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Workmen's Compensation—Lunch-Time Injuries on Employer's Premises

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Some states have assumed jurisdiction where the N. L. R. B. refused it due to self-imposed limitations. See 16 U. PITT. REV. 376 (1955); 34 L. R. R. M. 75 (1954). And in New York, some proponents of state regulations cling to an early decision, *Davega City Radio v. N. Y. S. L. R. B.*, 281 N. Y. 13, 22 N. E. 2d 145 (1939), holding that the state board may act until ousted by the N. L. R. B.'s exercise of its jurisdiction. See also *Natelson Bros. v. N. Y. S. L. R. B.*, 194 Misc. 635, 88 N. Y. S. 2d 129 (Sup. Ct. 1949). However, as the Supreme Court and N. L. R. B. declare greater breadth to federal pre-emptive powers under Taft-Hartley, these state policies are reduced to innocuous obscurity. The *Oak Flooring Case* extends the implied federal pre-emptive doctrine to protect a non-complying union's coercive and economic practices that are designed to force management's compliance with lawful union demands viz—peaceful picketing.

It is to be noted that the consequences of non-compliance may, in some instances, have a serious and detrimental effect upon a union seeking representation. Providing an election bar does not exist, an employer or rival union may request an N. L. R. B. certification wherein the non-complying union will not be allowed a place on the ballot. See *U. M. W. v. N. L. R. B.*, 38 L. R. R. M. 2711, 2713 (1956).

As to the judicial attitude afforded pre-emptive rights under Taft-Hartley, one finds an obvious substantiation of federal direction and control over labor relations. In the 84th Congress, a bill was introduced in the Senate that would have prevented federal laws, such as the Taft-Hartley Act, from taking precedence over consistent state laws dealing with the same subject except where specifically provided. See 38 L. R. R. M. 122 (1956). The bill failed to receive appreciable support from the legislators. Until such time as Congress should specify otherwise the federal pre-emptive powers will remain broadly construed.

Donald N. Roberts

Workmen's Compensation—Lunch-Time Injuries On Employer's Premises

Plaintiff, an employee of defendant company, having commenced her lunch hour, proceeded to a company-sponsored cafeteria located on defendant's property a short distance from the building where plaintiff worked. As she walked across defendant's driveway, she slipped on the ice, sustaining an injury for which the Michigan Workmen's Compensation Department awarded compensation. Held (5-3): award set aside on the grounds that the injury did not arise out of and in the course of the employment as plaintiff was not actively engaged in the

employer's business at the time of the injury. *Mack v. Reo Motors*, —Mich.—, 76 N. W. 2d 35 (1956).

The general rule is that an injury sustained on the property of the employer during the regular lunch hour is in the course of employment and thus is compensable under workmen's compensation even though the interval is technically outside the regular hours of employment in the sense that the worker receives no pay for that time and is in no degree under the control of the employer. *Mitchell v. Ball Bros. Co.*, 97 Ind. App. 642, 186 N. E. 900 (1933); *Humphrey v. Industrial Comm'n*, 285 Ill. 372, 120 N. E. 816 (1918); *Blouss v. Delaware Lackawanna & Western R.R. Co.*, 73 Pa. Super. 95 (1919); *Racine Rubber Co. v. Industrial Comm'n*, 165 Wis. 600, 162 N. W. 664 (1914). This rule is an offspring of the theory that the employee need not be actively and directly engaged in the employer's service to be within the course of his employment. The injury need only have arisen in close proximity in time and activity to the employer's service. *Bountiful Brick Co. v. Giles*, 276 U. S. 154 (1928); *Cudaby Packing Co. v. Parramore*, 263 U. S. 418 (1923); *Postal Teleg. Cable Co. v. Industrial Accident Comm'n*, 1 Cal. 2d 730, 37 P. 2d 441 (1934). The courts have been even more prone to award compensation when the injury occurred while the employee was leaving his actual working place but was still on the employer's premises. *Utah Apex Mining Co. v. Industrial Comm'n*, 67 Utah 537, 248 P. 490 (1926); *Wirta v. North Butte Min. Co.*, 64 Mont. 279, 210 P. 332 (1922).

New York follows the general rule in the application of its own Workmen's Compensation Law. *Reynolds v. Oswego Falls Corp.*, 264 App. Div. 965, 37 N. Y. S. 2d 167 (3d Dep't 1942), *leave to appeal denied*, 265 App. Div. 888, 38 N. Y. S. 2d 373 (3d Dep't 1942); *Smith v. City of New York*, 261 App. Div. 860, 24 N. Y. S. 2d 750 (3d Dep't 1941), *aff'd mem.*, 285 N. Y. 646, 33 N. E. 2d 561 (1941).

However, even though an injury occurs on the employer's premises during the lunch hour, compensation is generally denied where the employee is engaged in an unauthorized act at the moment of the injury. *Moore v. Superior Stone Co.*, 242 N.C. 647, 89 S. E. 2d 253 (1955), (setting off dynamite caps during noon hour); *Robertson v. Express Container Corp.*, 26 N. J. Super. 274, 97 A. 2d 693 (1953), (exploring other parts of premises where employee was not authorized to go). Plaintiff here clearly did not fall into this category as she was using the only authorized route to the cafeteria.

Michigan in this case has formulated a rule completely at odds not only with the general rule but also with an earlier Michigan rule set out in *Hallar v. City of Lansing*, 195 Mich. 753, 162 N. W. 335 (1915). *Luteran v. Ford Motor Co.*, 313 Mich. 487, 21 N. W. 2d 825 (1946) was cited as the basis for the

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present decision. In that case, an employee watching a baseball game on the employer's property during the lunch hour was injured by a swinging bat. The game was not sponsored by the employer but he allowed recreational activity to take place during the lunch hour. The *Luterau* case, though generally agreeing with the Michigan theory that the injury must have occurred while the employee was actively engaged in the employer's business to be compensable, can be distinguished from the instant case in that watching a baseball game at the time of the injury is quite remote from the employer's service as compared with walking on the employer's driveway on the way to lunch, especially since the game was not sponsored by the employer and the cafeteria was so sponsored. The court did not think this difference was sufficient to draw the line between an activity falling within the course of employment and one which did not. But, by not so distinguishing, Michigan comes squarely in conflict with the general rule in the country.

Though the application of workmen's compensation is made easier under the Michigan interpretation that the employee must be actively engaged in the employer's business at the time of the injury to be compensable, the justice of such a position is questionable. Since most states would have awarded compensation to the plaintiff, it appears that such an injury as she sustained was intended to come within most workmen's compensation statutes. *American Steel Foundries v. Czapala*, 112 Ind. App. 212, 44 N.E.2d 204 (1942); *Weiss v. Friedman's Hotel*, 37 Erie 237 (1953), *aff'd.*, 176 Pa. Super. 98, 106 A.2d 86 (1954). By strictly construing the words "in the course of employment" Michigan has apparently subverted the very purpose of the act—to place the financial burden of industrial accidents on the employer as an expense of the business which received the benefits of the injured employee's services and which engendered such accident. *New York Central R.R. Co. v. White*, 243 U. S. 188 (1917).

Diane C. Gaylord

Workmen's Compensation: Immoral Activity as Within Scope of Employment

A bank vice president, while on an "all expense paid" business trip in New York, was burned to death in his hotel room. A woman not his wife but registered as such also died as a result of the fire in the room. There was evidence of drinking and it was determined that the conflagration had been caused by careless smoking although there was no determination as to which of the two occupants had been actually responsible. Held, (5-2): Death benefits should not have been denied. *Wiseman v. Industrial Accident Commission*, — Cal. 2d —, 297 P. 2d 649 (1956).