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WORKMEN'S COMPENSATION-INJURY IN FIGHT AS ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT

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WORKMEN'S COMPENSATION—INJURY IN FIGHT AS ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT—Deceased was employed by defendant as an engineer and, while waiting to relieve the engineer then on duty, began to quarrel with him as to the manner in which a subordinate was doing his work. Words led to blows, and after a short fight, deceased collapsed and died of emotional trauma of the heart. There were no other witnesses, but the survivor claimed deceased struck the first blow. From an award given by the Workmen's Compensation Board,[1] defendant and its insurer appealed. *Held,* affirmed. The death arose "out of and in the course of the employment."[2] *Commissioner of Taxation and Finance v. Bronx Hospital,* (App. Div. 1950) 97 N.Y.S. (2d) 120.

[1] Under 64 N.Y. Consol. Laws (McKinney 1946) §§15-9, 25-a.
[2] Id. §10.

Since New York passed its first compensation act in 1910,[3] such acts have spread until now only one state is without one.[4] These statutes are practically unanimous in stating, as does the New York law, that to entitle one to compensation, the injury (or death) must arise "out of and in the course of the employment."[5] This section of the law has produced, perhaps, more litigation and controversy than any other,[6] and is the basis of the only issue considered on appeal in the principal case.[7] It is important to remember that the qualifications set up in this phrase are conjunctive; the injury must arise "out of" the employment, and it must arise "in the course of" the employment. Arising "out of" the employment usually refers to the nature of the activity going on at the time, while "in the course of" refers to the time and place of the injury.[8] An injury is usually held to arise "in the course of" the employment if it occurs during working hours or within a reasonable time before or after, and at the place of employment or, sometimes, on the way to or from such place.[9] When the injury or death is produced by an assault, the question is whether it arises "out of" the employment. Courts almost unanimously hold that when the quarrel leading to the assault is over a work matter, such as the manner in which the work is done, the injury arises out of the employment.[10] Some cases state that quarrels and fights leading to injury must be expected from the close association of workmen,[11] and there is dictum to that effect in the principal case.

[3] The original New York act (a compulsory one) was held unconstitutional as a denial of due process in Ives v. South Buffalo Railroad Co., 201 N.Y. 271, 94 N.E. 431 (1911). However, six years later the United States Supreme Court declared both elective and compulsory acts constitutional. Hawkins v. Bleakly, 243 U.S. 210, 37 S.Ct. 255 (1917); New York Central R. Co. v. White, 243 U.S. 188, 37 S.Ct. 247 (1917); Mountain Timber Co. v. State of Washington, 243 U.S. 219, 37 S.Ct. 260 (1917).

[4] That state is Mississippi. PROSSER, TORTS 519 (1941).

[5] PROSSER, TORTS 528 (1941).

[6] Cardillo v. Liberty Mutual Ins. Co., 330 U.S. 469, 67 S.Ct. 801 (1947); Horovitz, "Modern Trends in Workmen's Compensation," 21 IND. L.J. 473 at 497 (1946).

[7] Apparently in the trial court it was argued that recovery was barred since the death resulted from the "willful intention" of the employee. 64 N.Y. Consol. Laws (McKinney 1946) §10. However, the court in the principal case said, at 121, "The sole issue raised on this appeal is whether decedent's death resulted from an accident which arose out of and in the course of his employment." Courts have uniformly held that the "willful intention" of the employee so frequently mentioned in the statutes means something more than mere negligence or even gross or culpable negligence; it imports deliberateness, conduct to which moral blame attaches. See Ford Motor Co. v. Smith, 283 Ky. 795, 143 S.W. (2d) 507 (1940); Gignac v. Studebaker Corp., 186 Mich. 574, 152 N.W. 1037 (1915); Nickerson's Case, 218 Mass. 158, 105 N.E. 604 (1914).

[8] PROSSER, TORTS 528 et seq. (1941).

[9] Scholl v. Industrial Commission, 366 Ill. 588, 10 N.E. (2d) 360 (1937) (foreman shot on way to work by employee he had fired—recovery allowed); Aetna Casualty & Surety Co. v. Jones, (Ga. 1950) 61 S.E. (2d) 293 (employee required by work to travel from home injured on way home—recovery allowed).

[10] ". . . according to the great weight of modern authority, assaults are compensable if the assault arises out of a work matter and not out of a purely personal quarrel unrelated to the employment." Newell v. Moreau, 94 N.H. 439 at 441, 55 A. (2d) 476 (1947). See also Hegler v. Cannon Mills, 224 N.C. 669, 31 S.E. (2d) 918 (1944); Schueller v. Armour, 116 Pa. Super. 323, 176 A. 527 (1935).

[11] Hartford v. Cardillo, (D.C. Cir. 1940) 112 F. (2d) 11; Leonbruno v. Champlain Silk Mills, 229 N.Y. 470, 128 N.E. 711 (1920.

If expanded, this view might lead to compensation for injury from any assault while at work, no matter what the origin; at least one court has allowed compensation where the assault appears to have originated in personal animosity.[12] However, there is not as yet a sufficient number of cases so holding as to give much support to such a broad interpretation. In rare cases, compensation has not been allowed because the one seeking it was the aggressor, but the argument for this position is not very strong.[13] The principal case seems consistent with the general holding of the courts of this country, and it is certainly consistent with the purpose of the compensation act, which is to aid and protect the workman. The dictum is consistent with the trend, which has been, since the beginning, to give the acts a more and more liberal interpretation.[14] This trend seems justified, since the niceties and narrowness of the common law only create contempt for the law among the workers and their families, and since the purpose of the law is to benefit and protect the workers.[15]

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[12] Hartford v. Cardillo, supra note 11.

[13] Marion County Coal Co. v. Industrial Commission, 292 Ill. 463, 127 N.E. 84 (1920). The argument here was over work matter, but the court stressed the fact that decedent (aggressor) had no good reason for commencing the assault. The argument of the court might be interpreted to mean the death did not arise out of the course of the employment. The better rule seems to be that stated in Dillon's Case, 324 Mass. 102 at 107, 85 N.E. (2d) 69 (1949), where the court said, "So even where the employee himself strikes the first blow, that fact does not break the connection between the employment and the injury, if it can be seen that the whole affair had its origin in the nature and conditions of the employment, so that the employment bore to it the relation of cause to effect."

[14] The only variation from this trend has been by courts which find it difficult to forget the common law defenses of contributory negligence, assumption of risk, and the fellow-servant rule. Most courts agree with the decision in Hawkins v. Bleakly, supra note 3, which held these defenses abolished by the statute.

[15] Horovitz, "Modern Trends in Workmen's Compensation," 21 IND. L.J. 473 (1946).