

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

RUSSELL TRENT,

Appellant,

v.

CASE NO. 1D09-5110

CHARLOTTE SANITATION
And CNA CLAIMS PLUS,

Appellees.

/

Opinion filed April 7, 2010.

An appeal from an order of the Judge of Compensation Claims.
Kathy A. Sturgis.

Date of Accident: February 16, 1989.

Bill B. Berke, Cape Coral, and Bill McCabe, Longwood, for Appellant.

Michael E. McCabe of Miller, Kagan, Rodriguez & Silver, P.L., North Fort Myers,
for Appellees.

PER CURIAM.

In this workers' compensation appeal, Claimant raises four points alleging error. We affirm the first three points without further comment; however, we

reverse the fourth point, concerning the judge of compensation (JCC's) award of costs to the employer/carrier (E/C).

Following a final hearing on Claimant's petitions for benefits, the JCC ruled in favor of the E/C on all issues, and awarded the E/C costs payable by Claimant pursuant to section 440.34(3), Florida Statutes. On appeal, the E/C properly concedes the award of prevailing party costs was error because Claimant's date of accident pre-dates the October 1, 2003, version of section 440.34(3), which permits such an award. See Kaloustian v. Tampa Armature Works, Inc., 5 So. 3d 753 (Fla. 1st DCA 2009) (holding the JCC reversibly erred in applying the post October 1, 2003, version of section 440.34(3) to a claim with a pre-October 1, 2003, date of accident). Consequently, that portion of the JCC's order awarding the E/C prevailing party is reversed. In all other respects, the JCC's order is affirmed.

AFFIRMED in part and REVERSED in part.

WEBSTER, PADOVANO, and ROBERTS, JJ., CONCUR.