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Workmen's Compensation - Injury Suffered During Coffee Break as Arising Out of and in the Course of Employment

Hazen V. Hatch S.Ed.
University of Michigan Law School

WORKMEN'S COMPENSATION—INJURY SUFFERED DURING COFFEE BREAK AS ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT—Plaintiff was employed by defendant laundry company as a mangle operator. A collective bargain-

ing agreement between the defendant and the union representing its employees provided for two paid ten minute rest periods during the work day. Plaintiff left the defendant's premises during such a rest period and went to a nearby restaurant. On her return she slipped on ice on defendant's front step and was injured. The Department of Labor and Industry found the injury compensable under the Michigan Workmen's Compensation Act.[1] On appeal, *held,* reversed, two justices dissenting. The place of the injury is not determinative of eligibility for compensation. Because defendant had no control over plaintiff's actions and because plaintiff was not actively engaged in rendering a service to defendant at the time of the accident, the injury did not arise out of and in the course of plaintiff's employment. *Salmon v. Bagley Laundry Co.,* 344 Mich. 471, 74 N.W. (2d) 1 (1955).

The majority of courts have recognized that an employee remains "in the course of" his employment when he is engaged in ministering to his personal health, comfort and necessities,[2] unless he acts in an independent and reckless manner or in conflict with specific instructions.[3] This rule is predicated either upon the theory that these are acts that a workman may reasonably do while employed[4] or upon the basis that they are of indirect benefit to the employer.[5] Although these theories are generally extended to include injuries occurring during rest periods, lunch periods, and coffee breaks,[6] the majority of the court in the principal case refuses to accept this application, basing their argument on the fact that the defendant did not have the right to control the workmen during the rest period because, during that time, they were free to leave his premises.[7] The "right to control" test has often been used to determine whether the employer-employee relationship exists,[8] but not in determining whether the act arises

1 Mich. Comp. Laws (1948) §411.1 et seq.

2 Zurich General Accident & Liability Ins. Co. v. Brunson, (9th Cir. 1926) 15 F. (2d) 906; Haller v. Lansing, 195 Mich. 753, 162 N.W. 335 (1917). See 7 SCHNEIDER, WORKMEN'S COMPENSATION, perm. ed., §1617 (1950).

3 Monahan v. Hoage, (D.C. Cir. 1937) 90 F. (2d) 419; Young v. Department of Labor & Industries, 200 Wash. 138, 93 P. (2d) 337 (1939); 7 SCHNEIDER, WORKMEN'S COMPENSATION, perm. ed., §1617 (1950).

4 Haller v. Lansing, note 2 supra.

5 Thomas v. Proctor & Gamble Mfg. Co., 104 Kan. 432, 179 P. 372 (1919); Mann v. Board of Education, 266 Mich. 271, 253 N.W. 294 (1934).

6 Sundine's Case, 218 Mass. 1, 105 N.E. 433 (1914); Zurich General Accident & Liability Ins. Co. v. Brunson, note 2 supra; Kubera's Case, 320 Mass. 419, 69 N.E. (2d) 673 (1946); Sullivan's Estate v. Motor Realty Corp., 272 App. Div. 986, 73 N.Y.S. (2d) 276 (1947); Biagi v. United States, (D.C. Cal. 1953) 115 F. Supp. 697. 7 SCHNEIDER, WORKMEN'S COMPENSATION, perm. ed., §1632 (1950); 16 NACCA L. J. 88 (1955).

7 Principal case at 474.

8 The majority cites Tuttle v. Embury-Martin Co., 192 Mich. 385, 158 N.W. 875 (1916); Dennis v. Sinclair Lumber & Fuel Co., 242 Mich. 89, 218 N.W. 781 (1928); and Janofski v.

in the course of the employment. The dissenting opinion of Justice Smith points out that adoption of such a test is a judicially instigated reversion to the very common law tests of liability which the workmen's compensation acts sought to eliminate.[9] The effect is to cut the working day into ". . . a checkerboard of legal relationships."[10] Such a test loses its usefulness once it is decided that the employer-employee relationship exists, for it would exclude many injuries heretofore assumed to be compensable.[11] The majority of the court implies that in order for the injury to be compensable an employee must be "actively" engaged in a service to his employer when the injury occurs. While many courts do require a finding of some benefit to the employer,[12] the rule in the principal case would apparently require the employee, when injured, to be actually producing for his employer in order for the injury to arise in the course of his employment. Justice Smith rejects any test of benefit, relying on *Haller v. Lansing*,[13] and adopting the theory that any act that a workman may reasonably do while employed ". . . as part of the on-the-job activities of the human being involved . . ." is in the course of his employment.[14] Any test of benefit smacks of a requirement of consideration passing from employee to employer. Surely such common law tests should be abolished when administering an act aimed at compensation, not damages.[15] The language of the dissenting opinion is broad enough to allow recovery wherever the injury occurs. Perhaps the requirement that an injury must arise "out of" as well as "in the course of" the employment to be compensable is a sufficient limitation upon such a suggestion.[16] Many courts require the finding of ". . . a causal connection between the conditions under which the work is required to be performed and the resulting injury" to substantiate a finding that the injury arose out of the employment.[17] The modern trend is to allow compensation when the nature, conditions, obligations, or incidents of employment create a zone of special danger out of which the injury

Federal Land Bank, 302 Mich. 124, 4 N.W. (2d) 492 (1942), all of which adopt the "right to control" test merely to determine whether the injured party was an independent contractor or an employee.

9 Principal case at 482-486.

10 Id. at 485.

11 Theoretically, under the majority's view, an injury suffered by an employee while getting a drink of water would not be compensable, because the employer does not have the right to control such acts.

12 Note 5 supra.

13 195 Mich. 753, 162 N.W. 335 (1917).

14 Principal case at 490.

15 O'Leary v. Brown-Pacific-Maxon, Inc., 340 U.S. 504, 71 S.Ct. 470 (1951); Hebert v. Ford Motor Co., 285 Mich. 607 at 610, 281 N.W. 374 (1938).

16 See McNicols Case, 215 Mass. 497, 102 N.E. 697 (1913).

17 Id. at 499; Daniel v. Murray Corp. of America, 326 Mich. 1, 39 N.W. (2d) 229 (1949).

arose.[18] In the context of lunch hour and rest period injuries most courts recognize a distinction between injuries occurring on or off the premises of the employer,[19] only the former being compensable as arising out of the employment.[20] The distinction is based on the fact that once an employee leaves his employer's premises, unless at the latter's direction,[21] an injury does not occur because of a hazard of the employment.[22] The rationale is not that the employer may control the employee on his premises, but that he has control over the premises and the duty to keep them in a reasonably safe condition.[23] Since the injury in the principal case occurred on the steps of the employer's premises most courts would hold the injury compensable.[24] This result could be reached either on the theory that injuries on the premises of the employer during rest periods are compensable, or on the theory that plaintiff was returning to work just as she would in the morning or after lunch.[25] A 1954 amendment to the Michigan act provides that every employee going to or from work while on the premises of his employer

18 Thom v. Sinclair, [1917] A.C. 127; Caswell's Case, 305 Mass. 500, 26 N.E. (2d) 328 (1940); O'Leary v. Brown-Pacific-Maxon, Inc., note 15 supra.

19 Some extend compensable injuries beyond the premises of the employer. See, e.g.: Barnett v. Britling Cafeteria Co., 225 Ala. 462, 143 S. 813 (1932); Kasari v. Industrial Commission, 125 Ohio St. 410, 181 N.E. 809 (1932); 82 A.L.R. 1043 (1933); 85 A.L.R. 97 (1933). Some courts disallow compensation where the injury occurs on the premises, although at a remote place. Hills v. Blair, 182 Mich. 20, 148 N.W. 243 (1914). Tennessee distinguishes between the employer's "property" and his "premises." Bennett v. Vanderbilt University, (Tenn. 1955) 277 S.W. (2d) 386.

20 Haller v. Lansing, note 2 supra; Monahan v. Hoage, note 3 supra; Kubera's Case, note 6 supra. 7 SCHNEIDER, WORKMEN'S COMPENSATION, perm. ed., §1634 (1950); 38 CORN. L. Q. 470 (1953); 6 A.L.R. 1151 (1920); 141 A.L.R. 862 (1942). This rule applies only where the employee has a fixed place of employment, and does not include truck drivers, traveling salesmen, etc.

21 Beaudry v. Watkins, 191 Mich. 445, 158 N.W. 16 (1916); Anderson v. Kroger Grocery & Baking Co., 326 Mich. 429, 40 N.W. (2d) 209 (1949).

22 Jamison v. State Temporary Commission on Agriculture, 308 N.Y. 683, 124 N.E. (2d) 321 (1954).

23 Schank v. Glenn L. Martin-Nebraska Co., 147 Neb. 385, 23 N.W. (2d) 557 (1946). If an employee is in a place not permitted by the employer he is not in the course of his employment. See note 3 supra.

24 Hallett's Case, 232 Mass. 49, 121 N.E. 503 (1919); Sundine's Case, note 6 supra; Kantor v. William Armstrong Publishing Co., 236 App. Div. 749, 258 N.Y.S. 488 (1932); Travelers Ins. Co. v. Smith, 91 Ga. App. 305, 85 S.E. (2d) 484 (1954). This is true even if the premises are used by the public, too. Manville v. Department of Labor, 294 N.Y. 1, 59 N.E. (2d) 780 (1944).

25 This involves application of the "coming and going" rule. Generally, an injury to an employee going to or from work is not compensable unless the injury occurs on the employer's premises a reasonable time before or after working time. See Western Coal & Mining Co. v. Industrial Commission, 296 Ill. 408, 129 N.E. 779 (1921); 7 SCHNEIDER, WORKMEN'S COMPENSATION, perm. ed., §1629 (1950).

be presumed to be in the course of his employment.[26] It is hoped that this amendment will be construed to include not only persons going to or from work, but also employees injured on their employer's premises during rest periods.

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26 Mich. Comp. Laws (1948; Supp. 1955) §412.1. This statute was not applied in the principal case because the injury occurred in 1951, but on the theory of Rookledge v. Garwood, 340 Mich. 444, 65 N.W. (2d) 785 (1954), the statute might have been given retroactive effect. The amendment is remedial, and merely restores a remedy recognized in Michigan as late as 1948 that an injury on the employer's premises was compensable even though the conduct had but an indirect connection with the employment. Haggar v. Tanis, 320 Mich. 295, 30 N.W. (2d) 876 (1948). See also Brink v. J. W. Wells Lumber Co., 229 Mich. 35, 201 N.W. 222 (1924), subsequently overruled by Weaver v. General Motors Corp., 330 Mich. 404, 47 N.W. (2d) 665 (1951).