

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

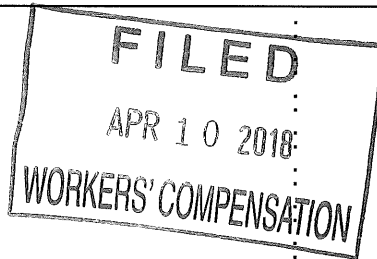
JAMES MOENCK,

Claimant,

vs.

JOHN DEERE DAVENPORT WORKS,

Employer,  
Self-Insured,  
Defendant.



File No. 5057569

NUNC PRO TUNC ORDER

On March 28, 2018, the undersigned filed an arbitration decision in this case. On April 9, 2018, claimant filed a motion for order nunc pro tunc. Defendant has not yet filed a response to the claimant's motion. However, it is clear that the undersigned made an oversight in the order section of the arbitration decision that can and should be corrected by nunc pro tunc order.

In the body of the arbitration decision, the undersigned spelled out the basis for an award of penalty benefits. (Arbitration Decision, pages 5-7) The penalty, however, was not specifically included in the order. It should have been. This was a mere oversight.

The phrase, "nunc pro tunc" means "now for then." See: Black's Law Dictionary, page 1218 (Revised 4th Edition 1968). The definition in Black's Law Dictionary further provides: "A phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, i.e. with the same effect as if regularly done." Black's at 1218. A nunc pro tunc order "is not for the purpose of correcting judicial thinking, a judicial conclusion, or a mistake of law." Headley v. Headley, 172 N.W.2d 104, 108 (Iowa 1969). The nunc pro tunc order can be employed to correct obvious errors or to make an order conform to the judge's original intent. Graber v. District Court for Washington City, 410 N.W.2d 224, 229 (Iowa 1987). Brinson v. Spee Dee Delivery Service, No. 8-754/06-2074 (Iowa App. November 13, 2008).

In this instance, the penalty should have been included in the order section.

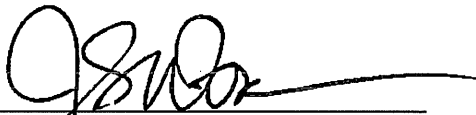
THEREFORE, IT IS ORDERED:

Claimant's motion for order nunc pro tunc is sustained.

The Order section shall be modified to include the following sentence:

Defendant shall pay a penalty in the amount of eight thousand and no/100 dollars (\$8,000.00).

Signed and filed this 10<sup>th</sup> day of April, 2018.

  
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JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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