Workmen's Compensation - Effect Upon Prior Release of Employer's Election to Subscribe to Act

William H. Bezold

Follow this and additional works at: http://scholarship.law.marquette.edu/mulr

Part of the Law Commons

Repository Citation
Available at: http://scholarship.law.marquette.edu/mulr/vol35/iss2/10

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obriens@marquette.edu.
Commissioner's rulings. The expressed intent of the donor was to make a gift and not to buy the composition. The plaintiff rendered no services to the donor since the time and effort incidental to a composition of this type were expended before the contest was ever promulgated. The donor received no financial remuneration from the contest; title to the composition remained in the plaintiff and the donor received no pecuniary benefits from it. The plaintiff's expressed motive for entering the contest was to make a contribution to the field of music and coupled with that fact is the added factor that the composition was completed six years before the announcement of the contest. No other conclusion can be drawn except that the plaintiff entered the contest for his expressly stated purpose.

Although it is doubtful the Commissioner will accede to the decision in the instant case, yet to do otherwise would only serve to further widen the gap between the courts and the Commissioner of Internal Revenue.

JOHN J. WITTAK

Workmen's Compensation—Effect Upon Prior Release of Employer's Election to Subscribe to Act—Claimant, an employee of The Pocahontas Corporation, contracted silicosis in the second stage several years before the employer elected to subscribe to the West Virginia Workmen's Compensation Act. On October 6, 1940, claimant and his employer entered into a compromise settlement by which the claimant received $1,000, the amount then fixed by the act for that disability, and the employer obtained a written release from the claimant for "all manner of . . . claims . . . for . . . injuries . . . ." Claimant continued in the employ of The Pocahontas Corporation. On June 15, 1943, the employer elected to subscribe to the act. Claimant then submitted a claim to the compensation commissioner for the same disability mentioned above and was awarded $1,600, the amount then allowed under the act. The Pocahontas Corporation set up the release as satisfaction and discharge of the claim. The Workmen's Compensation Appeal Board, in December, 1949, reversed the order of the commissioner, and claimant appealed. Held: Commissioner's order reinstated. Under the Workmen's Compensation Act, any contract or agreement which exempts an employer or employee from the burden or waives the benefit of the Act, is pro tanto void. Upon election to subscribe, the employer elected to accept the obligations and burdens of the Act as well as the benefits and protection thereof. It, in effect, waived any defense created by the release or settlement insofar as it affected any claim made under the Act. Vernon v. State Compensation Commissioner et al., 61 S.E. (2) 243 (W.Va., 1950).
The case under consideration presents a unique problem under the workmen's compensation laws. Though no case dealing with this question can be cited to support or rebut the decision found above, consideration of a few well known principles of law may give a more comprehensive answer to the problem.

The release involved was fully executed and the claim of the employee fully satisfied and extinguished before the employer subscribed to the Act. At that time the Act was only applicable to the parties in relation to certain common law defenses available to the employer. The preponderance of authority holds that contracts relieving the employer of liability for employees' injuries to be received in the future are void as against public policy or statute, but those contracts which are releases or settlements of existing demands are valid.1 There is no contention that the release was not valid or binding at the time it was executed. Consequently, the release relinquished the claim to the person against whom it might have been enforced, defeating the cause of action.2 Generally, and under Wisconsin decisions,

"The agreement of settlement expressed in the written release is, of course, a complete defense unless impeached by fraud or mistake."3

The court admits that the release was a complete defense before the employer subscribed to the Act, and if he withdraws from the operation of the Act, it would again act as such.

To uphold the court's decision, the Act must operate upon the creation of the release, since no claim exists after the release is executed. Consequently, that portion of the Act avoiding releases executed by those under the Act must be retroactive. Retroactive laws are not generally favored since they act on past rights and liabilities, pronouncing judgment on what has gone before, and are, therefore, in the realm of the judicial rather than the strictly legislative field.4 The well settled rule regarding retroactive operation of statutes is:

"... statutes are not to be construed retrospectively, or to have a retroactive effect, unless it shall clearly appear that it was so intended by the legislature, and not even then, if such construction would impair vested or constitutional rights."5

The Act gives no justification for holding it retroactive and, significantly, the West Virginia court's past decisions declare that it is not

---

1 35 AM. JUR. 671.
2 Pellett v. Sonotone Corp. et al., 26 Cal. (2d) 705, 160 P. (2d) 783, 160 A.L.R. 863 (1945); 45 AM. JUR. 676.
3 Steffen v. Supreme Assembly of The Defenders, 130 Wis. 485, 110 N.W. 401 (1907).
4 25 R.C.L. 786.
5 State v. Atwood, 11 Wis. 441 (1860); Seaman v. Carter, 15 Wis. 548 (1862); Building Height Cases, 181 Wis. 519, 195 N.W. 544 (1933).
In view of these past decisions the court's position in this matter is difficult to understand. The assertion that the employer waives the valuable right obtained under the release by the mere subscription to the compensation fund is difficult to comprehend.

Recognition of this as valid violates that settled policy of the law which forbids more than one complete satisfaction for the same wrong.

"The general rule is that when a plaintiff has accepted satisfaction in full for an injury done him, from whatever source it may come, he is so far affected in equity and good conscience that the law will not permit him to recover again for the same damages."

Under the Wisconsin Act the payment of a benefit under the silicosis feature estops the employee from further recovery from any employer under that feature. No protection against double compensation is afforded those employers who have settled claims before coming under the Act. If courts continue to hold that the compensation acts do not apply to injuries received before the law went into effect, the need for such protection in the law itself is unnecessary. However, if the decision of the West Virginia court presents a precedent to be followed by others, the previously satisfied claim of every employee similarly situated may be revived and paid in full by the employer. Such a result is obviously unjust.

The aim sought in all the compensation acts is to limit litigation and assure compensation for the loss of income regardless of the question of certain common law defenses. If the recognized advantages of the compensation acts are to be more widely accepted, the decision under discussion cannot stand. It is hard to believe that an employer would subscribe to the elective acts, or elect to subscribe to the compulsory acts, upon the condition that settled claims would be paid again by him on his election to come within the provisions of the acts. Such an unjust penalty imposed on subscribers to the acts would only defeat the purposes of the acts. Employers under the compulsory acts would be faced with legally extinguished claims which they would have to pay again. If releases and settlements are to be so lightly regarded, as in this instance, no claim will be settled by non-subscribers until it has been resolved after long litigation and becomes a matter of record. Certainly the result reached in the principal case is unsound in view of the prevailing principles of law.

William H. Bezold