

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BENNORAH YAHKWENNEH,

Claimant,

vs.

TYSON FRESH MEATS,

Employer,
Self-Insured,
Defendant.

File No. 20012062.01

ORDER NUNC PRO TUNC

RE: DEFENDANT'S MOTION

TO COMPEL

On December 28, 2021, the undersigned filed a ruling on defendant's motion to compel. Shortly thereafter, on December 29, 2021, claimant contacted the undersigned and requested an order nunc pro tunc.

Claimant correctly contends that the undersigned made a scrivener's error when dismissing the motion to compel. In the underlying ruling, the undersigned incorrectly labeled claimant as the moving party and dismissed claimant's motion to compel.

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. Iowa 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. 11/13/2008) (Iowa App., 2008).

Claimant provided answers to defendant's interrogatories and responses to defendant's requests for production of documents on December 13, 2021. The undersigned intended to dismiss defendant's motion to compel. It was and remains my intention that defendant's motion to compel discovery should be dismissed as moot. I conclude that this error was the result of a scrivener's error. I conclude that an order nunc pro tunc is an allowable means to correct this obvious scrivener's error to remedy this situation and enter an order that reflects my actual intention at the time of filing the December 28, 2021, ruling.

THEREFORE, IT IS ORDERED:

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

The December 28, 2021, ruling shall be modified to state:

According to claimant's resistance, claimant responded to defendant's discovery requests on December 13, 2021. Given this information, defendant's motion to compel is denied as moot.

Signed and filed this 3rd day of January, 2022.

A handwritten signature in black ink, appearing to read "Michael J. Lunn", is written over a horizontal line.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Thomas Palmer (via WCES)

Dillon Carpenter (via WCES)