

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

PLAYTEX PRODUCTS, INC.	:	
	:	C.A. No. 03A-11-003 HDR
Appellant,	:	
	:	
v.	:	
	:	
SYLVIA I. ROLAND,	:	
	:	
Appellee.	:	

Oral Argument: January 16, 2004  
Decided: January 27, 2004

**ORDER**

Upon Appellee's Motion to Dismiss. Granted.

Walt F. Schmittinger, Esquire of Schmittinger & Rodriguez, P.A., Dover, Delaware,  
attorneys for the Appellee.

J. R. Julian, Esquire of J.R. Julian, P.A., Wilmington, Delaware, attorneys for the  
Appellant.

WITHAM, J.

Before the Court is Appellee Sylvia I. Roland's motion to dismiss Appellant Playtex Products' appeal from an order of the Industrial Accident Board ("IAB" or "Board") compelling Playtex to produce certain records. Because the IAB's order is interlocutory in nature, it is unappealable. Roland's motion to dismiss will therefore be granted.

I.

Earlier this year, this Court reversed a decision of the Board that awarded attorney's fees to Roland, and remanded the case for further proceedings.<sup>1</sup> In preparation for the remand hearing, Roland requested Playtex's case-related time records. After Playtex refused, Roland sought and received an appropriate order to compel from the IAB. The Board, on a motion for reconsideration, affirmed its own decision in October.<sup>2</sup> The Board has yet to take up the remand hearing.

Playtex then appealed the Board's production order.<sup>3</sup> Roland has filed the present motion, claiming the Board's order is interlocutory, rather than final, and thus cannot be appealed. In response, Playtex contends that, in issuing the order to compel, the Board exceeded the authority granted to it under Delaware law. Playtex also urges that the order denying the motion for reconsideration is void because it was issued by a quasi-judicial administrator, hearing officer Michael Ripple, rather

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<sup>1</sup> *Roland v. Playtex Products, Inc.*, No. 02A-02-004 (Feb. 3, 2003) (Witham, J.).

<sup>2</sup> *Roland v. Playtex Products, Inc.*, IAB Hearing No. 1176757 (Oct. 24, 2003).

<sup>3</sup> The appeal is reproduced at App. Resp., Ex. A.

than the Board itself. This issue is not central to this Court's consideration.

## II.

Civil Rule 72(i) provides: "Dismissal [of appeals] may be ordered . . . for appealing an unappealable interlocutory order."<sup>4</sup> Delaware law provides that only "awards" may be appealed.<sup>5</sup> In turn, the term *award* refers to a final determination of the Board.<sup>6</sup>

The Board's order to compel stems from a request to produce documents relating to the now-reversed award of attorney's fees. Since the IAB has yet to adjudicate this claim on remand, it has made no final determination in the matter. The Board's order is therefore interlocutory, and unappealable. Playtex's appeal is therefore premature.

## III.

Because the Board's order compelling the production of time records does not constitute a "final determination" in the case, the order is interlocutory and

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<sup>4</sup> SUPER. CT. CIV. R. 72(i); *see also Eastburn v. Newark School Dist.*, 324 A.2d 775, 775 (Del. 1974) ("[I]nterlocutory orders of the Industrial Accident Board are unappealable.").

<sup>5</sup> *See* 19 Del. C. § 2349 ("An award of the Board . . . shall be final and conclusive between the parties . . . [unless] either party appeals to the Superior Court . . ."); *id.* at § 2350 ("In case of every appeal . . . the Court may reverse, affirm, or modify *the award* of the Board . . .") (emphasis added).

<sup>6</sup> *Eastburn*, 324 A.2d at 775 ("The word itself requires that connotation [of finality]; and the urgency of workmen's compensation cases, as well as the improvement of judicial administration, militates against a ruling permitting fragmentation of such litigation by interim appeals.").

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unappealable. Only after a final decision is rendered by the Board on remand may Playtex appeal the order to compel or the validity of the denial of reconsideration. Accordingly, Roland's motion to dismiss is **GRANTED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution

File