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LEGISLATION-STATUTES IN PARI MATERIA-ADMINISTRATIVE BOARD RULINGS

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LEGISLATION—STATUTES IN PARI MATERIA—ADMINISTRATIVE BOARD RULINGS—Lane's application for an annuity[1] under the Railroad Retirement Act to the lower adjudicative branches of the Railroad Retirement Board[2] was denied. Lane, by claiming that a "grievance"[3] had been created by the railroad's in-

[1] "In order to qualify for an annuity under the Railroad Retirement Act of 1937, an individual must, on August 29, 1935, the enactment date of the statute, have been either (a) actively serving an employer; (b) in the employment relation to one or more employers; or (c) an employee representative. Title 45 U.S.C.A. section 228a (b)." Principal case at 821.

[2] Created by Railroad Retirement Act of 1937, 50 Stat. L. 307 (1937), 45 U.S.C. (1946) §228a.

[3] "The purposes of the chapter are: . . . (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." Railway Labor Act, 48 Stat. L. 1186 (1934), 45 U.S.C. (1946) §151a.

sistence[4] that he had voluntarily resigned from its service in 1933, then brought the matter before the National Railroad Adjustment Board,[5] which found that Lane had been an "employee" of the railroad from 1905 to 1937. When Lane's case was subsequently heard before the Retirement Board, the findings of the lower adjudicative branches of the Board were affirmed and the Board held that it was not bound by the findings of the National Railroad Adjustment Board in determining whether Lane was entitled to an annuity. On petition to review the findings of the Retirement Board that Lane was not entitled to an annuity, *held,* affirmed. The statutes are not to be read in pari materia for the purpose of determining who is an "employee" under the Railroad Retirement Act. *Lane v. Railroad Retirement Board,* (6th Cir. 1950) 185 F. (2d) 819.

It is a well settled rule of construction that statutes in pari materia should be construed together so as to avoid inconsistency and conflict.[6] However, just when two statutes are "upon the same matter" is often a difficult question to determine.[7] The approach commonly used is to hold statutes in pari materia if they relate to similar matters in purpose, remedies, or rights.[8] A limitation engrafted on this doctrine of construction in all but the federal courts[9] is the requirement that before the statutes will be construed in pari materia, there first must be an ambiguity in the statute to be interpreted or an inconsistency between the two statutes. The court in the principal case applies the usual approach of looking to the subject matter of the statutes in question when it says, "No rule of statutory construction requires two acts relating to separate and distinct subjects to be read in *pari materia* even though they affect the same general class of persons. An individual may be an employee, as defined in one act and not an employee, as that term is used in a different statute."[10] However, there is serious doubt whether this is a proper case for application of the rule,

[4] In order to determine whether the deceased was in an "employment relation," the Board found it necessary to look to the employer's (The Detroit, Toledo and Ironton Railroad) employment practices.

[5] Created by the Railway Labor Act of 1934, 48 Stat. L. 1188 (1934), 45 U.S.C. (1946) §153.

[6] Daniel v. Citizens and Southern National Bank, 182 Ga. 384, 185 S.E. 696 (1936); Welsh v. Kuntz, (Md. App. 1950) 75 A. (2d) 343; State ex rel. Lefholz v. McCracken, 231 Mo. App. 870, 95 S.W. (2d) 1239 (1936).

[7] See Ahern v. Livermore Union High School, Dist. of Alameda County (S.F. 12925), 208 Cal. 770, 284 P. 1105 (1930), where a statute dealing with a school district's liability to the public and another dealing with its liability to school children were held not to deal with the same subject and thus could not be construed together. CRAWFORD, STATUTORY CONSTRUCTION §231 (1940).

[8] United States v. Colorado & N.W.R. Co., (8th Cir. 1907) 157 F. 321; 36 CYC. 1147 (1910).

[9] Adams v. Fielding, 148 Fla. 552, 4 S. (2d) 678 (1941); 2 SUTHERLAND, STATUTORY CONSTRUCTION, 3d ed., §5201, note 1 (1943); 59 C.J., §620 (2)(a) and §619,d,(1) (1932). It is doubtful whether such a limitation exists in the federal courts. Once it is determined that the statutes are in pari materia, federal courts seem automatically to apply the doctrine; Suwanee Fruit and Steamship Co. v. Fleming, (U.S. Emergency Court of Appeals, 1947) 160 F. (2d) 897.

[10] Principal case at 822, citing Nashville, C. & St. L. Ry. v. Ry. Employees' Department of American Federation of Labor, (6th Cir. 1937) 93 F. (2d) 340 at 343.

even if the result is justified. The problem here would not appear to be whether the acts are in pari materia so far as "employee" is concerned, but rather whether a finding by one administrative board, *subsequent* to another board's finding on the same fact, is binding on appeal from the first board's previous decision where both boards deal with the rights of the same class of people. Actually, there is nothing to indicate that Congress had any different concept of "employee" in mind in passing the two acts, which were passed in their original form at the same session of Congress.[11] It is submitted that the court has created a dangerous precedent for the case where a finding from the National Railroad Adjustment Board had been obtained *before* petitioning to the Railroad Retirement Board by laying down such a broad rule in the present case. It would seem to be a better approach to deal with the problem as one of administrative board jurisdiction rather than one of administrative board power. Such an approach to the problem would bring about the same result, but the basis for it would be administrative board res judicata.[12] The court cites the provision of the Railroad Retirement Act that the Board's findings on questions of fact should be conclusive in support of its decision and reasoning, but ignores the fact that the provision is in the section of the act providing for review of the Board's decisions by the United States district courts.[13] That section in no way expresses congressional intent in regard to the effect of another administrative board finding on the same point.[14] Emphasis on the doctrine of pari materia may be perfectly proper in the construction of two statutes creating administrative boards dealing with the rights of the same class of people, but it is suggested that it is of doubtful validity in considering conflicting determinations of those boards.

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[11] The Railroad Retirement Act of 1934 was passed on June 27, 1934; the Railway Labor Act on June 7, 1934. The fact that they were passed in the same session, dealt with the same class of people, and were passed within such a short time of each other would seem to indicate a congressional intent that they be considered together and that "employee" have the same meaning in both. The Railroad Retirement Act of 1937 is a direct descendant of the 1934 act, which was adjudged unconstitutional in Railroad Retirement Board v. Alton R. Co., 295 U.S. 330, 55 S.Ct. 758 (1935), and the definition of "employee" and other definitions are essentially the same in the two acts.

[12] Particularly should this be true where, as here, the board is of the quasi-judicial type and its findings of fact are conclusive on appeal in absence of fraud and if supported by evidence, 45 U.S.C. (1946) §355(f). See Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 61 S.Ct. 908 (1941), rehearing den. 313 U.S. 599, 61 S.Ct. 1093 (1941), where finding of NLRB was held not directly reviewable.

[13] "Review of final order of Board on petition to District Courts; costs (f) . . . The findings of the Board as to facts, if supported by evidence and in the absence of fraud, shall be conclusive." Railroad Unemployment Insurance Act, 45 U.S.C. 355 (f), incorporated into the Railroad Retirement Act of 1937 by §11 of the act, 45 U.S.C. §228k.

[14] An exhaustive search of the CONG. REC. of 1934, 1935 and 1937 shows no indication of any intent so far as conflicting board rulings or board jurisdiction between the two boards is concerned.