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Workmen's Compensation—Timeliness of Application

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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 afternoon 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.