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Workmen's Compensation—Jurisdiction Where Job Situs Outside State

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owner of an auto, sued under the Vehicle and Traffic Law and not present at the time of the accident, to implead the actively negligent driver of his vehicle and to obtain recovery over against him under section 193-a of the Civil Practice Act.[6] The Court said that if the plaintiff were allowed to recover against the owner here in either of the cases, the owner would then have a right of recovery over against the co-employee driver, thus defeating the injured employee's bar from bringing action against his co-employee (and, in fact, thereby defeating the co-employee's immunity from suit) under the "exclusive remedy" provision of the Workmen's Compensation Law.

Jurisdiction Where Job Situs Outside State

Workers today may often be called upon to do various jobs outside the state. This raises a close question as to where the employment is "located" for purposes of determining jurisdiction in workmen's compensation cases. The New York Workmen's Compensation Law does not contain any provision for the granting of compensation to New York employees who are injured while outside its territorial limits. However, it has been interpreted, in appropriate cases, to extend to such employees.[7]

The test in such cases is whether the work performed outside the state was in its nature transitory and incidental to general employment in New York or whether the employment was at a fixed location outside the state. There is no rigid rule for determining this, but it is rather on evaluation of the significant contacts with the state.[8] Thus it appears that the facts of each case will govern the decisions and not juristic concepts.

In *Nashko v. Standard Water Proofing Co.*,[9] the deceased employee was a resident of New York and his employment was controlled and directed from this state. The decedent had worked as a steam cleaner at various jobs for his New York employer from 1945 until 1950, when he was sent to New Jersey to work on a specific project. For purposes of union regulations, he was designated as a New York employee and received boarding expenses while working outside of the state. He was also covered by a compensation policy procured in New York and there was an understanding that he would return to this state after the New Jersey assignment.

The Court felt that these factors, coupled with the presumption of coverage

6. Traub v. Dinzler, 309 N.Y. 395, 131 N.E.2d 564 (1955).
7. In re Post, 216 N.Y. 544, 111 N.E. 351 (1916).
8. Cameron v. Ellis Construction Co., 252 N.Y. 394, 169 N.E. 622 (1930).
9. 4 N.Y.2d 199, 173 N.Y.S.2d 565 (1958).

raised by the Workmen's Compensation Law,[10] were sufficient to offset the Appellate Division's ruling, as a matter of law, that the employment was so unrelated to and remote from New York that the Workmen's Compensation Board had no jurisdiction.[11]

Timeliness of Application

Hengel v. Federici[12] was concerned with the length of time within which a claim for reimbursement from the Workmen's Compensation Special Disability Fund must be filed. The statute sets forth 104 weeks from the date of the disability as the time limit within which an employer must file in order to receive reimbursement.[13] In the instant case the Workmen's Compensation Board erroneously established August 22, 1947, as the date of the injury rather than April 15, 1947, the actual date of the employee's injury. Claim for reimbursement was not made by the employer's insurance carrier until June 22, 1949, but the carrier claimed that it should not be barred from reimbursement because of the Board's erroneous original determination. Without deciding whether under other circumstances the failure to file within the 104 week period might not preclude reimbursement, the Court disallowed the carrier's claim because the carrier had ample notice of the date of actual injury, and the Board's erroneous determination in no way affected the carrier's notice of the correct date.

Scope of Employment

A. In *Miller v. Bartlett Tree Expert Co.*,[14] a supervisory employee in the tree surgery business was directed by his employer to attend an annual conference which included both daytime and evening sessions. While working outside during an afternon session, claimant became dirty due to the handling of soil. As he was preparing to attend the evening session, he slipped in the shower, incurring an injury.

The Court held (5-2), without citing any authority, that the injury was compensable. The Court reasoned that, since his presence and participation were commanded by his employer at both day and evening sessions and the shower was taken between the two sessions, it "necessarily" arose out of and in the course of his employment.[15]

10. N. Y. WORKMEN'S COMPENSATION LAW, §21 provides that:
> In any proceeding, there is a presumption that the claim comes within the provision of the chapter which can be rebutted by substantial evidence to the contrary.

11. Nashko v. Standard Water Proofing Co., 4 N.Y.2d 199, 173 N.Y.S.2d 565 (1958).
12. 4 N.Y.2d 176, 173 N.Y.S.2d 291 (1958).
13. N. Y. WORKMEN'S COMPENSATION LAW §15(8).
14. 3 N.Y.2d 654, 171 N.Y.S.2d 77 (1958).
15. N. Y. WORKMEN'S COMPENSATION LAW §10.