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Assaults by Fellow-Employees in Workmen's Compensation Cases

Glenn W. Bundy

ASSAULTS BY FELLOW-EMPLOYEES IN WORKMEN'S COMPENSATION CASES

Pittman and Stewart were engaged in laying a concrete floor in a garage building. During an interval in which they had no duties to perform, Stewart tossed an empty cigarette package at Pittman, who retaliated by tossing back a pebble. Subsequently, after this "horseplay" had ceased and the men had returned to their work, Stewart struck Pittman over the head with a shovel, resulting in a serious and permanent brain injury. Workmen's Compensation was awarded Pittman. *Held,* on appeal, that plaintiff was entitled to compensation as the nature of the work brought the two men together, one of the hazards of which was that of an assault by one upon the other. *Mutual Implement and Hardware Insurance Company v. Pittman,* 59 So.2d 547 (1952).

This decision represents the liberal construction of the compensation law. The acts were originally enacted to change the liability for injury to workmen from one based upon fault to one based upon the relation of the injury to the employment. This relation was stated in most of the statutes to be that the injury must occur in the course of and arise out of the employment. Here there was no question in regard to the assault occurring in the course of the employment. The inquiry is whether or not it arose out of the employment.

The rule is generally stated that if the assault grew out of some incident or condition of the employment, it is compensable;[1] whereas if it was the result of an assault committed solely for personal gratification, then compensation will be denied.[2] The difficulty in applying the rule is in determining what is an incident or risk of the employment. The courts are not in agreement on this question; some take a strict and narrow view, while others follow a broad interpretation. Thus in *Mountain Ice Co. v. McNeil,*[3] two employees were engaged in "horseplay" and were ordered back to work by the president of the company and the foreman. After they had resumed their work, McNeil was struck on the side of the head with an ice pick by the fellow employee. Compensation was denied. Similarly, in *Rice v. Revere Copper and Brass, Inc.*[4] the petitioner was hit over the head with a shovel while working in a factory. The court denied compensation, stating that mere association of workmen on the job was not enough to establish a causal connection between the working environment and the assault. Compensation was also denied where the workman was shot while attempting to get out of the way of two work-

1. Anderson v. Security Bldg. Co., 100 Conn. 373, 123 A. 843, 40 A.L.R. 1119 (1924); Gavros' Case, 240 Mass. 399, 134 N.E. 269, 21 A.L.R. 755 (1922); McNical's Case, 215 Mass. 497, 102 N.E. 697, L.R.A. 1916A 316 (1913); Heitz v. Ruppert, 218 N.Y. 148, 112 N.E. 750, L.R.A. 1917A 344 (1916).
2. Jacquemin v. Turner and S. Mfg. Co., 92 Conn. 382, 103 A. 115, L.R.A. 1918E 496 (1918); Chicago v. Industrial Commission, 292 Ill. 406, 127 N.E. 49, 15 A.L.R. 586 (1920).
3. 91 N.J.L. 528, 103 A. 184, L.R.A. 1918E 494 (1918).
4. 186 Md. 561, 48 A.2d 166 (1946).

men who were assaulting another,[5] and where the assault was the result of a quarrel over the use of a ladle in a steel mill.[6]

In *Ferguson v. Cady-McFarland Gravel Company*,[7] where a track employee was struck on the head by a fellow employee for unknown reasons, the court granted compensation, basing its decision on the theory that the employment subjected the workman to a greater risk of assault than he would be exposed to outside of the employment. A similar result was reached in a case in which the workman was shot and killed while riding home from work on a logging train, the transportation being furnished by the employer.[8] The court went so far as to state that the employment threw the deceased workman and his assailant together and aggravated a pre-existing condition. The case quoted most often by those courts favoring the liberal view is *Hartford Accident and Indemnity Co. v. Cardillo*.[9] In this case an assault was committed as the result of the victim calling the other workman "Shorty". Here the court held that the mere association of workmen on the job was a sufficient risk of the employment to find a causal relation to the work neessary for an award of compensation.

A case involving similar facts has not been adjudicated in Wyoming. However, if such a case arose, it would be problematical how the court would decide. There are a number of Wyoming cases which state that the compensation law should be liberally construed,[10] as did the opinion in the instant case.' But the compensation statutes in Wyoming are not the same as in most states. The dissent in the instant case laid stress on the fact that the Louisiana statute, from which jurisdiction the majority quoted many cases, defined accident, for which the employer was liable, as "An unexpected or unforseen event happening, suddenly or violently, with or without human fault and producing symptoms of an injury." This, the dissent claimed, explained many of the Louisiana cases. In Wyoming it would appear that the statute goes just as far in the other direction. The statute states that "the words 'injury and personal injury' shall not include injuries caused by the wilful act of a third person directed against an employee for reasons personal to such employee, or because of his employment."[11] A literal reading of the words "because of his employment" appears to mean that an assault which was the result of an argument over the manner of doing the work would not be compensable, and that it would not be possible to reach a decision in Wyoming similar to the one

5. Sloss-Sheffield Steel & I. Co. v. Harris, 218 Ala. 130, 117 So. 755 (1928).
6. Jacquemin v. Turner & S. Mfg. Co., 92 Conn. 382, 103 A. 115, L.R.A. 1918E 496 (1918).
7. 156 La. 871, 101 So. 248 (1924).
8. Keyhea v. Woodward-Walker Lumber Co., 147 So. 830 (La. App. 1933).
9. 112 F.2d 11 (App. D.C. 1940), cert. denied, 310 U.S. 649, 60 St. Ct. 1100, 84 L. Ed. 1415 (1940).
10. McConnel v. Murphy Bros., 45 Wyo. 289, 18 P.2d 629, 88 A.L.R. 376 (1933); Pope v. Safeway Stores, Inc., 54 Wyo. 266, 91 P.2d 58 (1939); Christensen v. Sikora, 57 Wyo. 57, 112 P.2d 557 (1941); Fuhs v. Swenson, 58 Wyo. 293, 131 P.2d 333 (1942).
11. Wyo. Sess. Laws, 1951, c. 143, sec. 4(b); see also P.S., Wyo. Comp. Stat. 1945, sec. 72-104(b).

in the instant case. If this is so, then the Wyoming statute is very restrictive. What would be the result if a workman was assaulted by a third person because he was a strikebreaker? What decision if a policeman was shot by a person because he didn't like cops? Surely that is one of the risks of a policeman's job, but the statute indicates that such an injury would not be compensable. Did the legislature really intend for the statute to have this effect? The Wyoming Constitution provides in part: "As to all extra hazardous employment the legislature shall provide by law for the accumulation and maintenance of a fund or funds out of which shall be paid compensation as may be fixed by law according to proper classifications to each person injured in such employment or to the dependent families of such as die as the result of such injuries, except in case of injuries due solely to the culpable negligence of the injured employee."[12] In *Fuhs v. Swenson*[13] the court stated: "It is apparent from the constitutional clause and the several provisions of our state law . . . that the accident which places the employee beyond the pale of the law for the purposes of making awards must be due solely to the 'culpable negligence' of the injured employee." Also in *Zancanelli v. Central Coal and Coke Co.*[14] the court said: "the compensation law is not intended to give compensation as damages, but is more in the nature of accident insurance."

In view of the references of the Wyoming court to a liberal construction of the compensation law and the constitutional provision previously referred to, it appears that the court has the attitude of the liberal view. Does the statute referred to obstruct the carrying out of the court's view and the declared spirit of the Wyoming compensation law? That question will have to remain unanswered until the meaning of the statute is clarified.

GLENN W. BUNDY

SHALL CHILDREN BE DENIED OPPORTUNITY TO MAINTAIN ACTION AGAINST ONE WHO ENTICED THEIR PARENT?

Two minor children through guardian ad litem brought suit against a third party who allegedly enticed their father,, thus depriving them of his bounty, love and affection.[1] Defendant's motion to dismiss was based on the theory that since the gravamen of the complaint was one for alienation of affections it was prohibited by the state's heart-balm legislation.[2] The

12. Article 10, Sec. 4.
13. 58 Wyo. 293, 131 P.2d 333 (1942).
14. 25 Wyo. 511, 173 P. 981 (1918).

1. The mother as guardian, brought this suit in her own name as well. It was held her cause of action was barred by interdiction of the heart-balm which abolished suits for alienation of affection.
2. Fourteen states have specific provisions dealing with alienation of affection actions: Alabama, Ala. Code tit. 7, Sec. 114-117 (1940); California, Cal. Civ. Code, Sec. 43.5 (1951); Colorado, Colo. Ann. Stat. C. 24A, Sec. 1-10, Michie Cum. Supp. (1952); Florida, Fla. Ann Stat. Sec. 771.01-771.08 (1951); Illinois, Ill. Ann. Stat. Chap. 68, Secs. 34-47 (1951), this statute supplanted the one interpreted by the court in