

**THE STATE EX REL. BUTLER, APPELLANT, v. ROADWAY EXPRESS, INC. ET AL.,  
APPELLEES.**

**[Cite as *State ex rel. Butler v. Roadway Express, Inc.*, 2002-Ohio-2339.]**

*Workers' compensation—Court of appeals' judgment reversed and State ex rel. Gay relief ordered.*

(No. 2001-1175—Submitted April 9, 2002—Decided May 29, 2002.)

APPEAL from the Court of Appeals for Franklin County, No. 00AP-963.

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{¶1} The judgment of the court of appeals is reversed. The cause is returned to the Industrial Commission for relief consistent with *State ex rel. Gay v. Mihn* (1994), 68 Ohio St.3d 315, 626 N.E.2d 666.

DOUGLAS, RESNICK, F.E. SWEENEY and PFEIFER, JJ., concur.

MOYER, C.J., COOK and LUNDBERG STRATTON, JJ., dissent.

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**LUNDBERG STRATTON, J., dissenting.**

{¶2} I respectfully dissent and would affirm the judgment of the court of appeals.

MOYER, C.J., and COOK, J., concur in the foregoing dissenting opinion.

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Butkovich, Schimpf, Schimpf & Ginocchio Co., L.P.A., James A. Whittaker and Stephen P. Gast, for appellant.

Taft, Stettinius & Hollister, L.L.P., and Cynthia C. Felson, for appellee Roadway Express, Inc.

Betty D. Montgomery, Attorney General, and Jeffrey B. Hartranft, Assistant Attorney General, for appellee Industrial Commission of Ohio.

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