Michigan Law Review

Volume 40 | Issue 7

1942

WORKMEN'S COMPENSATION - INJURIES "ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT"

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WORKMEN'S COMPENSATION — INJURIES "ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT" — Plaintiff, an employee in defendant's mill, helped to organize a baseball team among defendant's employees. The defendant furnished the initial equipment for the team at a cost of approximately $450, but thereafter had little to do with controlling its policy or management. Defendant's employees were given no additional compensation or privileges for playing on the team; practice sessions were held after working hours; and all ball games were scheduled on Sundays. Plaintiff was injured in an automobile accident while returning from one of the Sunday games and sued for compensation under the state workmen's compensation act for injuries "arising out of and in the course of the employment." [1] *Held*, since the defendant's only connection with the ball club was a charitable or benevolent interest in promoting the social life of the workers, the injury to the plaintiff could not be said to arise out of and in the course of his employment. *Pate v. Plymouth Mfg. Co.*, 198 S. C. 159, 17 S. E. (2d) 147 (1941).

The two parts of the phrase "arising out of and in the course of his employment" are not synonymous,[2] and both must exist simultaneously before any court will allow recovery under a compensation act so worded.[3] To determine, in the "ball playing" cases, whether the injuries complained of by the employee fall within this phrase, the relation between the employer and the employee's ball team is of great importance, and four main factors must be considered: (1) the extent to which the employer supervises participation in the sport;[4] (2) the amount of advertisement, publicity or other benefit which the employer receives;[5] (3) the extent to which the employees are compelled to participate and the nature of any privileges given to participants;[6] and (4) the amount of financial support

[1] S. C. Code (Supp. 1936), § 7035-2 (f).

[2] "Arising out of" refers to the origin and cause of the injury, whereas "in the course of" refers to the time, place, and circumstances of the occurence. Ryan v. State Industrial Commission, 128 Okla. 25, 261 P. 181 (1927); Ridout v. Rose's 5-10-25c Stores, 205 N. C. 423, 171 S. E. 642 (1933).

[3] Ryan v. State Industrial Commission, 128 Okla. 25, 261 P. 181 (1937).

[4] Holst v. New York Stock Exchange, 252 App. Div. 233, 299 N. Y. S. 255 (1937) (employer arranged games for team, took receipts and paid deficits).

[5] Piusinski v. Transit Valley Country Club, 259 App. Div. 765, 18 N. Y. S. (2d) 316 (1940) (caddies became more competent by playing golf every Monday); Wing v. Rhodes & Jamieson, 5 Cal. Comp. Cas. (N. S.) 216 (1940) (team organized for advertising value); Federal Mutual Liability Ins. Co. v. Industrial Accident Commission, 90 Cal. App. 357, 265 P. 858 (1928). In two cases, no recovery was allowed, even though some benefit was derived by the employer. Clark v. Chrysler Corp., 276 Mich. 24, 267 N. E. 589 (1936) (court found mutual benefit both for employer and employee); Porowski v. American Can Co., 15 N. J. Misc. 316, 191 A. 296 (1937) (no advantage to employer by advertising or in monetary way).

[6] Wing v. Rhodes & Jamieson, 5 Cal. Comp. Cas. (N. S.) 216 (1940) (employees realized it was advisable to play when asked to by employer); Huber v. Eagle Stationery Corp., 254 App. Div. 788, 4 N. Y. S. (2d) 272 (1938) (employee required to be present and supervise team); 1 CAMPBELL, WORKMEN'S COMPENSATION, § 241, p. 233 (1935). In Industrial Commission v. Murphy, 102 Colo. 59, 76 P. (2d) 741 (1938), the court refused recovery on the ground that there was no compulsion on employees to play.

given by the employer to the team and whether such support is charged as a business expense.[7] Along with an investigation of these four factors, the courts may also be required to decide what the governing policy of the workmen's compensation act should be and how much liberality should be employed in its construction. The courts have generally taken a rather liberal construction of these compensation acts,[8] in order that the social policy of protecting labor from the hazards of industry be not defeated.[9] Should the court decide that the purpose of these acts is to recompense workmen as a legitimate business expense,[10] regardless of whether the employer might have avoided the injury, it will probably allow recovery more quickly than one which takes a less inclusive view of their basic purpose. The most complete analogy to the "ball playing" cases is found in the "picnic" or "recreation" cases. In this group of cases, the above four factors have been employed by the courts to determine whether there is a compensable injury [11] and the varying degrees of liberality taken by the courts toward the workmen's compensation act can be seen in the decisions. It is difficult to find the requisite intimacy between the employer and the employee's ball team in the principal case; but wherever the employer exercises some supervision over the team's affairs, gains some sort of benefit therefrom, requires participation, and helps support the team financially, a liberal construction of the compensation acts appears to be warranted, and recovery in the employee's favor should follow.

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[7] Huber v. Eagle Stationery Corp., 254 App. Div. 788, 4 N. Y. S. (2d) 272 (1938) (employer paid entrance fees and took profits and losses); Federal Mutual Liability Ins. Co. v. Industrial Accident Commission, 90 Cal. App. 357, 265 P. 858 (1928).

[8] Henley v. Oklahoma Union Ry., 81 Okla. 224, 197 P. 488 (1921); Pacific Employers' Ins. Co. v. Pillsbury, (C. C. A. 9th, 1932) 61 F. (2d) 101; Ocean Accident & Guarantee Corp. v. Industrial Accident Commission, 90 Cal. App. 725, 266 P. 556 (1928).

[9] Central Surety & Ins. Corp. v. Industrial Commission, 84 Colo. 481, 271 P. 617 (1928); Manley v. Lycoming Motor Corp., 83 Pa. Super. 173 (1924). Also see 71 C. J. 341 (1935).

[10] See the language of the Court in Alaska Packers' Assn. v. Industrial Accident Commission of California, 294 U. S. 532 at 541, 55 S. Ct. 518 (1935).

[11] Cases allowing recovery: Miller v. Keystone Appliances, 133 Pa. Super. 354, 2 A. (2d) 508 (1938) (picnic for better morale in employer's plant, superior officer directed employee to be present); Fagen v. Albany Evening Union Co., 261 App. Div. 861, 24 N. Y. S. (2d) 779 (1941) (employees carried to picnic in employer's trucks, and picnic held to better morale of employees); Stakonis v. United Advertising Corp., 110 Conn. 384, 148 A. 334 (1930) (employer ordered employees to attend picnic, provided transportation, and paid only those employees who attended); Scott v. Whitehouse & Co., 255 App. Div. 733, 6 N. Y. S. (2d) 916 (1938) (traveling representative killed while returning from social function given by employer).

Cases refusing recovery: Becker Asphaltum Roofing Co. v. Industrial Commission, 333 Ill. 340, 164 N. E. 668 (1929) (no recovery because court did not believe that the injury was within the risk of the employment).