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Workmen's Compensation-Injury Arising Out Of and In the Course of Employment-Accident

WORKMEN'S COMPENSATION—INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—ACCIDENT—One, Brewer worked for twelve to fourteen years on the same job in a brick factory. There was always a considerable amount of gas and smoke in the air as was necessitated by the brick kilns. Brewer on Monday, April 14, 1930, became sick from the gas and smoke, which were always clearly visible and known to Brewer. But he continued to work until the following Friday when he became so overcome that he had to quit work. Brewer claimed compensation under the Workmen's Compensation Act, but it was denied him by the Industrial Board on the ground that his injury did not arise by "accident." *Held*, affirmed. *Brewer v. Veedersburg Paving Co.*, Appellate Court of Indiana, June 25, 1931, 177 N. E. 74.

Raymond Bertels works for seven years handling heated metal sheets in a steel mill. The place of working was necessarily extremely warm and

on June 13, 1928, the atmosphere became unusually warm, Bertels became suddenly exhausted and was seized with cramping of his limbs, which affected his whole body and he was compelled to cease work. Medical aid was given him but within a few hours he died. Plaintiffs, his dependent mother and sister, claimed compensation under the Workmen's Compensation Act and the Industrial Board granted it to them on grounds that death was caused by "accident" arising out of and in the course of employment. *Held,* affirmed. *Chapman Price Steel Co. v. Bertels,* Appellate Court of Indiana, July 1, 1931, 177 N. E. 76.

In both cases the injured employee sought to recover compensation for an injury, the decease, caused by "accident" arising out of and in the course of the employment. "Accident" was defined as "any mishap or untoward event not expected or designed." By this definition it is not the injury, the disease, that must be surprising, but the event which brought on the disease. The injury is not something that proceeded directly from the employment but is a consequence of the "accident." Becoming overheated while handling heated sheets of metal in a steel mill is an "accident" according to one of these cases. Becoming suffocated and sick from the inhalation of vapor and gas while working near a brick kiln is not an "accident" by the other case. The distinction between these two cases, as to why one would be classed as an "accident" under the above definition and the other not, is difficult to understand. The heated atmosphere of the steel mill was as inevitable as the smoke and the gas-laden air of the brick factory. The fact that the symptoms of the consequential disease from the one is cramping of the limbs and the other suffocation is of no importance. It is not shown that one had more knowledge of his work or had more reason to believe that he was more reasonably safe from the injury than the other. The conditions of both men were practically the same in their respective employments.

A repeated holding by the Indiana Courts has been that a liberal construction in favor of the employee should be given to the Workmen's Compensation Act, in order that its humane purpose may be realized. *Wasmuth Endicott Co. v. Karst,* 77 Ind. App. 279. It should be liberally construed to the end that the purpose of the legislature, by suppressing the mischiefs and advancing the remedy, be promoted, even to the inclusion of cases within the reason, although outside the letter of the statute. *In re Duncan,* 73 Ind. App. 270; *In re Bowers,* 65 Ind. App. 128; *Dewery v. State of Indiana,* 84 Ind. App. 37. The purpose as expressed in these cases has been followed by the Indiana Courts in several cases with facts very similar to the two cases in question. It is believed that a liberal construction of the term "accident" would avoid the anomalous results and fine distinctions of the instant cases, and that such liberal construction is warranted from the authorities available. A case in which the facts were really stronger than the facts in the Brewer case and compensation was awarded was one in which the deceased was employed to paint the inside of tank cars. Everyone that was connected with the work, including the deceased, knew that the work was dangerous because of the poisonous fumes of the paint being so closely confined in the tank car. Deceased went in the tank to paint without a respirator, which was against the factory rules. He was dead in eight to ten minutes. *General American Tank Car Corp. v. Berchardt,* 69 Ind. App.

580. Here the danger of suffocation was many times more perceptible than in a brick factory and deceased was acting against orders by working without a respirator, yet compensation was awarded. Another case where one was suffocated and was killed thereby was one in which the deceased breathed the fumes and gases arising from molten brass. His dependents were awarded compensation. These facts are similar to the case in question. *General, etc., Tank Car Corp. v. Weirick*, 77 Ind. App. 242. A third case was one in which a coal miner, who was afflicted with chronic heart disease, breathed smoke-laden air in a mine and died as a result soon after. *Utilities Coal Co. v. Herr*, 76 Ind. App. 312. These cases clearly show the trend in the past of the Indiana Courts in construing the Workmen's Compensation Act. It has been gratifyingly liberal.

The case in which compensation was denied (*Moore v. Service Motor Truck Co.*, 80 Ind. App. 668) and the one on which the Brewer case was decided, was one in which the employee became sick from breathing and swallowing emery dust created by his work, knowing it had affected others the same way. The court denied compensation on the grounds that the employee was aware of the evil effects of emery dust upon his health and had reason to anticipate that more serious consequences would follow. This tends to classify this injury as an occupational disease and therefore not compensable in Indiana. Such a conclusion is open to doubt. A carpenter working on his knees for several days developed bursities or "housemaid's knee," and such injury was held to be from "accident" and entitled to compensation. The court said, "But, we need not consider whether such disease is or is not an occupational disease, for if it is conceded that it is in the nature of such, compensation may nevertheless be allowed, if it is contracted under such conditions as to constitute an accidental injury." *Standard Cabinet Co. v. Landgrave*, 76 Ind. App. 593. It would seem that there are enough cases decided by the Indiana Courts under the statute to throw serious doubt upon the soundness of the dogma that an "accident" within the meaning of the statute, must be some unforeseen, unusual, or surprising event arising out of the employment. It would be highly desirable if there were some more accurate and more workable test than one which will leave out of account so large a number of cases, and will permit such dubious results as the two instant decisions. J. D. W.