

5-3049

375 S. W. 2d 221

Supplemental Opinion on rehearing delivered February 3, 1964.

WORKMEN'S COMPENSATION—SUBCONTRACTORS—WEIGHT AND SUFFICIENCY OF EVIDENCE.—On rehearing the case of *Huffstettler v. Lion Oil Co.*, 208 F. 2d 549, held not to apply since it was not shown that the "D" Co. had any contract with a third person relative to the timber; accordingly, there was no evidence that "B", who cut the timber for "D" Co. was a subcontractor. Petition for rehearing denied.

CARLETON HARRIS, Chief Justice. In the petition for rehearing appellant insists that this case is controlled by *Huffstettler v. Lion Oil Company*, 208 F. 2d 549. There it was held that the operator of a bulk plant who distributed Lion products to retailers who had *contracted* with Lion to sell that company's products, was not an independent contractor, but a subcontractor.

The decision in the Lion case was based on *Hobbs Western Co. v. Craig*, 209 Ark. 630, 192 S. W. 2d 116, and *Brothers v. Dierks*, 217 Ark. 632, 232 S. W. 2d 646. In the *Hobbs Western* case it was shown that Hobbs Western was getting out crossties for the Rock Island Railroad under a *contract*, and it was therefore held that one Lea, who was in turn getting out ties for Hobbs Western, was a subcontractor, not an independent contractor.

In *Brothers v. Dierks* it was shown that Dierks was getting out timber under a *contract* with the Federal Government, and therefore, the one that Dierks employed to remove the timber from the government land was a sub-contractor and not an independent contractor.

In the case at bar it is not shown that Dierks had any contract with a third person in connection with the timber, and therefore, it cannot be said that the one who is getting out the timber for Dierks is a subcontractor.

Petition for re-hearing is denied.

Original opinion delivered December 16, 1963, p. 376.