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WORKMEN'S COMPENSATION

VIOLATION OF STATUTE BARS COMPENSATION

Plaintiff was employed by defendant solely as a "loader" in defendant's mine. Finding an electrically operated machine in the way of his work, the plaintiff moved it, instead of calling a skilled worker hired to handle this equipment. During this moving the plaintiff was injured. Held, compensation denied. In operating this electrical machine, the plaintiff violated a statutory duty and thereby took himself out of the "course of his employment."¹

The general rule in workmen's compensation actions is in accord with the principal case.² However, many jurisdictions refuse to allow a mere violation of such a statute to bar compensation and hold that unless the employee was guilty of "wilful misconduct" or "wilful failure or refusal to perform"³ a statutory duty he was not acting outside the course of his employment and may recover.⁴ This gives to the violation only the effect of negligence, which does not bar recov-

¹ Kozak v. Reilly Coal Co., 15 A (2d) 531 (Pa. Super. 1940). The statutory duty involved is contained in General Rule 12 of Article XXV of the Bituminous Mining Act. Pa. Laws 1911, p. 827 Pa. Statutes (Purdon, 1936) tit. 52, §1292: "All persons are forbidden to meddle or tamper in any way with any electric or signal wires, or any other equipment in or about the mine."

² Bugh v. Employers' Reinsurance Corp., 63 F. (2d) 36 (C.C.A. 5th, 1933); Fortin v. Beaver Coal Co., 217 Mich. 508, 187 N.W. 352, 23 A.L.R. 1153 (1922); Shoffler v. Lehigh Valley Coal Co., 290 Pa. 480, 139 Atl. 192 (1927).

³ IND. STAT. ANN. (Burns, 1933) § 40-1208: "No compensation shall be allowed for an injury or death due to the employee's . . . wilful failure or refusal to perform any statutory duty . . ." Cf. Va. Acts 1918, c. 400, § 14.

⁴ Union Colliery Co. v. Industrial Commission, 298 Ill. 561, 132 N.E. 200, 23 A.L.R. 1150 (1921); Nester v. H. Korn Baking Co., 194 Iowa 1270, 190 N.W. 949 (1922); Rushville School Township v. Mock, 86 Ind. App. 307, 157 N.E. 366 (1927).

ery under workmen's compensation acts.⁵ The employee must have actual knowledge or reason to know of the existence of the statutory prohibition before his breach will be judged "wilful" and bar recovery.⁶ This places upon the employer the duty to post notices of the statutory requirement in conspicuous places in the vicinity of the work or otherwise make a reasonable attempt to give notice to the employee of the statutory requirement.⁷ In all jurisdictions recovery will not be denied for violation of a statute unless such violation is the proximate cause of the injury.⁸

That the rule in the principal case works a hardship upon employees, for whose benefit the workmen's compensation acts were designed,⁹ is evident.¹⁰ Pennsylvania in 1937 attempted to modify the rule by inserting in its workmen's compensation act a section to allow recovery by an employee who was injured while violating a law,¹¹ but this provision was declared unconstitutional.¹² In 1939 the unconstitutional section was repealed and another enacted to the effect that no compensation shall be paid when the injury or death is caused by the employee's violation of a law.¹³ This last revision was not mentioned in the opinion of the principal case, but it clearly applies and sustains the holding.

England attempted a modification, similar to that of Pennsylvania,

⁵ *Callihan v. Montgomery*, 272 Pa. 56, 115 Atl. 889 (1922); *Dzikowska v. Superior Steel Co.*, 259 Pa. 578, 103 Atl. 351 (1918); HARPER, TORTS (1933) §215.

⁶ *Sloss-Sheffield Steel and Iron Co. v. Nations*, 236 Ala. 571, 183 So. 871, 110 A.L.R. 1403 (1938); *Kuhner Packing Co. v. Hitchins*, 97 Ind. App. 228, 186 N.E. 262, (1933).

⁷ *Kuhner Packing Co. v. Hitchins*, 97 Ind. App. 228, 186 N.E. 262 (1933); *King v. Empire Collieries Co.*, 148 Va. 585, 139 S.E. 473, 58 A.L.R. 197 (1927). *Cf. Fortin v. Beaver Coal Co.*, 217 Mich. 508, 187 N.W. 352, 23 A.L.R. 1153 (1922).

⁸ *Cooper v. Hamner*, 98 Ind. App. 272, 187 N.E. 407 (1933); *Kimball's Case*, 132 Me. 193, 168 Atl. 871 (1933); *Texas Employers' Ins. Ass'n v. Peppers*, 133 S.W. (2d) 165 (Texas, 1939). *Cf. Sand v. Metropolitan Life Ins. Co.*, 138 Pa. Super. 218, 10 A. (2d) 820 (1940). *But see Bugh v. Employers' Reinsurance Corp.*, 63 F. (2d) 36 (C.C.A. 5th, 1933).

⁹ BOYD, WORKMEN'S COMPENSATION (1913) §4; HARPER, TORTS (1933) §207.

¹⁰ Legis. (1937) 12 Temple L.R. 115.

¹¹ Pa. Laws 1937, No. 323, §301 (b).

¹² *Rich Hill Coal Co. v. Bashore*, 334 Pa. 449, 7 A. (2d) 302 (1936). The Pennsylvania legislature derives its power to enact a workmen's compensation act from Article III, §21 of the constitution. This authorization lays down three fundamental requirements of the act: (1) The compensation required of employers must be "reasonable," (2) the injuries must arise "in the course of employment," (3) the act must provide for benefits to be paid by the employers to their employees. The court stated that since it had held that an employee who is injured while violating a law is not injured "in the course of employment," *Shoffler v. Lehigh Valley Coal Co.*, 290 Pa. 480, 139 Atl. 192, (1927), to allow compensation to an employee who was injured during such a violation is a contravention of the second requirement.

¹³ Pa. Laws 1939, No. 281, §301 (a) and (b).

by allowing recovery to an employee injured while violating a statutory duty if the act of the employee was done in connection with his employer's business.¹⁴ The English courts have used this last phrase as the basis of a distinction in the cases and have allowed recovery where the employees, when injured, were doing some act which they were hired to do,¹⁵ and have denied it where the act resulting in an injury was performed in executing a task for their own benefit or to which they were not assigned.¹⁶

The dissatisfaction of the legislatures with the decisions is evidenced by the attempts in Pennsylvania and England to allow compensation where a statutory violation is involved. Since workmen's compensation acts were conceived to assure quick, inexpensive, certain, and reasonably adequate economic relief to injured workmen,¹⁷ it seems that judicial attempts to define "course of employment" has led to denial of compensation in many cases involving statutory violations where the legislatures contemplated allowing recovery.

From a theoretical standpoint, the decisions denying recovery may be criticized on the ground that they allow the employer the old and supposedly outlawed defense of negligence of the employee.¹⁸ While it is not contended that an employee should be allowed to recover for an injury sustained as the result of an intentional and reckless disregard of a statutory rule set up for his protection, it does seem harsh to deny recovery where the employee unknowingly violates the provisions of some obscure statute. It appears that Indiana and states with similar provisions have reached the result which is consistent with the underlying theory of workmen's compensation acts by requiring that the employee wilfully fail or refuse to perform a statutory duty before such failure or refusal will bar his recovery of compensation.

J. L. F.

¹⁴ Workmen's Compensation Act, 1925, 15 and 16 Geo. 5, 84, §1(2). Before this statute a statutory violation barred recovery. *Moore and Co. v. Donnelly* (1921), 1 A.C. 329.

¹⁵ *Wilsons and Clyde Coal Co., Ltd. v. M'Ferrin* (1926) A.C. 377 (compensation allowed mine "fireman" injured by an explosion of an unfired shot when he went back to inspect it before the time provided by statute had elapsed.)

¹¹ *Garrallan Coal Co. v. Anderson* (1927) A.C. 59 (pit-bottomer crushed by descending cage when he crossed the pit while the cages were in motion, contrary to a statutory prohibition; it did not appear the plaintiff crossed for a purpose connected with the employer's business and so compensation was denied); *Kerr or M'Aulay v. James Dunlop and Co., Ltd.* (1926) A.C. 377 (mine worker assisting a "fireman" coupled the cable to the detonator, this being the "fireman's" task and in violation of a statute; the mine worker was injured in the subsequent explosion caused by accidental touching of the firing handle; compensation denied. Note that this case was considered by the House of Lords along with the case in footnote 15, but that the opposite result was obtained here.)

¹⁷ See note 9, *supra*.

¹⁸ *Western Pacific R.R. v. Industrial Accident Comm.*, 193 Cal. 413, 224 Pac. 754 (1924).