truck, Mosby's Fifth Wheel agreed to provide driver services. However, Mosby's Fifth Wheel did not own a truck. It leased the truck, initially from Hribar Bros. itself. Later, in 2021, Mosby's Fifth Wheel began leasing a truck from Hribar-affiliated Amston Supply.

4. As part of his onboarding as a Hribar Bros. driver, Mr. Mosby was given a list of expectations including:

- wear P.P.E. at all times,
- do not exceed the company speed limit threshold of 70 mph,
- follow dispatch precisely,
- arrive to the job on time based on dispatch,
- complete the load quota assigned by dispatch,
- report maintenance issues daily,
- turn in weekly paperwork no later than Monday at 5 pm,
- maintain Saturday availability, and
- be prepared to work the full 14 hours of service allowed by the D.O.T. daily.

5. Mr. Mosby had some control over his schedule as a Hribar Bros. driver. He could choose to accept or reject loads offered to him by dispatch. However, when he accepted a load, it included information regarding when it had to be delivered and when he would need to pick it up. Mr. Mosby could take time off subject to approval by Hribar Bros. He was required to give at least one weeks' written notice when requesting a day off or, for more than one day at a time, three weeks' notice. Hribar Bros. also imposed an attendance policy and subjected Mr. Mosby to discipline if he took time off without advance approval.

6. Hribar Bros. and Transport required the use of Lytx and PeopleNet for all drivers, including Mr. Mosby. This system includes cameras facing both outwards and into the cab and transmits GPS information and video footage to Hribar. Drivers for Hribar Bros. pay a deposit for the system and a monthly service fee for its use, while Hribar Transport drivers do not pay any fees for use of the system. The system logs the routes taken by drivers, monitors the truck's speed, and alerts Hribar whenever it detects a driver has violated a rule such as not wearing a seatbelt, speeding, or covering a camera. Mr. Mosby was subject to multiple disciplinary actions based on information Hribar received through these systems while he was

working for Hribar Bros. Disciplinary steps taken included written warnings (labelled "failure of service" notifications), "safety downs," which are time periods in which Mr. Mosby was not allowed to drive, and required remedial training.

7. Hribar Bros. required Mr. Mosby to sign a confidentiality and noncompete agreement. Among other terms, this agreement limited Mr. Mosby's ability to perform services for other entities. Specifically, he was prohibited from soliciting or servicing any customers he had worked with during the most recent two years through his work for Hribar while his relationship with Hribar Bros. continued and for two years thereafter.

8. Hribar Bros. prohibited Mosby's Fifth Wheel from using the leased truck to perform services for other carriers unless he obtained written permission to do so. If such permission was granted, Mr. Mosby would have to pay Hribar Bros. a fee dependent on the scope of the work performed for the other carrier. However, when Mr. Mosby requested such permission, it was denied.

9. While driving, Mr. Mosby followed directions provided to him by the Hribar Logistics dispatcher. Hribar Bros. could deduct money from the amounts it owed to Mosby's Fifth Wheel for "excessive out of route miles" if Mr. Mosby drove "out of route without prior authorization." As discussed above, the Lytx and PeopleNet systems tracked Mr. Mosby's location and provided that information to Hribar Bros.

10. As a Hribar Bros. driver, Mr. Mosby was required to report any situation that would result in a delay in delivery to dispatch immediately. He was required to report any accidents to Hribar as well, and accidents could result in termination of his agreement with Hribar Bros. Mr. Mosby was also required to report any traffic conviction he received, other than parking violations, to Hribar Bros. regardless of what vehicle he was driving at the time.

11. While working for Hribar Transport, payroll taxes were deducted from Mr. Mosby's pay. However, while working for Hribar Bros., Mr. Mosby was responsible for paying self-employment payroll taxes. Hribar Bros. paid him on a 1099 form and, unlike when working for Hribar Transport, Mr. Mosby was not eligible for health insurance or other typical employee benefits.

12. As a Hribar Transport driver, Mr. Mosby was not responsible for any truck, maintenance or other driving expenses such as tolls or fuel. When working with Hribar Bros., Mr. Mosby had to pay his truck lease payments and was responsible for maintenance, tolls, and fuel costs. While working for Hribar Bros., Mr. Mosby was paid a set percentage of the fee Hribar Bros. collected from the customer for each load delivered. The total fee, and therefore the amount Mr. Mosby would receive, was determined by Hribar Bros.

13. Hribar Bros. covered some costs associated with Mr. Mosby's work for it. For example, Hribar Bros. paid for a required physical and drug screen for Mr. Mosby, provided he did not leave his employment within 90 days. Hribar Bros. required Mr. Mosby to purchase certain protective equipment from it. It also provided him with other safety equipment, including velcro safety straps that it required him to use when offloading material. Hribar paid the cost of the license plates for the truck and fuel taxes.

14. Hribar Bros. requires drivers to carry physical damage, liability, deductible buy-back, and occupational accident insurance. It offers these coverages to Hribar Bros. drivers but does not require them to purchase the insurance through it. Mr. Mosby was covered by these policies as provided by Hribar Bros. though he did not pay for insurance other than truck liability insurance. When Mr. Mosby was injured on the job, the director of human resources employed by Amston Supply handled the processing of Mr. Mosby's claim with the occupational accident insurance company and it paid Mr. Mosby for some of the time he missed work due to the injury.

15. Mr. Mosby attempted to hire his wife, who held a CDL, to work for Mosby's Fifth Wheel as either a non-driving assistant or as an additional driver. However, Steven Hribar, an employee of Matrix Enterprise and member of the Hribar Bros.' ownership group, informed Mr. Mosby he could not have his wife ride along with him or drive the leased truck.

16. The leased truck was painted with Hribar Transport's logo rather than Mosby's Fifth Wheel. The lease agreement indicates that Mr. Mosby could have requested permission to repaint it, but he did not do so, and it is unknown whether permission would have been granted.

17. Hribar Bros. required Mr. Mosby to grease the blower driveshaft every ten offloads, or to arrange for this task to be completed on this schedule. Other than this specific maintenance task, Hribar Bros. only required that maintenance be performed by a licensed shop.[1]

18. Mr. Mosby's working relationship with Hribar Bros. ended on February 15, 2023, when Hribar Bros. terminated its lease agreement with Mosby's Fifth Wheel without any advance notice.

19. Mr. Mosby typically left the leased truck in Hribar's parking lot when it was not in use, in a parking space he rented. When he left on February 15, 2023, he found that the truck was blocked in such that he could not drive it off the property. The termination paperwork provided to Mr. Mosby by Hribar Bros. included an option for

[1] Mosby's Fifth Wheel's lease with Amston Supply required the use of Hribar-affiliated maintenance and repair services. It is unknown if the same requirement was imposed by Hribar Bros. when Mosby's Fifth Wheel leased its truck from Hribar Bros.

him to purchase the truck. However, he had no option to continue the lease. Amston Supply also terminated its lease agreement with Mosby's Fifth Wheel.

Conclusions of Law

1. Mr. Mosby performed services for Hribar Bros. as an employee, within the meaning of the Act.

Memorandum Opinion

The issue before the commission is whether the Division has jurisdiction over the complainant's discrimination complaint. The Act provides that, "It is unlawful for any employer, labor organization, licensing agency or person to discriminate against any employee or applicant for employment or licensing." Wis. Stat. § 111.325. The Wisconsin Court of Appeals has effectively held that the protections afforded individuals against prohibited discrimination under the Act cover only employees and not independent contractors. *See Moore v. LIRC*, 175 Wis. 2d 561, 499 N.W.2d 289 (Ct. App. 1993). In *Moore*, the court adopted a Title VII test articulated in *Spirides v. Reinhardt*, 613 F.2d 826 (D.C. Cir. 1979), which provided the following guidance:

> [D]etermination of whether an individual is an employee or an independent contractor for purposes of [Title VII] involves… analysis of the "economic realities" of the work relationship… Consideration of all of the circumstances surrounding the work relationship is essential, and no one factor is determinative. Nevertheless, the extent of the employer's right to control the "means and manner" of the worker's performance is the most important factor to review here…
>
> Additional matters of fact that an agency or reviewing court must consider include, among others, (1) the kind of occupation, with reference to whether the work usually is done under the direction of a supervisor or is done by a specialist without supervision; (2) the skill required in the particular occupation; (3) whether the "employer" or the individual in question furnishes the equipment used and the place of work; (4) the length of time during which the individual has worked; (5) the method of payment, whether by time or by the job; (6) the manner in which the work relationship is terminated…; (7) whether annual leave is afforded; (8) whether the work is an integral part of the business of the "employer"; (9) whether the worker accumulates retirement benefits; (10) whether the "employer" pays social security taxes; and (11) the intention of the parties.

Moore, 175 Wis. 2d at 569.

Here, the respondent argues the complainant worked as an independent contractor and not an employee and therefore, the Division is deprived of jurisdiction. The

commission disagrees and will address each of the *Spirides* factors as applied to the facts described above.

Right to Control

The most important factor, the extent of the employer's right to control the means and manner of the individual's performance, weighs strongly in favor of finding that Mr. Mosby performed his services for Hribar Bros. as an employee. Hribar Bros. exercised significant control over Mr. Mosby's services. Hribar Bros. required Mr. Mosby to use a camera and GPS tracking system that monitored his location and transmitted his speed, location, and camera footage both outside and inside the cab to Hribar Bros and used this information to discipline him. It also subjected him to an attendance policy and required him to get approval prior to taking days off work. It controlled what loads he was offered and the amount he would be paid for each load. It dictated the pick-up and delivery time for each load. It had the right to deduct money from the amounts it paid Mr. Mosby if he took a route it did not approve of in completing the deliveries. It limited his ability to work for others and to hire additional drivers or assistants to work with him. All of these facts weigh in favor of a conclusion that Hribar Bros. retained significant control over the "means and manner" of Mr. Mosby's performance of services for it.

The kind of occupation, with reference to whether the work usually is done under the direction of a supervisor or is done by a specialist without supervision

Being a truck driver requires specialized training and a commercial driver's license ("CDL"). Mr. Mosby had a CDL prior to beginning work with Hribar Transport. Hribar Bros. supervised drivers working for it as "owner-operators" in the same manner that Hribar Transport supervised its employed drivers. Both companies used the Lytx and PeopleNet systems which monitored speed and location and sent alerts to them whenever potential violations, including drivers not wearing seatbelts or covering their cameras, were detected.

The skill required in the particular occupation

The occupation requires driving skills. The same skills were required of Mr. Mosby when he worked as an employee of Hribar Transport and when he worked for Hribar Bros. Truck drivers are required to have a CDL and specialized driving skills, and often work as both employees and independent contractors.

Whether the "employer" or the individual in question furnishes the equipment used and the place of work

The main piece of equipment used in the performance of Mr. Mosby's services is the truck Mr. Mosby drove. His company's agreement with Hribar Bros. required it to

provide a truck. However, the truck used was initially owned by Hribar Bros. itself. Later, the truck driven by Mr. Mosby was owned by Hribar-affiliate Amston Supply. Mr. Mosby paid to lease these trucks, from Hribar Bros./Amston Supply, then leased the same truck back to Hribar Bros. for its use (along with Mr. Mosby's driving services). Other equipment necessary was furnished by Hribar Bros., including safety equipment, license plates, and the camera system. Mr. Mosby paid a fee for the use of the camera system and, at least in contract, paid for some of the safety equipment. He did not pay for the license plates.

The length of time during which the individual has worked

Mr. Mosby worked for Hribar Transport as an employee for less than a year. He then worked for Hribar Bros. for more than two years.

The method of payment, whether by time or by the job

When working for Hribar Transport, Mr. Mosby was paid per mile. When working for Hribar Bros., he was paid a set percentage of the fee Hribar Bros. received for each job. However, the total fee Hribar Bros. received for a job was set by Hribar Bros. and the customer, so Mr. Mosby was not able to negotiate or set his own rates.

The manner in which the work relationship is terminated

When performing services for Hribar Transport, Mr. Mosby was an at-will employee. By contrast, his contract with Hribar Bros. provided that the relationship could be terminated with 10-days' notice. However, Hribar Bros. terminated the agreement with no notice, contrary to the terms of the contract. Additionally, when Hribar Bros. terminated its agreement with Mosby's Fifth Wheel, it physically blocked Mr. Mosby from removing the truck from its premises, preventing any possibility that he could use the truck to perform work for other entities. Its affiliate, Amston Supply, terminated its lease with Mosby's Fifth Wheel as well.

Whether annual leave is afforded

Mr. Mosby was afforded a set amount leave when working for Hribar Transport. There was no stated cap regarding how much leave he could take while working for Hribar Bros., but any leave was subject to Hribar Bros.' approval.

Whether the work is an integral part of the business of the "employer"

Hribar Bros.' business is to provide trucking services. Mr. Mosby's work in leasing a truck to Hribar Bros. and providing the service of driving that truck was integral to Hribar Bros.' business.

Whether the worker accumulates retirement benefits

Mr. Mosby did not accumulate retirement benefits or have access to other workplace benefits when working for Hribar Bros.

Whether the "employer" pays social security taxes

Social security taxes were paid by Hribar Transport when Mr. Mosby performed services for that entity, but not when he worked for Hribar Bros.

The intention of the parties

Mr. Mosby intended to transition from being an employee to being an independent contractor, working for his own separately established business, when he transitioned from working for Hribar Transport to Hribar Bros. However, Hribar Bros.' contracts and actions indicate that it intended to shift the financial risk of the trucking business to Mr. Mosby and his company, while retaining oversight of his work. It also limited the amount of work Mr. Mosby could perform, who he could perform work for, and who his business could hire to perform work, stripping him of the control necessary to potentially increase his business' profit.

Conclusion

Considering all the factors discussed above, it is clear that the relationship between Mr. Mosby and Hribar Bros., for the purposes of the Act, was that of employee and employer. The work performed by Mr. Mosby and the supervision exercised by Hribar did not change in any significant way when he transitioned from working for Hribar Transport to Hribar Bros. Some financial aspects of the relationship were designed to indicate that Mr. Mosby worked for Hribar Bros. as an independent contractor. However, Hribar Bros. maintained control over Mr. Mosby's work and even limited the ability of his business to perform services for other entities. Considering the totality of the circumstances, the commission finds that Mr. Mosby worked for Hribar Bros. as an employee.

Because the commission concludes that Mr. Mosby performed his services as an employee, and not as an independent contractor, it finds that the Division does have jurisdiction over this claim. Accordingly, the decision of the ALJ is reversed and the matter is remanded for a hearing on the issue of probable cause and for such further proceedings as may be warranted.

NOTE: The commission consulted with the administrative law judge who held the hearing to obtain her impressions as to the credibility of the witnesses, based on their demeanor, which were a factor in her decision. The administrative

law judge responded that she found Mr. Mosby to be sincere when he indicated that he had started Mosby's Fifth Wheel with the intent of it being a family business. The commission similarly found Mr. Mosby to be sincere but, for the reasons explained above, has reached a different conclusion than the administrative law judge regarding his status as an employee.