Michigan Law Review

Manuscript 6718

Workmen's Compensation - Recreation Injury

David Shute S.Ed.

WORKMEN'S COMPENSATION—RECREATION INJURY—Decedent was employed by an automobile dealer as assistant manager of the service department. The dealer's custom was to hold a monthly business meeting of the staff of major departments after working hours and without extra compensation. One such meeting was scheduled to be held at a city hotel. At the suggestion of an employee that it would be more pleasant to hold the meeting at a nearby lake, the employer changed the meeting place to a summer cottage owned by him. It was understood by those attending that there would be an opportunity for swimming and boating. Decedent was expected to and did attend the meeting. Following the meeting he decided to take a swim, and upon attempting a dangerous dive fractured a cervical vertebra. The injury subsequently resulted in his death. Decedent's dependents were awarded compensation by the Industrial Board, but the award was reversed on appeal by a divided appellate court. On appeal to the Supreme Court of Indiana, *held,* the injury was compensable, two judges dissenting. The employer obtained a business benefit from the swimming by using it to obtain better attendance and participation in the business meeting, and the recreation was therefore

incidental to the employment. The Industrial Board could properly conclude, as the trier of facts, that decedent's injury and death arose out of and in the course of employment. *Noble v. Zimmerman,* (Ind. 1957) 146 N.E. (2d) 828.

An injured employee is generally entitled to a workmen's compensation award if his injury meets the statutory test of "arising out of and in the course of employment."[1] Injuries received during recreational activities are frequently held compensable on the theory that such activities may be considered, under certain circumstances, incidental to the employment. Compensation has been awarded for such injuries where there is shown any one of several factors, including compulsion or direction to participate,[2] profits made by the employer from the activity,[3] evidence that the activity was a settled practice on the employer's premises,[4] or a business benefit to the employer.[5] Although prominent writers in the field state that the presence of any one of these factors is sufficient to bring the recreational activity within the course of employment,[6] previous Indiana appellate decisions had indicated that some form of employer direction or compulsion, admittedly absent in the instant case,[7] must be found before an award can be made.[8] The principal case, in basing the award on the presence of a business benefit,[9] brings Indiana into line with the

1 Forty states, including Indiana, use this phrase in their statutes. Variations are used by the eight other states. 1 LARSON, WORKMEN'S COMPENSATION LAWS 41 (1952).

2 Stakonis v. United Advertising Corp., 110 Conn. 384, 148 A. 334 (1930).

3 Holst v. New York Stock Exchange, 252 App. Div. 233, 299 N.Y.S. 255 (1937).

4 Thomas v. Proctor & Gamble Mfg. Co., 104 Kan. 432, 179 P. 372 (1919).

5 Tadesco v. General Electric Co., 305 N.Y. 544, 114 N.E. (2d) 33 (1953). See 1 LARSON, WORKMEN'S COMPENSATION LAWS 328 (1952), and 6 SCHNEIDER, WORKMEN'S COMPENSATION 519 (1948), for discussions of all of the above factors. See also 5 DE PAUL L. REV. 337 (1956).

6 6 SCHNEIDER, WORKMEN'S COMPENSATION 519 (1948); 1 LARSON, WORKMEN'S COMPENSATION LAWS 328 (1952).

7 Of the four employees who attended, two made preparations to leave immediately after the meeting and did not participate in the recreation at all.

8 In Tom Joyce 7-Up Co. v. Layman, 112 Ind. App. 369, 44 N.E. (2d) 998 (1942), the employee was injured on his way home from participation in a bowling league where shirts were worn advertising the employer's product. Compensation was denied on the ground that there was no evidence that the employment required or contemplated participation. The case is cited in SMALL, WORKMEN'S COMPENSATION LAW OF INDIANA 159 (1950) as establishing that a business benefit is not alone sufficient, and in 1 LARSON, WORKMEN'S COMPENSATION LAWS 340 (1952) as being contra to the general rule that advertising benefits bring the recreation within the course of employment. In Mishawaka Rubber and Woolen Mfg. Co. v. Walker, 119 Ind. App. 309, 84 N.E. (2d) 897 (1949), an employee was drowned while fishing on the employer's premises during the lunch hour. Compensation was denied without discussion of whether the fishing was a settled recreation, although the general rule as expressed in LARSON, this note supra at 328, is that where recreation is a settled practice on the premises, that fact alone makes it compensable. These two decisions illustrate the fact that Indiana courts had apparently committed what LARSON, this note supra at 330, calls the error of requiring some additional factor other than either a business benefit or a settled practice on the premises.

9 It is interesting to note that the majority directed its attention to the inducement idea, and concluded that the business benefit in the form of a better business meeting was obtained by holding out the promised recreation. The dissent, on the other hand,

more generally accepted view.[10] However, even granting that the presence of a business benefit is a sufficient work-connecting factor, it must be conceded that the dissent in the principal case makes a reasonable argument that the benefit here involved was at best remote and indirect.[11] The decision is thus open to question in this regard. Yet it would appear that the position of the majority in a borderline case such as this is the better view, conforming as it does with the policy of liberality toward compensation claimants to further the humane purposes of the workmen's compensation laws.[12] Although the work-connection in recreation injuries may at first glance seem tenuous, the majority correctly points out that employers are more and more utilizing recreation in "aiding and promoting better business relations with persons in their employ, calculating the same to benefit the employer's best business interests."[13] As long as a court requires the existence of any one of the work-connecting factors discussed above, resolving doubtful cases in this area in favor of employees falls far short of the charge made by the dissent that the employer will become an outright insurer of the safety of employees at sponsored recreational functions.[14] But how far the "business benefit" concept of the principal case will be extended remains to be seen.

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focused its attention on the swimming itself, and concluded that the benefit was not sufficient. The majority's position has been used by other courts where the employer obtained no direct benefit from the recreation itself, but used it as an inducement. See, e.g., Linderman v. Cownie Furs, 234 Iowa 708, 13 N.W. (2d) 677 (1944) (employee injured on fishing trip won in sales contest), and Kelly v. Ochiltree Electric Co., 125 Pa. Super. 161, 190 A. 166 (1937) (employee killed on return from convention trip to Miami). *Contra,* Lehman v. B. F. Nelson Mfg. Co., 193 Minn. 462, 258 N.W. 821 (1935) (employee injured while attending movies which employer used as inducement to obtain attendance at safety lecture).

[10] Linderman v. Cownie Furs, note 9 supra; Fagen v. Albany Evening Union Co., 261 App. Div. 861, 24 N.Y.S. (2d) 779 (1941); Kelly v. Hackensack Water Co., 23 N.J. Super. 88, 92 A. (2d) 506 (1952). In Jewel Tea Co. v. Industrial Commission, 6 Ill. (2d) 304 at 314, 128 N.E. (2d) 699 (1955), the court states: "The essential inquiry by each court appears to be whether the employer could be deemed to sustain a direct benefit from the recreational activity so that it could be regarded as an incident of the employment."

[11] The dissent also expressed the fear shared by several other courts that holding recreation injuries compensable is unwise because it will discourage employers from supporting such programs. To the same effect, see Industrial Commission v. Murphy, 102 Colo. 59, 76 P. (2d) 741 (1938); Wilson v. General Motors Corp., 298 N.Y. 468, 84 N.E. (2d) 781 (1949), and Clark v. Chrysler Corp., 276 Mich. 24, 267 N.W. 598 (1936). Compare the view of the dissenting opinion in the Wilson case and 23 UNIV. CHI. L. REV. 328 (1956).

[12] In Wilson v. General Motors Corp., note 11 supra, the dissenting opinion observes, at page 479: "The broad and remedial purpose of the Workmen's Compensation Law would not be effectuated by narrowly restricting coverage solely to the employees who are injured while performing the specific tasks for which they were hired."

[13] Principal case at 834. A brief discussion of recent studies on the practical business benefits of recreation programs is contained in 23 UNIV. CHI. L. REV. 328 (1956).

[14] That the employer will now be made an insurer of employees' safety is vigorously argued by the dissent, principal case at 837.