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Insurance--Effect of Failure to Return Premium--Declination Clause

ABSTRACTS

Arbitration—Disposition of No-Strike Damage Claims

Dissatisfied over company discipline of fellow workers, employees of the company struck, closing the plant for several days. At the time of the strike a collective bargaining agreement containing a no-strike clause was in effect between the company and the employees' union. The company promptly presented a grievance seeking damages and arbitration of its claims. The company based its demand for arbitration on a no-sue clause in the agreement which provided for arbitration of any grievance arising under the terms of the agreement. The union refused to arbitrate, contending that the arbitration clause referred only to those grievances of the employees and did not provide a procedure for the settling of the company grievances. The company then brought suit under section 301 of the management relations act to compel arbitration. The district court granted summary judgment for the company directing arbitration. *Held,* affirmed. In construing contracts between a company and a union, doubts as to arbitration must be resolved in favor of arbitration. Broad provisions for the arbitration of any grievance arising between the parties, unrestricted by an exclusionary clause, are sufficient to impose upon the parties the duty to arbitrate the company's claim for strike damages. *H. K. Porter Co. v. Local 37, United Steelworkers,* 400 F.2d 691 (4th Cir. 1968).

The court held as controlling precedent *Drake Bakeries v. Local 50, American Bakery & Confectionery Workers,* 370 U.S. 254 (1962), where it was held that arbitration was the proper forum for the disposition of no-strike damage claims, absent specific evidence to the contrary. For an exhaustive study of the Supreme Court's holdings in this area see Schubert, *Arbitration and Damage Claims for the Violation of the No Strike Clause,* 16 LAB. L.J. 751 (1965).

Insurance—Effect of Failure to Return Premium—Declination Clause

Defendant insurance company's agent took an application from plaintiff's husband for life insurance for which the first month's premium was paid. The plaintiff's husband was given a receipt acknowledging payment which contained the following declination clause: the "company shall have 60 days from date of application to consider and act upon application. Failure of the company to offer a policy within such 60 days shall be deemed a declination."

Upon the husband's death, eighty days after application, plaintiff claimed that the failure of the defendant to return the premium in a reasonable time made the defendant liable for the amount of the policy. The trial court determined the policy should have issued, that the company was estopped to deny coverage, and that the failure to return the first month's premium constituted waiver of any claim of forfeiture. *Held,* reversed. Notwithstanding the failure to return the first month's premium, no contract of insurance ever came into being where the receipt issued for the initial premium contained a declination clause and where a policy was never written by the company. No inference or presumption of acceptance was to be drawn from mere delay in passing on the application. *Maldonado v. First National Life Insurance Company,* 443 P.2d 744 (N.M. 1968).

The court found that the receipt was plain and unambiguous; even casual examination of the receipt would reveal the declination clause. This factor distinguished the present case from cases showing a contrary result in that the receipts in those cases were much more complex and detailed than the one in the *Maldonado* case, or that the policies had already been written but not yet delivered. The overwhelming weight of authority is to the effect that no inference or presumption of acceptance is to be drawn from mere delay in the passing on the application.

Workmen's Compensation—Judicial Review

Plaintiff, an unskilled laborer, incurred a back injury arising out of and in the course of his employment at defendant's plant. Plaintiff did not work for a time and during this interim he underwent surgery on his back.

Over seven years after plaintiff returned to work, defendant discharged plaintiff for being under the influence of intoxicants while at work. Plaintiff made an application for hearing and adjustment of his claim for workmen's compensation, contending there was a causal relationship between his drinking and the original injury. The hearing referee entered an award in plaintiff's favor which the workmen's compensation appeal board affirmed. Defendant appealed to the Michigan Court of Appeals contending that the appeal board finding was not supported by the record. *Held,* affirmed. Evidence supported the board's finding that a job-incurred injury