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Workmen's Compensation-Refusal by an Employee to Accept Proffered Medical Services

Workmen's Compensation—Refusal by an Employee to Accept Proffered Medical Services. Witte, employee of J. Winkler and Sons, prosecutes this appeal from a decision of the Industrial Board which adhered to demands of

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23 Bloomer v. Snelling (1908), 221 Pa. 25, 69 A. 1124.
24 33 A. L. R. 181; 33 A. L. R. 218.
25 (1928), 248 Ill. App. 270.
26 (1927), 215 Ala. 494, 111 So. 237.
27 (1921), 51 Cal. App. 668, 197 P. 427.
28 (1921), 148 La. 450, 87 So. 233.
29 (1924), 260 S. W. 982 (Mo.).
30 (1921), 192 Iowa 1250, 184 N. W. 722, 20 A. L. R. 1138.

Winkler and Sons based on alleged change in conditions. Although afflicted with a double inguinal hernia, appellant refused to submit to an operation tendered at the financial responsibility of employer. Refusal was prompted by an untoward physical condition and his advanced age of 64 years. An expert witness, A, appeared at the request of the insurance carrier of appellee and was identified at the hearing as a nephew of one of the insurance agents and thus was not entirely divorced from interest in this claim. The examination brought an assertion that Witte should undergo the operation. Witness B, qualified by appellant, found Witte a "poor risk" for an herniotomy. A family doctor of Witte testified in accord with witness B. From this evidence the Industrial Board found that the refusal to submit to an operation was unjustified. Held, The refusal, under the statute, must be unreasonable to bar further compensation during the interim in which refusal persists. Burden of proof of a change in condition was upon appellee, an obligation they failed to sustain.[1]

Section 25 of the 1926 statute provided, "The refusal of the employee to accept such (medical) services and supplies, when so provided by the employer, shall bar the employee from all compensation during the period of such refusal, unless, in the opinion of the industrial board, the circumstances justify such refusal."[2] With the revision of this proviso in 1929, the legislature, after reciting that a refusal will be a bar to further compensation, tacitly expelled the limitation clause formerly cited when justifying a rejection.[3] There is no expression in the opinion of the court that reveals a judicial consciousness of this statutory change. The laconic gesture, "We hold that such refusal of the employee must be unreasonable and without just cause," forces the interpretation of the 1929 provision into conformity with the Indiana decisions prior to the revision.[4] Furthermore, this construction adheres to the continuity of similar tests in other jurisdictions.[5] To have held that the removal of this suffix alone manifests a legislative intention to unconditionally suspend the right to compensation upon rejection of medical treatment would render the operative effect of the statute a grotesque mockery of its declared purpose. A literal reading of the revision, judicially applied, would leave labor the victim of whatever balance the employer might strike between cupidity and conscience. Unreasonable and vicious demands that an injured employee submit himself to whatever perversions of medical culture genius can devise would be levied with impunity by employers. At once, by the statute, the employee would find himself deprived of his common-law remedies and further discover his employer fortified with an impregnable immunity as the consequence of a just refusal to accept an offer that might well imperil his life. Neither a volatile imagination nor an opinionated sympathy need be invoked to concur in the construction which the court has given this section of the compensation law. Reason will not permit the literal phrasing of a sentence to be abstracted from its context that the whole statute be turned to literary nothingness.

1 Witte v. J. Winkler & Sons, Inc. (1934), 190 N. E. 72 (Ind. App.).

2 Burns' Ann. Statutes (1926), sec. 9470-25.

3 Burns' Ann. Statutes (1929 Supp.), sec. 9470-25.

4 Enterprise Fence & Foundry Co. v. Majors (1918), 68 Ind. App. 575, 121 N. E. 6; Bradbury v. Hymera Coal & Mining Co. (1931), 92 Ind. App. 626, 176 N. E. 875.

5 Mt. Olive Coal Co. v. Industrial Commission (1920), 295 Ill. 429, 129 N. E. 103; O. W. Rosenthal & Co. v. Industrial Commission (1920), 295 Ill. 182, 129 N. E. 176; Jendrus v. Detroit Steel Products Co. (1913), 178 Mich. 265, 144 N. W. 563; Frost v. United States Fidelity & Guaranty Co. (1922), 109 Neb. 161, 190 N. W. 208; United States Fidelity & Guaranty Co. v. Wickline (1919), 103 Neb. 681, 173 N. W. 689; Myers v. Wadsworth Mfg. Co. (1921), 214 Mich. 636, 183 N. W. 913; O'Brien v. Albert A. Albrecht Co. (1919), 206 Mich. 101, 172 N. W. 601; McNelly v. Hudson & M. R. Co. (1915), 87 N. J. Law 455, 95 Atl. Rep. 122.

The essence is ascertainable only by a viewing of all the aspects in their proper proportion. Statutory construction is amenable to this process of human observation. Moreover, the omnipresent sanction to a liberal construction of the statute in behalf of the employee would seem to commend the position taken by the court.[6]

The opinion imposes a duty upon the employee to accept those tendered medical services as are reasonable. This duty is of initial import since Section 8 of the statute delegates the burden of proof unto the defendant where compensation is barred because of a wilful failure or refusal to perform any statutory duty.[7] Unless the court considered the employer as the defendant in this action on the assumption that the hearing because of a change in conditions was a continuation of the proceedings for the original compensation award, the burden of proof fell wrongly upon the appellee. In thus allocating this obligation, the blanket statement that, "One prosecuting an appeal because of change of condition since the last preceding award, sustains the burden of proof," was alone relied upon as authority. Taken from the Indiana case, Berkey v. Chase Bag. Co.,[8] where the appeal did not arise from an alleged breach of statutory duty, the approved statement, nevertheless, appears sufficiently broad to commit the court to its application in every case, regardless of Section 8.

If the employee is in fact under such a duty, there is a correlative right in the employer. "A right is the legal capacity, or ability, to enforce action or forbearance by another, because it is his duty."[9] This ability to enforce a stipulated mode of conduct upon another necessarily implies a method of coercion through the legal process. It may be contended that the suspension of compensation is such a remedial right as to mark an antecedent right in the employer. However, it appears more accurate to describe an unreasonable refusal on the part of an injured employee as suspending or annihilating a duty owed by the employer to furnish compensation. Thus, an unreasonable rejection is not a breach of duty but rather a condition subsequent obliterating the duty to a continuation of compensation.[10] If this be a proper rationale, Section 8 of the statute is inapplicable and the cases would thereby harmonize with the usual rule of holding the burden of proof upon the party who carries the affirmative of the issue, in this instance, the employer.

Having quoted a postulate that the award of the Industrial Board is impregnable to attack where any competent evidence has been introduced by the successful contender upon the disputed fact,[11] the court finds that "no evidence sustains the finding of the board." There is the accompanying limitation that the evidence will not be weighed "unless the evidence is of such a conclusive character as to force a contrary conclusion."[12] However,

[6] United Paper Co. v. Lewis (1917), 65 Ind. App. 356, 117 N. E. 276; Stacey Brothers Gas Construction Co. v. Massey (1931), 92 Ind. App. 348, 175 N. E. 368; In re Ayers (1919), 66 Ind. App. 458, 118 N. E. 386.

[7] Burns' Ann. Statutes (1929 Supp.), sec. 9453-8.

[8] Berkey v. Chase Bag Co. (1933), 187 N. E. 679 (Ind. App.).

[9] Willis, Anglo-American Law (1931), p. 22.

[10] Jendrus v. Detroit Steel Products Co. (1913), 178 Mich. 265, 144 N. W. 563. "The statutory obligation to give maintenance during the period of incapacity resulting from an accident is subject to the implied condition that the workman shall avail himself of such reasonable remedial measures as are within his power."

[11] Berkey v. Chase Bag Co. (1933), 187 N. E. 679 (Ind. App.); Vonnegut Hardware Co. v. Rose (1918), 68 Ind. App. 385, 120 N. E. 608; Star Publishing Co. v. Johnson (1925), 83 Ind. App. 348, 175 N. E. 368; J. H. Hardin Co. v. Crowe (1924), 81 Ind. App. 513, 143 N. E. 710.

[12] Swing v. Kokomo Steel and Wire Co. (1919), 75 Ind. App. 124, 125 N. E. 471; Roush v. W. R. Duncan & Son (1932), 96 Ind. App. 122, 183 N. E. 410; Goshen Veneer Co. v. Cozzi (1931), 93 Ind. App. 160, 176 N. E. 634; Indianapolis Heat & Light Co. v. Fitzwater (1918), 70 Ind. App. 422, 121 N. E. 126.

the testimony of witness A, hereinbefore stated, offered some ground upon which to sustain the holding of the board, had the rule first set forth been strictly applied. Regardless of the overstatement that no evidence was adduced to support the holding of the Industrial Board, it would appear that a proper conclusion was reached upon the balance of the evidence.

Despite the ostensible benevolence of Section 25, a decision contrary to that offered by the court would leave labor standing upon a bankrupt statute.

J. F. T.