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Workmen's Compensation-Remand for Rehearing

WORKMEN'S COMPENSATION—REMAND FOR REHEARING.—Plaintiff McCoy brought an appeal from the award of the Industrial Board denying her compensation for the death of her husband, alleged to have been caused by an accident arising out of and in the course of his employment by the defendant corporation. A physician testified for the plaintiff that it was his opinion that death resulted from heat exhaustion occasioned by the work done by plaintiff's deceased. Two physicians were called for the defendant; one, testifying in answer to a hypothetical question which included facts not proved by the evidence, gave it as his opinion that the most logical explanation was a

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20 Clark, "The Effect of Unauthorized Practice of Law Upon the Ethics of the Legal Profession." 5 Law & Contemporary Problems 97.

21 Land Title Abstract and Trust Co. v. Duorken (1934), 290 Ohio St. 23, 193 N. E. 650.

22 1933 Burns Ind. Stat. Ann. 4-3611.

23 Berk v. State ex rel. Thompson (1932), 225 Ala. 324, 142 So. 832; People ex rel. Los Angeles Bar Assn. v. Cal. Protective Corp. (1926), 76 Cal. App. 354, 244 Pac. 1089.

24 Goodman v. Beall (1936), 130 Ohio St. 427, 200 N. E. 470.

25 Richmond Assn. of Credit Men, Inc. v. Bar Assn. of City of Richmond et al. (1937), 167 Va. 327, 189 S. E. 153.

26 In re Morse (1924), 89 Vt. 85, 126 A. 552.

27 5 Am. Jur. 353; Creditors Nat. Clearing House v. Bannwort (1917), 227 Mass. 579, 116 N. E. 886.

28 Bennie et al. v. Triangle Ranch Co. (1923), 73 Colo. 584, 216 P. 718.

29 Crawford Co. Treas. et al. v. McConnell et al. (1935), 173 Okla. 520, 49 P. (2d) 718.

30 5 Am. Jur. 353; Creditors Nat. Clearing House v. Bannwort (1917), 227 Mass. 579, 116 N. E. 886.

31 Stinchfield, F. H., Our Position for the New Year, 23 Am. Bar. Assn. Journal 110 (1937); Hill, W. H., Address to the Indiana Bar Assn. on the Integrated Bar, 14 Ind. Law Journal 81 (1938).

cardiac death but that there could be other causes. The other physician called was the coroner who did not give his opinion as an expert based on a hypothetical question but based on information gathered as to cause of death in his capacity as coroner. The plaintiff assigned as error for reversal that the award was contrary to law. The court remanded the case for a rehearing before the board. *McCoy v. General Glass Corporation* (Ind. App. 1938), 17 N. E. (2d) 473.

The general principles governing appeals from awards by the Industrial Board are well settled; that the Industrial Board is recognized as an administrative body[1] rather than a court, its function being to hear evidence on compensation claims and to make an award thereon; that although the strict rules of law as to admissibility of evidence are not binding on the board[2] the award must be based on something more than mere guess, surmise, possibility or conjecture;[3] that any competent evidence or legitimate inferences drawn from the evidence, which sustain the finding of the board, will be sufficient to affirm the award;[4] but that where no competent evidence is found to support the award, it should be reversed,[5] and where it appears that the evidence conclusively shows that the award was wrong, the opposite award should be entered.[6] Thus, the usual practice has been to put an end to litigation by either affirming or reversing the award and directing the entrance of an award for the other party.

However, remanding to the board for further proceedings where proof of a mere technical issue was lacking has been rightly ordered where the evidence indicates clearly that the injury arose out of and in the course of the employment, but the board failed to make a finding in this respect.[7] Again, where there was no question that deceased was injured by an accident arising out of and in the course of his employment, but where a finding of the board as to weekly pay was supported only by evidence of daily wage, the Court remanded for the purpose of obtaining evidence as to the weekly compensation.[8]

In the twenty-three years of the Workmen's Compensation Act in Indiana, there has been only one case prior to the instant case in which a rehearing was ordered, except those cases involving mere technical proof as previously shown. In the case of *Inland Steel Co. v. Lambert*,[9] the Court, upon appeal from an award of compensation for the employee, said, "It is our judgment, from a consideration of the evidence, that the accident arose in the course of the employment, but that it did not arise out of the employment.

"Our Workmen's Compensation Act does not specifically direct what shall be the mandate of this court in the case of reversal. It is our judgment, however, that the mandate should be regulated by the facts of the particular case.

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[1] Milholland Sales & Engineering Co. v. Griffiths (1931), 94 Ind. App. 62, 178 N. E. 458.

[2] Milholland Sales & Engineering Co. v. Griffths (1931), 94 Ind. App. 62 178 N. E. 458.

[3] Swing v. Kokomo Steel Co. (1919), 75 Ind. App. 124, 125 N. E. 471.

[4] Nowacki v. Molenda (1935), 101 Ind. App. 165, 198 N. E. 465.

[5] Indiana Bell Telephone Co. v. Haufe (1924), 81 Ind. App. 660, 144 N. E. 844.

[6] Staley v. Indianapolis Coal Co. (1935). 101 Ind. App. 335, 197 N. E. 713.

[7] Muncie Foundry & Machine Co. v. Thompson (1919), 70 Ind. App. 157, 123 N. E. 196.

[8] McCoskey v. Armstrong (1933), 98 Ind. App. 23, 187 N. E. 901.

In the case at bar it appears to us that the ends of justice will more nearly be met by directing a rehearing before the board, if the appellee desires such rehearing."

The question thereupon arises, in what manner may the ends of justice more nearly be met by directing a rehearing? If it is the opinion of the court that the evidence shows conclusively that the injury did not arise out of the employment, this would serve to cut off recovery.[10] The objectives of the Workmen's Compensation Act, that there be swift and certain disposition of injury claims to afford claimant compensation during his disability, or realize at once there will be no recovery, should not be disregarded. When it is evident to the court that there is or is not sufficient evidence to support the award, remanding for a new hearing should not be used to prolong the proceedings.

A hurried reading of the decision in the instant case might lead one to believe that the case was remanded because the incompetent evidence of the coroner was admitted which was prejudicial to the substantial rights of the plaintiff. However, it seems clear, upon closer study of the case that this is not the import of the decision.[11] The real holding of the court is to the effect that because there is no competent evidence to support the award, the case should be remanded for rehearing by the board, since the evidence of both physicians for the appellee is in fact incompetent.

If then, after a careful examination of the evidence remaining in the record, incompetent evidence having been eliminated, the record should fail "to disclose any evidence of probative force or sufficient in character to sustain the award of the full board," the award should be reversed.[12]

In conclusion, the new trend, evidenced by the Appellate Court in remanding for a rehearing, except in those cases where the result is clearly indicated by the evidence and only some technical difficulty is presented which requires some further proceedings by the board, is highly objectionable as being not only contra to the well established procedure in disposition of workmen's compensation cases both in Indiana and in other jurisdictions but as subversive of the principal policy and objective of our Workmen's Compensation Act.

H. M. K.

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9 (1917), 66 Ind. App. 246, 118 N. E. 162.

10 Muncie Foundry & Machine Co. v. Thompson (1919), 70 Ind. App. 157, 123 N. E. 196. "In cases of this kind there are five facts which must be found as the legal basis for an award of compensation, viz. . . . (3) that the accident arose out of and in the course of the employment. . ."

11 This seems clear for three reasons: (1) that question was not presented to the court by the assignment of errors which was that the award was contrary to law; (2) the court states in the first of the opinion that an award is not to be reversed because incompetent evidence was admitted so long as there is competent evidence to support the award; and (3) the court would not overrule the proposition of law stated just above which has been established in this state since 1917. United Paperboard Co. v. Lewis (1917), 65 Ind. App. 356, 117 N. E. 276.

12 Frazer v. McMillen & Carson (1931), 94 Ind. App. 431, 179 N. E. 564.