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WORKMEN'S COMPENSATION—STATUTORY CONSTRUCTION—THE DEMISE OF THE LIBERALITY RULE?

Bernard Fair was injured in the course of his employment with Korhumel Steel and Aluminum Company, and the West Virginia Workmen's Compensation Commission awarded Fair \$2,832. Fair subsequently filed a common law negligence action against Korhumel in the federal district court¹ on the theory that the company had not qualified for, and therefore was not covered by, the West Virginia Workmen's Compensation Act.² The district court dismissed Fair's claim stating that although Korhumel had been "sloppy"³ in its attempt to qualify under the Act, it had qualified sufficiently to bar Fair's negligence action.⁴ Fair appealed to the Court of Appeals for the Fourth Circuit. *Held*, reversed. The court of appeals ruled that Korhumel had done nothing to qualify under the West Virginia Workmen's Compensation Act and that there was insufficient evidence of a relationship⁵ between the National Steel Corporation and Korhumel for Korhumel to be covered by the fund under the National Steel account. *Fair v. Korhumel Steel & Aluminum Co.*, 473 F.2d 703 (4th Cir. 1973).

The West Virginia Code outlines the procedures necessary for an employer to qualify under the West Virginia Workmen's Compensation Act. A West Virginia employer must: (1) make a deposit with the State Compensation Commissioner at the time of application;⁶ (2) make quarterly payroll reports to the Commissioner;⁷ (3) provide notice to his employees of the election to subscribe to the

¹ The federal court had diversity jurisdiction, since Fair was a resident of West Virginia and Korhumel was an Illinois corporation. *Fair v. Korhumel Steel & Aluminum Co.*, 473 F.2d 703, 704 (4th Cir. 1973).

² W. VA. CODE ANN. §§ 23-1-1 to -6-1 (1973 Replacement Volume).

³ 473 F.2d at 704.

⁴ W. VA. CODE ANN. § 23-2-6 (1973 Replacement Volume). The Act provides:

Any employer subject to this chapter who shall elect to pay into the workmen's compensation fund the premiums provided by this chapter shall not be liable to respond in damages at common law or by statute for the injury or death of any employee however occurring, after such election and during any period in which such employer shall not be in default in the payment of such premiums and shall have complied fully with all other provisions of this chapter.

⁵ See text accompanying note 16 *infra*.

⁶ W. VA. CODE ANN. § 23-2-5 (1973 Replacement Volume).

⁷ *Id.*

workmen's compensation fund;⁸ and (4) make quarterly premium payments to the State Compensation Commissioner,⁹ or, in lieu of making payments to the fund, elect to become a self-insurer by submitting to a finding of fact by the Commissioner that the employer is financially responsible, posting sufficient bond, and contributing to the administrative costs of the Commission.¹⁰ A foreign employer must comply with the same requirements as a West Virginia corporation and must also file with the Commissioner a certificate from the Secretary of State showing that the employer is qualified to do business in the State.¹¹

Despite Korhumel's contention that it had qualified under the Act, the court of appeals found "100 percent failure to comply either on a premium paying basis or as a self-insurer."¹² Korhumel also contended that National Steel Corporation had taken sufficient action to qualify Korhumel under the Act. National Steel did attempt to qualify Korhumel as one of its divisions, and Korhumel was listed as such with the Commission; however, the court stated that this was an erroneous listing because of the lack of a sufficient relationship between the two corporations.¹³

The court recognized that "the West Virginia Act should not be viewed with an overly technical eye,"¹⁴ but it found that Korhumel's inaction was not merely a technical flaw but one that went to "the heart of the statute—the public policy of assuring that employees will be protected."¹⁵ The court believed that to allow Korhumel to bar Fair's claim would be to condone the "creation of a situation that permits an employer to choose, after the event, whether it will be advantageous to come within the Workmen's Compensation Act,"¹⁶ thus undermining the employee's assurance of indemnification.

Judge Bryan dissented and stressed that Korhumel had made no attempt to qualify under the Act on the assumption that it was covered as a division of National Steel Corporation. Korhumel was

⁸ *Id.* § 23-2-7, construed in *Daniels v. Boldt Co.*, 78 W. Va. 124, 88 S.E. 613 (1916).

⁹ W. VA. CODE ANN. § 23-2-5 (1973 Replacement Volume).

¹⁰ *Id.* § 23-2-9.

¹¹ *Id.* § 23-2-1.

¹² 473 F.2d at 705.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 706.

¹⁶ *Id.*

a wholly-owned subsidiary of National Steel, National's report of earnings included Korhumel's payroll, and Korhumel operated under lease on the property of National Steel at Weirton, West Virginia. Furthermore, in 1965, representatives from National Steel met with the Commissioner to determine Korhumel's status and eligibility for coverage under National Steel's account. It was decided, and confirmed by letter, that Korhumel was to be covered under the National Steel account, and thereafter, claims by Korhumel Steel employees were reported under National's account number. Fair in his application for compensation declared that he was an employee of "National Steel Corporation (Korhumel Steel and Aluminum Company)."¹⁷

The purposes of the West Virginia Workmen's Compensation Act, as established by case law are: (1) prompt compensation to injured employees;¹⁸ (2) assurance of employee indemnification;¹⁹ and (3) protection for employers from court suits and the resulting verdicts.²⁰ The West Virginia court has applied a so-called "liberality rule" to workman's compensation law, and has consistently held that the Workmen's Compensation Act should be given a liberal interpretation in order to accomplish its intended purposes.²¹ By overemphasizing the finer points of compliance with

¹⁷ *Id.* at 708 (dissenting opinion).

¹⁸ *State ex rel. Conley v. Pennybacker*, 131 W. Va. 442, 448, 48 S.E.2d 9, 13 (1948).

¹⁹ *Richardson v. Belcher*, 404 U.S. 78, 83-84 (1971); *Jones v. Laird Foundation, Inc.*, 195 S.E.2d 821, 827 (W. Va. 1973) (concurring opinion); *Chiericozzi v. Compensation Comm'r*, 124 W. Va. 213, 216-17, 19 S.E.2d 590, 592 (1942).

²⁰ *Jones v. Laird Foundation, Inc.*, 195 S.E.2d 821, 827 (W. Va. 1973) (concurring opinion); *Mains v. J.E. Harris Co.*, 119 W. Va. 730, 732-33, 197 S.E. 10, 11 (1938). See also *De La Mater, A Brief Survey of the West Virginia Law of Compensability*, 62 W. VA. L. REV. 303 (1960).

In *Jones*, the court recognized the dual function of the workmen's compensation laws.

The very purpose of the workmen's compensation laws is to release both employer and employee from the often burdensome common-law rules of liability and damages. Its policy is to protect the employer from expensive and unpredictable litigation and to provide compensation for injuries to employees without the burdensome requirements of proving common-law negligence.

195 S.E.2d at 827 (concurring opinion).

²¹ *Bragg v. State Workmen's Compensation Comm'r*, 152 W. Va. 706, 166 S.E.2d 162 (1969); *Estes v. Workmen's Compensation Comm'r*, 150 W. Va. 492, 147 S.E.2d 400 (1966); *Walk v. State Compensation Comm'r*, 134 W. Va. 223, 58 S.E.2d 791 (1950); *Prince v. Compensation Comm'r*, 123 W. Va. 67, 13 S.E.2d 396 (1941); *McVey v. Chesapeake & Potomac Tel. Co.*, 103 W. Va. 519, 138 S.E. 97 (1927).

the Act and by ignoring Korhumel's relationship with National Steel, the federal court defeated the purposes of the Act, through a strict construction rather than a liberal application of the Act to affect those purposes.

Fair had been promptly compensated from the fund, but by negating Korhumel's qualification and leaving Fair to attempt to recover through a tort action that conceivably would not be tried for some time, the court delayed Fair's recovery,²² and thus defeated the first purpose of the Act, *prompt* compensation. Furthermore, instead of assuring Fair compensation, the court left him to seek his remedy in an uncertain tort claim. Since the Commissioner had already approved his award under the Act, Fair's recovery will be far less assured by pursuing it through the labyrinth of the court system. Finally, the third purpose, that of protecting the employer from judicial action, has been frustrated by the court's holding. After being assured by the Commissioner that it qualified under the Act,²³ Korhumel was divested of its protection by the court and left to defend a tort claim, stripped of its most effective defenses.²⁴

The "liberality rule" requires that a statute be construed expansively to include cases that are within the reason or the spirit of the law, resolving all reasonable doubts in favor of the application of the statute to the case at hand.²⁵ The statute should receive a construction calculated to avoid sacrificing the rights of the parties to technical mistakes, inaccuracies, or omissions.²⁶ Whether a statute is given a liberal construction depends upon such factors as the language of the statute itself and the purposes and objects of the statute.²⁷ The text of the statute provides the most accurate determinant of how a statute is to be construed. To a lesser extent, the purposes and objects of the statute supply the basis for this determination. Statutes enacted to relieve suffering, hardship, or

²² It is assumed that after this decision, Fair was required to return the compensation award previously paid to him.

²³ 473 F.2d at 708 (dissenting opinion).

²⁴ W. VA. CODE ANN. § 23-2-8 (1973 Replacement Volume). Under this section, employers who are not covered by the Act may not avail themselves of the common law defenses of the fellow servant rule, assumption of risk, or contributory negligence when defending a tort action arising from damages suffered by reason of personal injuries received in the course of employment.

²⁵ H. BLACK, HANDBOOK ON THE CONSTRUCTION & INTERPRETATION OF THE LAWS § 134 (2d ed. 1911).

²⁶ E. CRAWFORD, THE CONSTRUCTION OF STATUTES § 254 (1940).

²⁷ 2A C. SANDS, STATUTES & STATUTORY CONSTRUCTION § 58.01 (4th ed. 1943).

personal disadvantage are generally given a liberal interpretation.²⁸ So also are remedial statutes, that is, those enacted to facilitate or improve existing remedies for the enforcement of rights or redress of wrongs or injuries as well as to correct mistakes, defects, or omissions in a former law.²⁹ Workmen's compensation statutes are generally considered remedial legislation and, as such, are to be accorded a liberal construction.³⁰ This construction of a workmen's compensation act is not foreign to West Virginia or most other jurisdictions.³¹

The traditional practice of liberally construing remedial legislation has been aided in the case of the West Virginia Workmen's Compensation Act by the text of the statute itself. The first West Virginia Workmen's Compensation Act, enacted in 1913, provided in section forty-four that the Commission was not bound by any common law or statutory rules of evidence or procedure other than those appearing in the Act, and that investigations should be carried out in such a manner as was "best calculated to ascertain the substantial rights of the parties and to carry out justly and *liberally* the spirit of this act."³² When the Act was revised and reenacted in 1919, section forty-four read substantially the same as the section passed in 1913, except that the reference to "liberally" was omitted.³³ The reference has not been included in any later revisions of the Code.³⁴ The West Virginia Supreme Court of

²⁸ *Id.* § 58.04.

²⁹ E. CRAWFORD, *supra* note 26, at § 73. ³⁰ *McVey v. Chesapeake & Potomac Tel. Co.*, 103 W. Va. 519, 138 S.E. 97 (1927).

Other examples of remedial legislation include statutes imposing liens, bankruptcy legislation, statutes pertaining to mortgages, health laws, homestead and other exemption statutes, and wrongful death statutes. For more examples, see 3 C. SANDS, *STATUTES & STATUTORY CONSTRUCTION* § 60.02 (4th ed. 1943).

³¹ See 99 C.J.S. *Workmen's Compensation* § 20(b), at 95 n.91 (1958).

³² Acts of the 31st W. Va. Leg. ch. 10, § 44, Reg. Sess. (1913) (emphasis added).

³³ Acts of the 34th W. Va. Leg. ch. 131, § 44, Reg. Sess. (1913). The section reads:

The commissioner shall not be bound by the usual common law or statutory rules of evidence, but shall adopt formal rules of practice and procedure as herein provided, and may make investigations in such manner as in his judgment is best calculated to ascertain the substantial rights of the parties and to carry out the provisions of this act.

³⁴ The corresponding Code section today is W. VA. CODE ANN. § 23-1-15 (1973 Replacement Volume), which reads:

The commissioner shall not be bound by the usual common-law or statutory rules of evidence, but shall adopt formal rules of practice and procedure as herein provided, and may make investigations in such man-

Appeals began almost immediately to incorporate the spirit of liberality into its decisions³⁵ and has uniformly applied the liberality rule since then, despite the omission of the justifying language.

The first case to seriously question the present basis for the rule was the recent case of *Whitt v. State Workmen's Compensation Commissioner*,³⁶ which involved the quantity of evidence necessary to substantiate a claim under the Act. After reviewing the history of the liberality rule, the court concluded: "[T]here is no provision in the workmen's compensation law requiring the commissioner, the appeal board, or this Court to apply a rule of 'liberality' either in construing the workmen's compensation law or appraising the evidence in a workmen's compensation case."³⁷ Despite the criticism leveled at the liberality rule in *Whitt*, the West Virginia court has followed the rule in subsequent decisions. In *Johnson v. State Workmen's Compensation Commissioner*, the court stated that it "is required to be guided by the rule of liberality both in the application of pertinent statutes and in appraising the evidence in support of the claim."³⁸ In *Barnett v. State Workmen's Compensation Commissioner*, the court reiterated that the compensation law of West Virginia is remedial in nature and is to be liberally construed.³⁹ These cases indicate that the West Virginia court will continue to follow the liberality rule in spite of the absence of a statutory basis.

Even though the Fourth Circuit strictly construed the Act, it did acknowledge the existence of the liberality rule.⁴⁰ Thus it becomes questionable whether the *Fair* case will be valuable as precedent. However, in light of the recent West Virginia decisions applying the liberality rule, the Fourth Circuit should conform to West Virginia case law and apply the rule in a similar manner.

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ner as in his judgment is best calculated to ascertain the substantial rights of the parties and to carry out the provisions of this chapter.

³⁵ *Culurides v. Ott*, 78 W. Va. 696, 90 S.E. 270 (1916); *Poccardi v. Ott*, 82 W. Va. 497, 96 S.E. 790 (1918); *Sole v. Kindleberger*, 91 W. Va. 603, 114 S.E. 151 (1922).

³⁶ 153 W. Va. 688, 172 S.E.2d 375 (1970).

³⁷ *Id.* at 692, 172 S.E.2d at 377.

³⁸ 186 S.E.2d 771, 776 (W. Va. 1972).

³⁹ 153 W. Va. 796, 799, 172 S.E.2d 698, 700 (1970).

⁴⁰ 473 F.2d at 705. The court stated that it was "mindful that the West Virginia Act should not be viewed with an overly technical eye."

