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Workmen's Compensation

Michael J. McNicholas

WORKMEN'S COMPENSATION

CAUSAL CONNECTION

Arkansas. The case of *Scobey v. Southern Lumber Co.*[1] held that constant irritation of a lung cancer by inhalations of emery and wood dusts was an accidental aggravation and that the employer was liable to the deceased employee's estate under the workmen's compensation act. The court in effect said that working atmosphere, dust and poor ventilation combined to make an accidental injury. Epithelimatous cancer, the cause of the employee's death, is listed in the compensation statute as an occupational disease.[2] The court, however, looked not only to the listing of occupational diseases but also to the listed causes of the occupational diseases. Since emery dust was not listed as a cause of lung cancer, the court said this lung cancer was not an occupational disease within the meaning of the statute. The medical testimony was conflicting as to whether or not breathing emery dust was the cause of the disease, but medical testimony was in agreement as to the possibility that emery dust might aggravate the condition. The court held the aggravation accidental on the ground that in doubtful cases the question of sufficiency of evidence should be resolved in favor of the claimant. The court pointed out that the aggravation need not be the sole proximate cause of death but need only be substantially contributory to the death of the employee.

OCCUPATIONAL DISEASE

Arkansas. Two cases with almost identical facts concerning the disease of silicosis resulted in different holdings. The case of *Peerless Coal Co. v. Jones*[3] allowed recovery, while *Collier Dunlap Coal Co. v. Dickerson*[4] did not. About the only distinguishing fact was that in the former case the employee worked eight years for his last employer and in the latter case the employee worked two years for

[1] ___ Ark. ___, 238 S. W. 2d 640 (1951).
[2] ARK. STAT. 1947 ANN. § 81-1314.
[3] ___ Ark. ___, 240 S. W. 2d 647 (1951).
[4] ___ Ark. ___, 239 S. W. 2d 9 (1951).

his last employer. The evidence offered by both claimants amounted to statements that each had been a miner for thirty years and that their respective mines were dusty. In the case allowing recovery, medical testimony indicated the silicosis of the claimant had been acquired in a silica-hazardous industry, and the majority of the court said that this was evidence that claimant had acquired the disease in the mine of his last employer. In the case denying recovery the court said there was no evidence of silica in the last employer's mine nor evidence of claimant being exposed to the hazard of silicosis. It would seem that the medical testimony which was accepted as evidence in the first case of exposure to silica hazard spelled the difference between the two cases. The doctor's testimony established that Jones was in a silica-hazardous industry, that he had been employed as a miner for his last employer for eight years and that the time period satisfied the Arkansas statute connecting occupation with the disease of silicosis.[5] It would seem that injustice was done in the *Dickerson* case, since there was only a medical opinion spelling the difference between recovery and no recovery. However, since both appeals were on the sufficiency of evidence to support an award by the Workmen's Compensation Commission, both cases are correct according to the rules of review in Arkansas. The supreme court, being limited to the record, could only grant compensation where there was evidence to support such a grant, and in the *Dickerson* case there was no evidence that the last employer's mine was silica-hazardous. The court had no alternative but to deny recovery.

DEPENDENCY

Louisiana. The case of *Patin v. T. L. James & Co.*[6] presented an interesting question as to death benefits when deceased left a partially dependent mother and a totally dependent non-relative. The non-relative was the deceased's concubine's minor nephew.

[5] ARK. STAT. 1947 ANN. § 81-1314 (b) (2).

[6] ___ La. ___, 51 So. 2d 586 (1951).

Evidence established that the minor non-relative was totally dependent and living with the deceased at the time of the latter's death. Defendants contended that since an award was made to the mother, an award to the minor was precluded. Defendant relied on statutory provisions which seemed to state that a dependent other than those named could recover only in absence of widow, widower, child or dependent parent.[7] The court allowed the minor to recover as a total dependent, saying that the list in the statute applied where persons are wholly dependent. Since the mother was only a partial dependent, her recovery did not preclude the minor's recovery. The court arrived at this conclusion by construing the section relied on by the defendants in the light of other statutory provisions on dependency.[8] These other provisions omitted the parents from a listing of presumed total dependents and stated that where there are no total dependents, benefits should be shared among partial dependents according to the extent of their actual dependency.

EXTRATERRITORIAL COVERAGE

Louisiana. The Louisiana Supreme Court in *Ohlhausen v. Sternberg Dredging Co.*[9] held that if an employee and employer enter into a contract of employment within the state, the Louisiana compensation statute will be given extraterritorial effect to cover injuries received in another state or in a foreign country. In this case the employee, a Louisiana resident, telephoned his former employer for a job and was directed by the employer to board a train within the state and proceed to a new job in Florida. Later, the employee was injured in Arkansas. The court found that since the employment contract was made in Louisiana, extraterritorial coverage should be given to the Louisiana statute. It is interesting to note here that Louisiana, not having an express extraterritorial provision, predicates the extraterritorial coverage on the fact that the contract of employment was made within the boundaries of the state.

[7] 23 LA. REV. STAT. (West, 1951) § 1232.
[8] 23 LA. REV. STAT. (West, 1951) §§ 1231, 1251-1253.
[9] 218 La. 677, 50 So. 2d 803 (1951).

Texas. On the other hand, Texas does have an express extraterritorial provision within its compensation statute.[10] The provision says, in effect, that an employee "hired in this State" has the right to compensation for injuries received outside the state within one year after leaving the state, provided he has not elected to recover under the compensation statute of the state where the injuries occurred. The expression, "status of a Texas employee," has been used by the Texas courts to determine whether extraterritorial coverage will be given. This expression includes not only the element of a Texas contract of employment but also the element or requirement that the employee must have in fact done some work in Texas. It seems that Louisiana emphasizes the place where the contract was made while Texas gives weight to both place of contract and place of performance of work. For example, the case of *Hale v. Texas Employers Ins. Assn.*[11] held that a nine- or ten-week layoff between the time that an employee worked for an employer in Texas and the time that he worked for the employer in another state did not deprive him of the "status of a Texas employee" necessary for coverage by the Texas compensation statute for injuries received outside the territorial limits of Texas. The court said that the layoff did not sever the employee-employer relationship and emphasized that the period of layoff was not unreasonable, considering the readiness of the employee to respond to the employer's call and his intention to resume work for the employer. It is apparent that the court considered that the employee should establish that he had done some work in Texas on the Texas contract of employment in order that he would qualify as having the "status of a Texas employee."

COMPROMISE SETTLEMENT AGREEMENT

Texas. In *Pacific Employers Ins. Co. v. Brannon*[12] the Texas Supreme Court handed down a decision holding that once the Industrial Accident Board has approved a compromise settlement, the

[10] TEX. REV. CIV. STAT. (Vernon, 1948) art. 8306, § 19.
[11] ..... Tex. ....., 239 S. W. 2d 608 (1951).
[12] ..... Tex. ....., 242 S. W. 2d 185 (1951).

settlement is final and can only be set aside judicially on the ground of fraud or some other equity. The case is of interest because it is a supreme court ruling approving the Board's practice of treating the settlement as final and not subject to execution of a receipt by the claimant. Prior to 1944 no order or approval was made by the Board until payment was made and a receipt executed by the claimant. Since 1944 the practice has been consistent with the holding in this case, *i.e.*, to treat the Board's approval of a compromise as final. It may be said that the old practice gave the claimant more time to consider the advantages and disadvantages of the settlement, but the new practice and the policy behind it have the advantage of doing away with much delay and confusion, and it does guarantee to the claimant that the insurer will within the time specified in the Board's notice of approval carry out the terms of the compromise settlement.

Michael J. McNicholas.