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Workmen's Compensation—Intermittent Employment

Morton Mendelsohn

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be noted that the *Sullivan* decision is in harmony with the great weight of authority in other jurisdictions.²⁹

Intermittent Employment

Workmen's Compensation Law § 203 provides: "Employees in employment of a covered employer for four or more consecutive weeks shall be eligible for disability benefits as provided in section two hundred four."

In *Russomanno v. Leon Decorating Co.*,³⁰ a painter had worked for several employers for varying periods of time, but in no event did he work for one employer for the statutory minimum of four consecutive weeks. The court held³¹ that his injury, sustained in the course of employment, was not compensable, despite evidence that he was ready and willing to work steadily, and that the intermittent nature of his employment was in accordance with the pattern of the trade.

The Appellate Division had affirmed an award on the ground that claimant was "in employment" for the required period in the sense that he was available for work in accordance with trade practice.³² But the Court of Appeals rejected this reasoning, relying on the "plain meaning" of the statute.

The effect of this decision is to exclude from coverage many workmen whose employment is intermittent.³³ The court found this unobjectionable, in view of the fact that there are several other exclusions found in the statute;³⁴ but it may be questioned whether the obviously remedial intent of the statute is best served by the strict construction adopted by the court.

29. *Ibid.*

30. 306 N. Y. 521, 119 N. E. 2d 367 (1954).

31. Conway and Dye, JJ., dissenting, and following the Appellate Division decision, *infra*, note 32.

32. 282 App. Div. 18, 121 N. Y. S. 2d 732 (3d Dep't 1953). The decision relied on Regulation 52(b), promulgated by the Board, which provides for eligibility when "in employment during the work period usual to and available during such four consecutive weeks in any trade or business in which he is regularly employed and in which hiring from day to day of such employees is the usual employment practice." But the Court of Appeals refused to construe the regulation: ". . . Whatever be its full meaning and bearing, it cannot overrule the statute itself and we assume it was not intended to do so." *Supra*, note 30 at 525, 119 N. E. 2d at 369.

33. Such factors as weather, hiring practices, and nature of work could limit the possibility of steady employment in many cases; thus the benefits of the statute might be seriously restricted. This was pointed out in the Appellate Division, *supra*, note 32 at 19, 121 N. Y. S. 2d at 734.

34. See WORKMEN'S COMPENSATION LAW § 201 (6).