

Butler v. Southern States

Virginia Supreme Court

November 4, 2005

This is a sexual assault case involving the bar of the Workers' Compensation Act.

The plaintiff was a lady who worked for Southern States. Three years after she was hired Southern States hired the defendant, who had a criminal history involving sexual assault. They were required on one day to deliver certain items to a customer by truck and in the process the defendant became physically aggressive towards the plaintiff who rebuffed his advances and sued both the defendant and Southern States. Both the defendant and Southern States raised the bar of the Workers' Compensation Act and the trial court sustained the plea. This appeal followed.

The Virginia Supreme Court reversed. Basically it said there is a two prong test for the Workers' Compensation Act bar. The injury must both "arise out of" and "be in the course of" the employment of the employee. In this case it is without doubt that her injury incurred "in the course of" her employment, she was in the act of delivering product to a customer when the alleged assault occurred. However the Court noted that for a physical assault to be within the ambit of the Act there must be a causal connection between the injury and the conditions under which the employer requires the work to be done. Here the defendants tried to argue that because the defendant worker was a known felon with a history of sexual assault that requiring the plaintiff to work with him made the assault "arising out of" her employment. The Virginia Supreme Court disagreed, holding that assaults of this type are personal and therefore not covered by the Act, and therefore the trial judge is reversed and the suit can continue without the bar of the Act.