Marquette Law Review

Volume 10
Issue 1 *December 1925*

Article 12

1925

Workmen's Compensation Act: Miscellaneous provisions

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the future, had no surrender taken place, are terminated, but liabilities which have already accrued remain unaffected.[17]

In only a few jurisdictions, not strictly in accord with the above rule, the courts have held that the landlord has also the right to treat the lease as terminated, re-enter and sue for damages for the breach, the damages to be measured by the difference between the amount reserved in the lease and the rental value of the premises to the end of the term.[18]

According to the weight of authority, then, we may conclude that the landlord has the right to stand aside from the premises entirely, providing there is no provision in the lease to the contrary, and recover rent for the whole term; or with the tenant's consent express or implied, relet the premises as the tenant's agent and apply the proceeds to the tenant's account without accepting the surrender of the lease.[19]

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Workmen's Compensation Act: Miscellaneous provisions.—The courts place a liberal construction on the Workmen's Compensation Act with the intention of carrying out its manifest purpose, e.g., to relieve workmen from the distress of work accidents by placing a portion of the burden upon the employers, and through such employers, in the cost of production, upon the public as a whole.[1] Payment is not considered in the light of a gift made to the injured employe, but is treated as a moral and equitable obligation.[2] The exclusive remedy provided by the act[3] includes all injuries for which the employer might be liable at common law by reason of his failure to exercise ordinary care or comply with the statutory requirements as well as those resulting from pure accident or negligence of the employe or of a fellow servant.[4]

In Wisconsin, an employer is not compelled to place himself under the act, but, in order to escape its provisions, he "must file with the industrial commission a notice in writing to the effect that he elects not to accept the provisions thereof."[5] Under this section, it was held that a principal contractor who was subject to the act, was liable to an employe of a subcontractor who had elected not to come under the act: and that such principal contractor had his remedy over against the one actually liable.[6] And a claimant for compensation for the death of an employe of a subcontractor who employed less than three persons and was not subject to the act, but whose principal contractor was subject to the act, was given the option either to hold the primary employer, its insurance carrier, and the principal contractor, or to hold the sub-

[17] *Boyd v. Gore,* 143 Wis. 531; 128 N.W. 68.

[18] *Brown v. Hayes, supra.*

[19] See 23 Mich. Law Rev. 211; 35 C. J. 1086 to 1096.

[1] *Town of Germantown v. Ind. Comm.,* 178 Wis. 642, 190 N.W. 448; *Ronning v. Ind. Comm.,* 185 Wis. 384, 200 N.W. 652.

[2] *State v. Carter,* (Wyo.) 215 Pac. 477, 28 A. L. R. 1089.

[3] Sec. 102.03 to 102.34, Wis. Stats.

[4] *Knoll v. Schaler,* 180 Wis. 66, 192 N.W. 392.

[5] Sec. 102.05, Wis. Stats.

[6] *Miller v. Ind. Comm.* 179 Wis. 192, 190 N.W. 81.

contractor liable for damages at common law as modified by the provisions of the act. However, the subcontractor could not be held liable for compensation.[7]

To entitle an injured employe to recover compensation under the Workmen's Compensation Act, it is only necessary to show (1) that the employer and the employe were subject to the act, (2) that the employe was performing service growing out of and incidental to his employment, and (3). that the injury was proximately caused by accident.[8]

Some interesting cases have been decided under the provision: "where, at the time of the accident, the employe is performing service growing out of and incidental to his employment."[9] A city salesman, employed to go from customer to customer to solicit orders for his employer, and who was not required to report to his employer before starting out for his day's work, and who was injured while on his way to the first customer, was within the act as "performing service growing out of and incidental to his employment."[10] The following are some cases within this provision: An injury to a teacher going to an institute:[11] death by electric shock, though by way of a joke by a fellow employe;[12] an infection in the throat of an employe in a lumber camp caused by a straw falling from the bunk above while sleeping;[13] employe of a lumber company required by the terms of employment to sleep in a company bunk house with other employes, and who was attacked and injured, while asleep, by another employe;[14] a public school principal selecting a basketball team and injured by a ball on the school grounds;[15] injury while eating lunch during noon recess by fall of a pile of crude rubber;[16] typhoid fever contracted from polluted drinking water furnished by employer while at work;[17] employe required to dump tram cars with heated iron ore, struck by another car while warming himself from the ore on a cold night;[18] employe riding on logging train to get his pay check cashed at the office;[19] loss of hand while grinding meat for hamburger steak in a restaurant;[20] loss of life in entering a burning building to save employer's property;[21] straining of muscles even though there was no external evidence of injury;[22] hernia even though em-

[7] *Kloman v. Ind. Comm.*, 181 Wis. 505, 195 N.W. 405.
[8] *Kaiser Lbr. Co. v. Ind. Comm.*, 181 Wis. 513, 195 N.W. 329.
[9] Sec. 102.03 (2), Wis. Stats.
[10] *U. S. Casualty Co. v. Superior Hdwe. Co.* 175 Wis. 162, 184 N.W. 694.
[11] *Stockley v. School District*, (Mich) 204 N.W. 641.
[12] *Newport Co. v. Ind. Comm.*, 167 Wis. 634, 167 N.W. 749.
[13] *Holt Lbr. Co. v. Ind. Comm.*, 168 Wis. 381, 170 N.W. 366.
[14] *Kaiser Lbr. Co. v. Ind. Comm.*, 181 Wis. 513, 195 N.W. 329.
[15] *Milwaukee v. Ind. Comm.*, 160 Wis. 244, 151 N.W. 238.
[16] *Racine Rub. Co. v. Ind. Comm.*, 165 Wis. 600, 162 N.W. 664.
[17] *Vennen v. New Dells Lbr. Co.*, 161 Wis. 370, 154 N.W. 640.
[18] *N.W. Iron Co. v. Indust. Comm.*, 160 Wis. 633, 152 N.W. 416.
[19] *Casper Cone Co. v. Ind. Comm.*, 165 Wis. 255, 161 N.W. 784.
[20] *Brenner v. Herribin*, 170 Wis. 567, 176 N.W. 228.
[21] *Bell City M. I. Co. v. Roland*, 170 Wis. 297, 174 N.W. 899.
[22] *Bystrom Bros. v. Jacobson*, 162 Wis. 180, 155 N.W. 919.

ployе was predisposed to that infirmity;[23] pulmonary tuberculosis from the filling of the lungs with granite dust;[24] typhoid fever where conditions surrounding a lumber camp were such as ordinarily attend a focus of typhoid fever infection.[25] Hence, it is evident that compensation will not be denied merely because at the moment the injury was received, the employe was not actually doing the specific work assigned him.[26]

On the other hand, an employe engaged in road work and killed by the collapse of a barn in which he had taken refuge during a violent and unprecedented storm, was held to have met his death through exposure to a hazard common to the public, which was in no way accentuated by reason of his employment.[27] Some other cases holding that injuries or death sustained did not arise out of "performing service growing out of and incidental to his employment" are: Injury for lightning unless employment involved exceptional exposure;[28] riding home on freight train from place of employment;[29] boy cutting paper tablet for himself contrary to orders;[30] city firemen on a street, returning to work after dinner, in automobile collision;[31] (but a county employe while returning to his work on a highway by a short-cut across a vacant village block and who was injured by tripping over a wire, was held entitled to compensation[32]).

Prior to the decision by the United States Surpeme Court in *Southern Pac. Co. v. Jensen,*[33] it was generally held by the state courts that the Workmen's Compensation Acts were applicable to cases involving maritime contracts or torts; and that the admiralty courts did not have exclusive jurisdiction over such cases. Since this decision, it seems to be settled that a state compensation act, even though elective, is inapplicable if the person injured was employed under a maritime contract, and was injured on water within admiralty jurisdiction.[34] An exception was found to this rule in a later case wherein a workman was injured while employed as a carpenter on an incompleted vessel lying in navigable water. Here, the contract for constructing the vessel was brought before the court and held to be a nonmaritime contract and, hence, the Oregon State Compensation Act was applicable.[35]

J. O'B.

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[23] *Casper Cone Co. v. Ind. Comm, supra.*

[24] *Wenrich v. Indust. Comm.*, 182 Wis. 379, 196 N.W. 824.

[25] *Scott & Howe Lbr. Co. v. Indust. Comm.*, 184 Wis. 737, 199 N.W. 160.

[26] *Widell Co. v. Indust. Comm.*, 180 Wis. 179, 192 N.W. 449.

[27] *Carey v. Indust. Comm.*, 181 Wis. 253, 194 N.W. 339.

[28] *Hoenig v. Indust. Comm.*, 159 Wis. 646, 150 N.W. 996.

[29] *Foster-Latimer Co. v. Indust. Comm.*, 167 Wis. 337, 167 N.W. 453.

[30] *Radke Bros. v. Rutzinski*, 174 Wis. 216, 183 N.W. 168.

[31] *Hornburg v. Morris*, 163 Wis. 31, 157 N.W. 556.

[32] *Monroe County v. Indust. Comm.*, 184 Wis. 32, 198 N.W. 597.

[33] 244 U. S. 205, 37 S. Ct. 524.

[34] *Neff v. Indust. Comm.*, 166 Wis. 127, 164 N.W. 845; *Machie v. Fellenz Co.*, 183 Wis. 44, 197 N.W. 198; *Thornton v. Gt. M. C. I. Co.*, (Mich) 168 N.W. 410; *Newham v. Chile Exploration Co.*, 232 N. Y. 37, 133 N.E. 120; *State v. Dawson*, 122 Wash. 572, 211 Pac. 724.

[35] *Grant-Smith-Porter Ship Co. v. Rhode*, 257 U. S. 469, 42 S. Ct. 157.