Marquette Law Review

Volume 18
Issue 1 *December 1933*

Article 9

Master and Servant: Paupers

Carl W. Hofmeister

ise to pay to their officers extra compensation in the way of a bonus, and when properly authorized, it is not in itself a fraud upon dissenting stockholders. *Church* v. *Harnit,* supra; *Putnam* v. *Juvenile Shoe Corp.,* 307 Mo. 74, 269 S.W. 593 (1925) where the court said: "The payment of a bonus may be legal or illegal, according to the purposes to which and the circumstances under which the same is authorized;" *Witt* v. *James McNeil & Bro. Co.,* 296 Pa. 386, 146 Atl. 27 (1929). Generally, however, these schemes purporting to stimulate executive initiative by cash bonuses or rights to purchase stock at preferential prices have received judicial sanction. *Bennett* v. *Milville Improvement Co.,* 67 N.J.L. 320, 51 Atl. 706 (1902); *Zwolanek* v. *Baker Mfg. Co.,* 150 Wis. 517, 137 N.W. 769 (1912); *Young* v. *United States Mtg. & Trust Co.,* 214 N.Y. 279, 108 N.E. 418 (1915); *Roberts* v. *Mills,* 184 N.C. 406, 114 S.E. 530 (1922); *Church* v. *Harnit,* supra. And although bonuses are usually contingent on the amount of profits, here the courts have upheld them as a cost of the enterprise rather than a distribution of profits to other than stockholders. See Comment (1933) 42 Yale Law Jour. 419, 422. Some courts have gone to the extent of attaching an economic value to the bonus scheme. *Booth* v. *Beattie,* 95 N.J.Eq. 776, 118 Atl. 257 (1924); *Harker* v. *Ralston Purina Co.,* 45 F. (2d) 929 (C.C.A. 7th, 1931). Their economic value may be reasonably doubted, however, in view of the fact that recent disclosures have indicated that these "bonus" plans may "mask raids on corporate treasuries." See N. Y. Times, Feb. 22, 1933, at p. 1, re: National City Bank of New York bonus plan; Time, Mar. 6, 1933, at p. 47; N. Y. Times, Aug. 1, 1930, at p. 20, and id., Nov. 1, 1930, at p. 28, re: Bethlehem Steel Corp. bonus system; Cox, COMPETITION IN THE AMERICAN TOBACCO INDUSTRY (1933) p. 308 et seq. A number of courts, however, have not hesitated to inquire into the reasonableness of compensation received by corporate executives, even after the approval of stockholders. *Ward* v. *Davidson,* 89 Mo. 445, 1 S.W. 846 (1886); *Lillard* v. *Oil Paint & Drug Co.,* 70 N.J.Eq. 197, 56 Atl. 254 (1903); *Booth* v. *Beattie,* supra; *Godley* v. *Crandall & Godley Co.,* 212 N.Y. 121, 105 N.E. 818 (1914); *Atwater* v. *Elkhorn Valley Coal-Land Co.,* 184 App. Div. 253, 171 N.Y. S. 552 (1918); *Sotter* v. *Coatesville Boiler Works,* 257 Pa. 411, 101 Atl. 744 (1917); *Nichols* v. *Olympia Veneer Co.,* 139 Wash. 305, 246 Pac. 941 (1926); *Collins* v. *Hite,* 109 W.Va. 79, 153 S.E. 240 (1930). Reasonableness, being the test then, intervention is frequently placed on the theory enunciated by Judge Swan, dissenting in *Rogers* v. *Hill,* 60 F. (2d) 109 (C.C.A. 2d, 1932), saying, that if the payment is unreasonable, it constitutes a gift which the majority stockholders have no right to make against the protest of the minority. See also *Godley* v. *Crandall & Godley Co.,* supra; *Collins* v. *Hite,* supra. Other cases have justified interference by a statement of the rule: "The fairness of such salaries is open to examination in equity for the benefit of the corporation." See Rugg, C. J., in *Stratis* v. *Anderson,* 254 Mass. 536, 150 N.E. 832 (1926). See also *Booth* v. *Beattie,* supra; *Lowman* v. *Harvey R. Pierce Co.,* 276 Pa. 382, 120 Atl. 404 (1923); *Sotter* v. *Coatesville Boiler Works,* supra.

CLEMENS H. ZEIDLER.

MASTER AND SERVANT—PAUPERS.—Proceedings for compensation under the Workmen's Compensation Act. The plaintiff received aid from the defendant city pursuant to a statute requiring the municipality to relieve its poor, and continued to be so relieved without performing any labor for what he received until the city instituted a scrip plan of relief under which able persons were "required" to work. The rate of scrip pay was forty cents per hour. Plaintiff was assigned to

work three hours a day at $7.20 per week, the scrip being exchangeable for supplies at the city store. While working in a city park the plaintiff was injured. Award of compensation made; on appeal. *Held,* award vacated. The contractual relation of employer and employee did not exist. *Vaivida* v. *City of Grand Rapids,* (Mich., 1933) 249 N.W. 826.

With thousands of men receiving emergency employment at the hands of governmental units under arrangements, as in the instant case, novel to political policy as well as to judicial review, the decision herein is especially pertinent.

To recover compensation under the Workmen's Compensation Act the contractual relation must exist between employer and employee. Mich. Comp. Laws 1929, par. 8407 et seq.; Sec. 102.07 (1), Wis. Stats.; *Milw. T. Co.* v. *Indus. Commission,* 203 Wis. 493, 234 N.W. 748 (1931); *Neitz* v. *Kraft,* 208 Wis. 301, 242 N.W. 163 (1932). The Michigan court vacated plaintiff's award on the ground that he was "in a sense a ward of the municipality and if set to work at common and unremunerative public tasks there does not arise a contract of hire or relation of employer and employee, but only a helping hand in behalf of the public charity." The court stated that the city possessed the common law right to the services of its paupers and that the relation here did not arise out of contract but as a counterpart of their statutory duty to support.

In a dissent by three justices a more liberal handling is noted, for in this opinion it was held that the scrip relief plan was not an incident to the administration of poor relief but a substitute for it, the employment of the plaintiff being contractual and not statutory and that the situation created the relation of employer-employee. The plaintiff was not required to work by statute nor the city to provide work, both parties being free to contract for employment and when, in pursuance of the city's plan, it had full control of the employment, dictated the rates of wages and the hours and conditions of labor, it was in no different position than any other employer making his own terms nor the plaintiff from any other employee who accepts the terms offered. The relationship created is governed by what they did, not by why they did it.

The case did not present an argument on the interpretation of precedent, the newness of the question naturally precluding such help, and the few cases cited were used only by way of suggestion in the dissenting opinion. The Wisconsin court in *Town of Germantown* v. *Industrial Commission of Wisconsin,* 178 Wis. 642, 190 N.W. 448, 31 A.L.R. 1284 (1922), held that a taxpayer who had an option to pay his road tax or perform labor and who chose to work, created by his election an implied contract of service, and that the relationship of employer-employee existed, stating that "the distinction between two kinds of workmen (for cash—or for tax) is too subtle and technical to be within the spirit and purpose of the law." In the annotation of the case, 31 A.L.R. 1284, citing also *Winifield* v. *Peeden,* 8 Kan. App. 671, 57 Pac. 131 (1899) and *In re Ashby,* 60 Kan. 101, 55 Pac. 336 (1898), as cases holding similarly with the Wisconsin decision, it is stated "the conclusion as to whether any particular claimant's status or relationship may be regarded as within the category or not is likely to be influenced by the court's view of the spirit and purpose of the act and its disposition to construe it broadly and liberally or narrowly and strictly."

The Wisconsin court has many times stated that the provisions of the Workmen's Compensation Act should be as liberally construed to effect the beneficent purposes intended as it can reasonably be. *Metzger* v. *Koefler,* 205 Wis. 339, 235 N.W. 802 (1931); *Village of Kiel* v. *Industrial Commission,* 163 Wis. 441, 158 N.W. 68 (1916); *Romning* v. *Industrial Commission,* 185 Wis. 384,

200 N.W. 652 (1925); (1933) 17 Marq. Law Rev. 188. Similar factual situations are sure to reach the courts of many states in the near future and the instant case will probably be much quoted, though a single precedent can mean but little in the face of a liberal disposition in other courts. In *Modin* v. *The City Land Co., et al.,* (Minn., 1933), 250 N.W. 73 an award was given to a plaintiff working under municipal unemployment relief; the question of relationship however was not raised, the amount of compensation alone being at issue. It can hardly be doubted that the social features of relief plans would be better served by holding the relation of a governmental agency to its working paupers to be that of employer-employee.

CARL W. HOFMEISTER.

PUBLIC UTILITIES—REDUCTION OF RATES BY COMMISSION—ECONOMIC CONDITIONS.—Petition by the City of Wauwatosa for reduction of rates of the Wauwatosa for reduction of rates of the Wauwatosa Gas Company on the grounds that the rates were unlawful and unreasonable. Hearings held before the Wisconsin Public Service Commission on Sept. 7, 1932, March 27, 1933, and July 19, 1933. Considerable testimony was introduced concerning economic conditions in the Milwaukee area so as to show a large decrease in employment in 1932, a decrease in average wages, and a large increase in the number of persons receiving outdoor relief. Evidence introduced in the investigation of the Wisconsin Telephone Company, 2-U-35, P.U.R. 1933B, 412 reflecting on the economic conditions in Wisconsin and Milwaukee was made a part of the record in this case. During the same period of 1931 and 1932 the earnings of the Wauwatosa Gas Company actually increased so as to net a return of 7.4 per cent on the company's rate base set at $884,000. *Held,* rates reduced so as to allow a return of 6 per cent instead of the return of 7.4 per cent presently enjoyed. *City of Wauwatosa* v. *Wauwatosa Gas Company,* 2-U-277, P.U.R. 1933D, 489 (1933).

The importance of this case lies in the fact that the Wisconsin Public Service Commission has once again yielded to the pressure of economic conditions and has ordered a temporary reduction of rates without first arriving at a final determination of the rate base. Although the rate base was set at $884,000 the Commission, itself, admits that its investigations were but preliminary and that it had not as yet completed an audit of the company's books and a valuation of the company's property. This case, therefore logically follows the rule laid down in Re Wisconsin Telephone Company, P.U.R. 1932D, 173 (1932) in which the Wisconsin Public Service Commission held that if an emergency justifies temporary increases in utility rates without full investigation, as in *Block* v. *Hirsch,* 256 U.S. 135, 41 Sup. Ct. 458, 65 L. Ed. 865 (1921); *Wilson* v. *New,* 243 U.S. 332, 37 Sup. Ct. 298, 61 L. Ed. 755 (1917); *Chicago R. Co.* v. *Chicago,* 292 Ill. 190, 126 N.E. 585 (1920); *Omaha & C B. Street R. Co.* v. *State R. Comm.,* 103 Neb. 695, 173 N.W. 690 (1919); then it may also justify a decrease in rates for the same reason; that the Commission is given specific authority to reduce rates in an emergency which affects the business or interests of the people, under sec 196.70, Wis. Stats.; and that the economic depression is an emergency within the meaning of the statute.

And yet there is an obvious distinction between this case and that of *Re Wisconsin Telephone Company,* supra. In the instant case the question of determining the rate base was not unusually difficult inasmuch as a comparatively small investment of approximately one million dollars was involved. The Commission took the company's own book value as being a fair investment of the rate base,