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WORKMEN'S COMPENSATION-RIGHT OF DOLE EMPLOYEE TO COMPENSATION

WORKMEN'S COMPENSATION — RIGHT OF DOLE EMPLOYEE TO COMPENSATION — The plaintiff, a citizen on the relief rolls of the defendant city, was put to work in accordance with a scrip relief plan under which persons receiving aid were "required" to work if they were able. They were paid a stipulated amount of script per hour, which was exchangeable for goods at the city store. The plaintiff was injured while using a wheelbarrow in line of duty in so working in the city park, and claimed the right to workmen's compensation under the statute as an employee of the city. The court *held*, by a five-to-three division, that the plaintiff could not recover. *Vaivida v. City of Grand Rapids*, 264 Mich. 204, 249 N. W. 826 (1933).

The instant case presents a new problem — the authorities disclosing no similar cases.[1] The majority opinion cited no cases, and put the decision on the ground that municipalities called upon to support paupers have a right to their services and earnings to aid in their support. It might be suggested that the opposite result would be more in accord with the reasons and purposes of the Workmen's Compensation Act. It was the aim of the framers of the law to make the industry itself bear the risk of accident, and that liability should follow from the fact of the injury; hence, the compensation should be treated as an element in the cost of the commodity produced, and should be borne by the community as a whole.[2] To this end the legislatures have generally abolished the usual defenses that the injury was caused by the employee's own negligence unless such

[1] There are two unreported cases which the dissenting judge mentions. In Bennett v. City of Detroit, Michigan Department of Labor and Industry, June 15, 1931, the plaintiff who had worked to pay for aid from the city was held a public employee. The Ohio Industrial Commission reached the opposite result under the laws of the State which require an indigent person to render services for relief furnished him. City of Columbus v. Greenlee, Industrial Commission of Ohio, June 5, 1932. Ann. Code of Ohio (Throckmorton, 1930), sec. 3493.

[2] Schneider, Workmen's Compensation Law, 2d ed., 2 (1932).

negligence was wilful, that the injury was caused by the negligence of a fellow servant, or that the employee had assumed the risks of the employment.[3] The definition of a public employee under the statute is broad, for it includes not only one under "contract" of hire, but also one under "appointment."[4] And courts have generally not tried to restrict the class by rigid interpretation. The following persons have been held to be public employees: a member of a posse organized at the direction of a deputy sheriff although not specifically deputized;[5] a taxpayer who was working out his road tax at his option;[6] a convict who was working and receiving compensation when it was optional with the prisoners whether they would work or not;[7] a juror;[8] and indirectly, a person summoned by a state fire warden to put out a fire in the neighborhood.[9] It would seem that the stress should be laid not upon the motive and purposes of the employer, but rather upon the master and servant relationship itself. Both parties in the instant case were free to contract for employment, inasmuch as it is probable that the city had the duty of supporting the plaintiff whether he worked or not.[10] In having control over the hours of work, the wages, and the conditions of employment, the city was in no different position than any other employer. The scrip relief plan would seem to be a substitute for the statutory support of the poor, and the relationship would seem to be that of employer and employee.

J. W. C.

[3] Mich. Comp. Laws, sec. 8407 (1929); Mass. Gen. Laws, c. 152, sec. 66 (1932); Conn. Gen. Stat., sec. 5224 (1930).

[4] Mich. Comp. Laws, sec. 8413 (1929).

[5] Vilas County v. Industrial Commission, 200 Wis. 451, 228 N. W. 591 (1930). A bystander summoned by sheriff to assist in making an arrest was held a public employee. County of Monterey v. Industrial Accident Commission, 199 Cal. 221, 248 Pac. 912 (1926), 47 A. L. R. 359 (1927).

[6] Town of Germantown v. Industrial Commission, 178 Wis. 642, 190 N. W. 448 (1922), 31 A. L. R. 1284 (1924). But *contra*, Board of Trustees of Crutcho Township v. State Industrial Commission, 149 Okla. 23, 299 Pac. 155 (1931).

[7] California Highway Commission v. Industrial Accident Commission, 200 Cal. 44, 251 Pac. 808 (1926), 49 A. L. R. 1377 (1927). But where work was not voluntary on the part of convict, he was not employee of the city. Murray County v. Hood, (Okla. 1933) 21 Pac. (2d) 754; Greene's Case, 280 Mass. 506, 182 N. E. 857 (1932).

[8] Industrial Commission v. Rogers, 122 Ohio 134, 171 N. E. 35 (1930), 70 A. L. R. 1244 (1931).

[9] Kennelly v. Stearns Salt and Lumber Co., 190 Mich. 628, 157 N. W. 378 (1916). Some cases, however, would seem to be contra.

A volunteer fireman, for example, was held not an employee. The court said that the only basis for computing compensation is the earning ability of the employee in the particular employment out of which injury arises. Bingham City Corporation v. Industrial Commission of Utah, 66 Utah 390, 243 Pac. 113 (1925). One operating city grader gratuitously by agreement with local committees improving land set aside by city council for park was held not an employee on the ground that city did not have any control over him or the work. Norman v. City of Chariton, 206 Iowa 790, 221 N. W. 481 (1928).

[10] Mich. Comp. Laws, sec. 8229 (1929). The law raises an implied promise on the part of a township chargeable with the support of the pauper to furnish such support. Eckman v. Township of Brady, 81 Mich. 70, 45 N. W. 502 (1890). There appears to be no statute which confers on a city authority to require labor as a condition to poor relief.