

Supreme Court Case Number SC-2018-02

IN THE SUPREME COURT OF THE CHEROKEE NATION

SALLIE LUETHJE
CLAIMANT/APPELLEE

vs.

CHEROKEE NATION and the THE HUDSON INSURANCE COMPANY
RESPONDENTS/APPELLANTS

DISTRICT COURT CASE NUMBER: CV-2017-317

BRIEF IN CHIEF OF CHEROKEE NATION/HUDSON
INSURANCE COMPANY

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June 1, 2018

2018 JUN -1 PM 3:07
CHEROKEE NATION
SUPREME COURT
KENNEDY BIRD, COURT CLERK

FILED

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IN THE SUPREME COURT OF THE CHEROKEE NATION

SALLIE LUETHJE,

Claimant,

v.

S. Ct. Case No. SC-2018-02

CHEROKEE NATION,

Respondent,

HUDSON INSURANCE COMPANY,

Insurance
Carrier.

BRIEF-IN-CHIEF

COME NOW the Respondent, CHEROKEE NATION, and its insurance carrier, THE HUDSON INSURANCE COMPANY, with their Brief-In-Chief. Cherokee Nation and the Hudson Insurance Company will be referred to as “Cherokee”. The claimant will be referred to as “Luethje”.

INTRODUCTION

Respondent and insurance carrier appeal the Order of District Court Judge Luke Barteaux dated March 2, 2018. For purposes of simplicity, Cherokee Nation and the Hudson Insurance Company will be referred to as “Cherokee”. The claimant will be referred to as “Luethje”.

ASSIGNMENTS OF ERROR

The District Court erred in its March 2, 2018 Order adopting and affirming the Arbitration Order dated May 31, 2017. The Arbitrator erred in Paragraph 14 of his Order when he awarded Claimant a \$500.00 “penalty” pursuant to the Cherokee Nation Uniform

Arbitration Act at 12 CNCA §1321(C). There was no basis in law, fact, or equity to award that sum of money given the facts of the case.

STATEMENT OF ISSUES PRESENTED

1. Did the District Court err in affirming the award of \$500.00 to Claimant pursuant to 12 CNCA §1321(C)?

STATEMENT OF THE CASE

Luethje suffered an injury to her shoulder on November 5, 2016. Cherokee admitted that injury and provided Luethje medical treatment. The issue of mileage reimbursement arose when Luethje submitted a request for mileage reimbursement for travel dates February 16, 2017 to March 10, 2017. Those were denied because her requests for those dates of mileage listed the destination as Stilwell Memorial Hospital and her home address as 18282 S. 585 Road, Stilwell, OK.

85 CNCA §43(A) (CNWCA Legislative Act 20-10 Section 44(A))¹ provides the employer shall not be liable for travel wholly within the limits of the city or town of the claimant's residence. Mileage was paid by Cherokee during this time period for her travel to her treating physician in Tulsa, Oklahoma. (Arbitration Transcript P. 9, L. 5 and Respondent's Exhibit 3). Cherokee is obligated by statute, 85 CNCA §6(D) (CNWCA Legislative Act 20-10 Section 8(D)) to make a final decision on mileage requests received from claimant. Cherokee made a final decision, based upon the information Luethje provided, on March 23, 2017.

¹ The documents in evidence and testimony in the record reference CNWCA section numbers as outlined in Legislative Act 20-10. When that Act was codified in the Cherokee Nation Code Annotated, the numbering of the sections was modified. Cherokee will provide reference to both citations for this Court's reference.

