

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

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

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.