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Workmen's Compensation—Contribution by Prior Employers

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cated that where there is evidence of a claimant's bad faith, *e. g.*, where it appears that claimant rejected jobs at higher pay which he was physically able to perform, "actual earnings" would not be the sole measure of the rate of compensation.⁴³

Contribution By Prior Employers

Successive decisions have engrafted to the Workmen's Compensation Law a proviso that where prior compensable injuries have contributed measurably to ultimate disability, the award should be apportioned among the prior employers in proportion to the extent to which the earlier accidents contributed to the final condition.⁴⁴ This rule was reaffirmed by the Court of Appeals this term in two cases joined on appeal,⁴⁵ despite serious problems of statutory construction.

Claimants *Meszaros* and *Braunstein* had suffered prior compensable injuries, and ultimate disability following their latest injuries was found to have been caused in part by the earlier accidents. The problem appeared in the fact that their earnings after the latest accidents were *greater* than they had been at the time of the earlier contributing accidents. The court held that the award should be charged in part against the earlier employers, despite the fact that their liability might exceed the wages paid to claimants while they were in the earlier employ.

The New York statute provides:

In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages which the employee was receiving at the time the injury occurred.⁴⁶

The majority observed that the statute referred only to earnings at the time of the latest injury, for which compensation is now being awarded. Any other result, it was argued, would permit

43. See, *e. g.*, *Santo v. Symington Mach. Co.*, 237 App. Div. 242, 261 N. Y. Supp. 706 (3d Dep't 1932).

44. *Anderson v. Babcock & Wilcox Co.*, 256 N. Y. 146, 175 N. E. 654 (1931); *Chiodo v. Newhall Co.*, 254 N. Y. 534, 173 N. E. 854 (1930); *Zuk v. McGuire Bros.*, 277 App. Div. 956, 99 N. Y. S. 2d 617 (3d Dep't 1950); *Thomas v. Royal Dairy*, 270 App. Div. 688, 63 N. Y. S. 2d 276 (3d Dep't 1946).

45. *Meszaros v. Goldman*, *Braunstein v. General Marine Repair*, 307 N. Y. 296, 121 N. E. 2d 232 (1954). In the *Braunstein* case the Appellate Division had affirmed an award against the latest employer only, on the ground that WORKMEN'S COMPENSATION LAW § 15 (6) demanded it. 281 App. Div. 1059, 121 N. Y. S. 2d 386 (3d Dep't 1953). In *Meszaros*, an award partly against the prior employer was upheld on the theory that the statute applied only to earnings greater than those obtaining at the time of the latest accident. 281 App. Div. 1063, 121 N. Y. S. 2d 421 (3d Dep't 1953).

46. WORKMEN'S COMPENSATION LAW § 15 (6).

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a prior employer to escape from contribution merely because a claimant's wages increased after leaving the former employ.

But the dissenters⁴⁷ strongly contended that:

1. The statute in its terms does not compel apportionment of the award among employers.⁴⁸
2. None of the decisions which have authorized *pro rata* division on the basis of contributory causation prevent a claimant from recovering the entire award from the latest employer if earlier employers, for any reason, are unable to contribute.
3. Even if, as the majority concluded, § 15(6) was drafted with reference to a single accident involving but one employer, the reasons for extending it to cover successive accidents are compelling.

The dissent suggested that the purpose of the enactment of § 15(6) was to limit an employer's contingent liability, *i. e.*, to ensure that the employer may not be charged if the reduced earnings after the accident exceed the earnings before the injury occurred; therefore:

. . . it is not less likely to have been the legislative intention to preclude such a consequence if in after years the claimant, while working for somebody else in an era when prevailing wage rates are disproportionate to those existing when he was in the former employ, sustains an aggravation of the previous condition while working for another.⁴⁹

While an award solely against the latest employer appears to penalize him *vis-à-vis* prior employers whose earlier accidents are found to have contributed to the present disability, it is arguable that this apparent inequity is outweighed by the cogency of the dissent in the instant case.

XIII. OTHER CASES

Religious Associations

The Congregational Christian Churches of the United States and the Evangelical and Reformed Church proposed to unite under the name of the United Church of Christ. The General Council of the former organization after a lengthy study, endorsed the union. Over seventy per cent of its member churches, who voted on the

47. Van Voorhis, J., with Lewis, Ch. J., concurring.

48. WORKMEN'S COMPENSATION LAW § 15 (5), (7).

49. *Supra*, note 45 at 306, 121 N. E. 2d at 237.