Buffalo Law Review

Volume 5 | Number 1 Article 46

10-1-1955

Workmen's Compensation—Statute of Limitations

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WORKMEN'S COMPENSATION

Statute of Limitations

Workmen's Compensation Law § 28 provides: "The right to compensation under this chapter shall be barred . . . unless within two years after the accident... a claim shall be filed with the chairman . . . ."

In *Cook v. Buffalo General Hospital*,[1] claimant, a student nurse, was sent from Children's Hospital, (her general employer), to General Hospital (her special employer), for further training, and there contracted tuberculosis. Children's Hospital made advance payments of compensation in the form of medical care, but no claim was filed within the two year statute of limitations by the employee.

The court *held* (4-3), that advance payments of compensation by a general employer toll the statute of limitations as to a special employer, and an award may be made against the special employer alone. It is assumed by both opinions that medical care for an injured employee given by his employer is such an advance payment of compensation as to make filing of a formal claim by the employee unnecessary,[2] and that if there were a timely filing of a claim in the instant case, an award could be sustained against either or both of the employers.[3]

The majority relied on the language in *De Noyer v. Cavanaugh*[4] to the effect that although a workman has a special and a general employer, this is not inconsistent with the relation of employer and employee between both of them and him, and also upon the express provisions of Workmen's Compensation Law §18.[5] The result thus reached is that the term *employer* in §18 includes both general and special employers as a unit, and an act by one tolling the statute of limitations has the same effect on the other.

The dissent argues that under C. P. A. §59,[6] advance payment by one of jointly or severally liable persons does not toll the statute of limitations as to the others, and there is no distinction in this respect between the C. P. A. and Work-

1. 308 N. Y. 480, 127 N. E. 2d 66 (1955).
2. *Glowney v. Statler's Restaurant*, 267 App. Div. 1020, 48 N. Y. S. 2d 147 (3rd Dep't 1944); *appeal denied*, 268 App. Div. 835, 50 N. Y. S. 2d 466 (3rd Dep't 1944); *appeal dismissed*, 293 N. Y. 854, 59 N. E. 2d 442 (1944).
3. *De Noyer v. Cavanaugh*, 221 N. Y. 273, 116 N. E. 992 (1917).
4. 221 N. Y. at 276, 116 N. E. at 992.
5. "No case in which an advance payment is made to an employee . . . shall be barred by the failure of the employee . . . to file a timely claim."
6. "An acknowledgment or promise contained in a writing signed by the party to be charged is the only competent evidence of a new or continuing contract whereby to take case out of the operation of the article relating to the limitations of time within which an action may be brought . . . ."

men's Compensation Law. Although this opinion accurately reflects the traditional rule for tolling a statute of limitations, the analogy is inaccurate when it is attempted to be applied to Workmen's Compensation Law, where the public policy is to construe the provisions liberally in favor of injured employees.[7]

The instant situation is unusual in that there is no question that the general employer could have been held liable for an award,[8] but the claimant chose to hold the special employer alone liable. The policy towards liberal construction will sustain this decision, but it is suggested that in the ordinary case where both employers would be joined, this result need not follow, since relief can be given the employee against the employer making advance payments of compensation, thereby making application of the public policy unnecessary.

Hearsay Evidence

In *Doca v. Federal Stevedoring Company,*[9] claimant was injured by a crane owned by his employer after finishing work for the day and starting home. The employee never filed a claim, although the employer filed a report of the accident, and upon an award for the employee by the Workmen's Compensation Board, the employee took the unusual position of appealing, thereby hoping to gain a reversal so as to commence an action for negligence.

The court, affirming the Appellate Division,[10] *held,* that the Board had jurisdiction, and that the finding that the accident arose *out of and in the course of employment* had support on the record.

Judge Desmond writing for the majority disposes of the jurisdictional question by pointing out that in a previous common-law action brought by this employee,[11] it was held that the filing of the report by the employer conferred an initial jurisdiction on the Board, and this is *res judicata.* It was further held that since the employer's carrier paid compensation before an award to the employee, the Board had jurisdiction without a claim ever being filed by the injured employee.[12]

The evidence upon which the award was based was the reports filed by the employer and attending doctor. This was hearsay evidence which is admissable in

7. *Kiriloff v. A. G. W. Wet Wash Laundry,* 257 App. Div. 37, 12 N. Y. S. 2d 109 (3rd Dep't 1939); *reargument denied,* 258 App. Div. 818, 15 N. Y. S. 2d 815 (3rd Dep't 1939); *appeal dismissed* 282 N. Y. 466, 27 N. E. 2d 11 (1940).

8. Notes 2 and 3 *supra.*

9. 308 N. Y. 44, 123 N. E. 2d 632 (1954).

10. 284 App. Div. 46, 130 N. Y. S. 2d 172 (3rd Dep't 1954) [unanimous opinion written by Imrie, J].

11. *Doca v. Federal Stevedoring Co.,* 305 N. Y. 648, 112 N. E. 2d 424 (1953).

12. *Meaney v. Keating,* 305 N. Y. 660, 112 N E. 2d 763 (1953).