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Workmen's Compensation-Injury Arising Out of and in the Course of the Employment-Shooting of Non-Union Miner by Picket During Strike

Workmen's Compensation—Injury Arising Out of and in the Course of the Employment—Shooting of Non-Union Miner by Picket During Strike.—Union miners employed by appellee went out on strike on April 1, 1932, and appellee employed appellant and other nonunion miners to work in the mine. On the day of the injury, long before the usual quitting time, appellant and the other workers were ordered to stop working by the foreman. They were ordered to the top where they found the mine surrounded by pickets. Here the mine guards and bosses passed out rifles, ammunition, and dynamite and told them to protect the mine property in the event the pickets entered upon the mine property. They were also ordered to stay at the mine, under cover, until the sheriff arrived to escort them to their homes. While so waiting in the tipple and after several hours, appellant was shot in the arm by one of the pickets. Held, appellant's injury, as a matter of law, arose "in the course of and out of his employment."[1]

The question of Workmen's Compensation as respects injuries suffered by employees due to labor disorders and industrial strife is a unique one in spite of its seemingly possible prevalence. Dudine, J. far from overstated the status of the law on this problem when he said, "It is a new question for this court." In fact it would have been a new one for most courts, and the law reviews and journals seem consequently to be quite devoid of notes or articles precisely in point. Of course, technically, a solution may be found in some interpretation of the clause "accident arising but of and in the course of the employment,"[2] a clause, which of necessity is one that may include everything, anything, or almost nothing. But it is not the purpose of this note to deal with the many views already expounded on such interpretation.[3] Suffice to state, that if it is true, as has often been said, that the beauty of the law lies in its uncertainty, there is little danger of Workmen's Compensation litigation marring that attribute when we find what is termed a rough expression of the general principles[4] to be, "the statute imposing liability embraces all injuries that arise out of and occur while the workman injured is doing what a man under like facts and circumstances, engaged in like employment may reasonably do, in the conduct or projection of such work for the employer or in the promotion or safeguarding of such business, or for the protection of the men and properties while used or engaged for the purposes of the master's business."[5]

In other words, the facts and circumstances of each case should govern that case, and the facts and circumstances of the principal case being an altogether new situation to an Indiana court, the decision was unhampered

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25 Tumey v. Ohio (1926), 273 U. S. 510.

1 Bedwell v. Dixie Bee Coal Corp. (1934), 192 N. E. 723 (Ind.).

2 Indiana Workmen's Compensation Act, Acts 1917, p. 673.

3 R. A. Brown, "Arising out of and In The Course of the Employment" (1931-32), 7 Wis. L. R. 15 and 67; (1932-33), 8 Wis. L. R. 134 and 217; Heilbron, Accident "in Course of Employment," (1930), 18 Cal. L. R. 551.

4 Harper, Law of Torts (1933), sec. 212.

5 Ex parte Majestic Coal Co. (1927), 208 Ala. 86, 93 So. 728.

by precedent, giving the refreshing sight of an opinion which neither quoted nor cited a previous decision as a basis for reason or result. If we evade then, the technical interpretation of the workable, and worked, phrase set out above, there remains yet a comparison of the principal case with those of similar claimants for compensation which arose out of injuries caused by unruly strikers, and a raising of some of the social and economic queries which such a decision may affect.

In Rourke's Case[6] and Lampert v. Siemons,[7] strikebreakers were assaulted by strikers while going or coming from work and at some distance from the place of employment. The courts in both cases were justifiably reluctant to extend the employer's compensatory protection beyond the limits of the plant, and although the injuries were held to have arisen out of the employment, they did not occur in the course of it. The employers liability was thus cut off, and compensation was not awarded. These cases, however, are easily distinguishable from the principal case, since in them, the time and the place of the injury definely precluded its having occurred "within the course of the employment."[8] There are two additional major cases where the courts were not so stringently confined to hold the injury to have arisen outside the course of employment, for in these cases the injuries were sustained on the premises, and here the results were more in accord with the principal decision. In Mulky v. Kiskiminetas Valley Coal Co.[9] strikebreakers were brought in and quartered on the mine property to avoid contact with the strikers. After their regular working shift, and while sleeping in the bunkhouse, a bomb was thrown thru the window, killing claimant's husband. The Pennsylvania court held it to be sufficiently during the hours of employment and thus within the course of the employment. The fact that the Pennsylvania act does not require that the injury shall have "arisen out of the employment"[10] would of course have no bearing on the case as it was not one of those very unusual situations where one element may be present but not the other. Again, in Baum v. Industrial Commission[11] strikers invaded the workroom and in the scuffle that occurred in attempting to keep them out, the single male employee, battling fiercely side by side with his employer, was stabbed. The award was given, altho the annotations to the case indicate the basis thereof might have been the employee's right to compensation for injuries received while acting in an emergency coupled with considerable heroism.[12]

Thus, altho the facts in the Bedwell case may still be open to some question as to its technical compliance with the requirement of an "accident arising out of and in the course of the employment," it is submitted that they are actually stronger than similar cases so holding. The realistic question still is, whether such decision is consistent with the intent and purposes of Workmen's Compensation legislation. It is said "The industry to which the employees contribute their labor should bear the expense of all such economic burdens which become a legitimate part of the commercial life as 'the overhead' cost."[13] "The risk of economic loss thru personal injury in the course of production should be borne by the industry itself."[14] It is submitted that

6 (1921), 237 Mass. 360, 129 N. E. 603, 13 A. L. R. 549.
7 (1923), 235 N. Y. 311, 139 N. E. 278, 31 A. L. R. 1085.
8 Granite Sand etc. Co. v. Willoughby (1919), 70 Ind. App. 112, 123 N. E. 194; In re Ayres (1917), 66 Ind. App. 458, 118 N. E. 386.
9 (1924), 278 Pa. 551, 123 Atl. 505, 31 A. L. R. 1082.
10 Callihan v. Montgomery (1922), 272 Pa. 56, 115 Atl. 889.
11 (1919), 288 Ill. 516, 123 N. E. 625, 6 A. L. R. 1242.
12 6 A. L. R. 1242.
13 Schneider, Law of Workmen's Compensation (1932), Vol. 1, p. 5.
14 Downey, Workmen's Compensation (1924), p. 21.

there seems to be no rational grounds for excluding such injuries because they originate in labor dissatisfaction, altho there may be other reasons, political and economic ones. As Judge Thompson noted in the Baum case, "Unfortunately, during the course of a strike, and in the excitement of events which occur during a strike, trouble quite frequently arises."[15] It is evident then, that quite often such "trouble" will produce an "accident arising out of and in the course of the employment" as was present in the principal case, and will thus be compensable to the injured strikebreaker.

The principal case thus leaves some interesting conjectural connotations. Is it economically or socially desirable that scabs and strikebreakers obtain such protection against possible violence? Is it commercially desirable that the entrepreneur who chooses to quarrel with organized labor shoulder this additional burden of possible injuries arising from such differences? Is it conducive to peaceful settlement of labor disputes, and generally beneficial to the social order to place organized labor in such position that in their bargaining, they may be able to remind a hesitant industrialist, that if they call a strike, overzealous strikers may thus cause additional expense to him? Is it not quite just that the employer so protect faithful employees? Thus far, the Indiana Appellate court has answered these questions in the affirmative.

H. A. A.

[15] Baum v. Industrial Commission (1919), 288 Ill. 516, 123 N. E. 625.