Volume 61 | Issue 4 Article 7

June 1959

Assault in Workmen's Compensation Cases

J. S. T.
West Virginia University College of Law

West Virginia Law Review

Published by the College of Law of West Virginia University. Official publication of The West Virginia Bar Association.

STUDENT NOTES

Assault in Workmen's Compensation Cases

Of the increasing list of workmen's compensation decisions throughout the country, numerous cases involve an assault by one employee upon another while at work. The recent West Virginia case of *Claytor v. State Compensation Comm'r*[1] with its accompanying dissenting opinion by Judge Browning is representative of many borderline cases which decide whether an assault upon a worker by a fellow employee, provoked by words of the claimant, does or does not arise from employment.

In the *Claytor* case, the court held that an injury received by the decedent by being struck over the head with a shovel by a fellow-employee, which was the result of the decedent's kidding the fellow-employee concerning the speed of his work, was purely a personal matter between them, and not rising from the employment was not compensable. Judge Browning's dissent sees the assault arising from a spirit of competition between employees and would allow recovery for the injury or death which results.

[1] 106 S.E.2d 920 (W. Va. 1959).

It is well recognized that an injury must result from employment to be compensable.[2] Therefore, an assault must arise from or because of employment, and not merely from some disconnected personal matter.

There seem to be no definite classifications among workmen's compensation claims growing out of assault; one court basing a decision on one line of reasoning, while the same factual situation in another jurisdiction might be treated in a different light entirely. While some differences may be based on the distinctions between the various workmen's compensation statutes, most decisions reflect simply the various degrees of strictness or liberality upon which the respective state courts base their decisions.

Often, in assault cases, compensation is denied because the claimant was an aggressor. In *Jackson v. State Compensation Comm'r*,[3] an employee charged that another employee was impeding his work. An altercation followed in which the decedent was the aggressor, and as a consequence, the claim was not compensable. Exemplary of such cases is a New York case in which the decedent invited a coemployee to step out of his truck to settle matters, and as he attempted to leave the truck, the decedent got in the first blow. Compensation was again denied.[4]

Although the large majority of cases deny recovery to the aggressor, a New Hampshire case allowed recovery to one provoking a fight, holding the defense of aggression not to be tenable.[5]

Disregarding the aggressor cases, it is generally held that the mere fact that an assault occurs while employees are at work does not in itself mean that such injury is work-connected and compensable. In a Georgia case, a claimant was shot while sitting in his employer's truck, but the injury was held not compensable since he was shot for personal reasons not connected with employment.[6]

---

[2] E.g., W. VA. CODE ch. 23, art. 4, § 10 (Michie 1955); Archibald v. Workmen's Compensation Comm'r, 77 W. Va. 448, 87 S.E. 791 (1916).

[3] 127 W. Va. 59, 31 S.E.2d 848 (1944).

[4] Stillwagon v. Callan Bros., Inc., 183 App. Div. 141, 170 N.Y. Supp. 677 (1918). See also Kimbro v. Black & White Cab Co., 50 Ga. App. 143, 177 S.E. 274 (1934), where the aggressor was denied recovery even though the assault grew out of employment. Here, bad language was held to constitute aggression.

[5] Newell v. Moreau, 94 N.H. 439, 55 A.2d 476 (1947). The aggressor defense has been abolished in other states, too. See, e.g., Petro v. Martin Baking Co., 239 Minn. 307, 58 N.W.2d 731 (1953); Martin v. Snuffey's Steak House, 46 N.J. Super. 425, 134 A.2d 789 (1957).

[6] Jackson v. Wilson, 84 Ga. App. 684, 67 S.E.2d 161 (1951).

The Indiana court denied compensation in a case where one employee was continually ridiculed by the claimant. After words between the two, the claimant was struck over the head with a board. It was held that the matter was personal, and that the employee reacted naturally to persistent provocation.[7] This case is similar both factually and in the holding to the West Virginia *Claytor case*.[8]

Even in some cases where the assault has its genesis in some work related dispute, compensation has been denied. In an Ohio case, two employees began fighting concerning their work. One employee threatened the other with a knife, forcing him to leave the building. He returned a few minutes later and hit the other in the head with a piece of pipe. Compensation was disallowed as having no causal connection with the employment.[9]

Another line of thinking is represented by the famous case of *Hartford Acc. & Indem. Co. v. Cardillo*.[10] Here the claimant, not caring for the nickname "Shorty" by which he was called by a fellow employee, responded by calling the coemployee a vile name, whereupon the claimant was hit in the face and injured. The following words of Mr. Justice Rutledge explain his position:

> "This view recognizes that work places men under strains and fatigue from human and mechanical impacts, creating frictions which explode in myriads of ways, only some of which are immediately relevant to their tasks. Personal animosities are created by working together on the assembly line or in traffic. Others initiated outside the job are magnified to the breaking point by its compelled contacts. No worker is immune to these pressures and impacts upon temperament. They accumulate and explode over incidents trivial and important, personal and official. But the explosion point is merely the culmination of the antecedent pressures. That it is not relevant to the immediate task, involves a lapse from duty, or contains an element of volition or illegality does not disconnect it from them nor nullify their causal effect in producing injurious consequences."[11]

Following such a theory, almost any assault at the place of employment could be held compensable as arising from the friction and

---

[7] Kemble v. Aluminum Co. of America, 120 Ind. App. 72, 90 N.E.2d 134 (1950).

[8] Note 1 *supra*.

[9] Brown v. Industrial Comm'n, 86 Ohio App. 256, 82 N.E.2d 878 (1948).

[10] 72 App. D.C. 52, 112 F.2d 11 (1940).

[11] *Id.* at 58, 112 F.2d at 17.

strain of work. But the liberal view of Mr. Justice Rutledge has been rejected by many courts,[12] and obviously has not been accepted in West Virginia in the *Claytor* case.

An equally liberal view is the so-called "but-for" rule. Courts following this theory hold that but for the employees' presence at the place of employment, or but for the employment itself, no accident would have occurred.[13] Again, it would be difficult to deny recovery to any injured victim of an assault following this theory.

In states not following either of the above liberal rules, a fine line is often drawn between assaults which are held to grow out of employment and those which do not. It is generally held that injuries from assaults growing out of disputes arising between employees over the manner of their work are compensable, unless barred by aggression. A Missouri case allowed compensaton for the death of an employee who was struck by a fellow employee in a dispute as to whether the employees should work on Saturdays.[14] In a Minnesota dispute between two hand-truck operators, a controversy arose, with each employee claiming to be doing more than his share of work. Compensation was allowed, it being held that an ensuing fight and death grew out of employment.[15]

The West Virginia court in the *Claytor* case, refusing to follow the more liberal states, points out that some jurisdictions would reach a contrary result, but no indication is given when, if ever, an assault would be held to grow out of employment in West Virginia. Undoubtedly, as long as compensation claims differ, each case will rise and fall on its own merits, but regardless of the remoteness of the assault to the particular employment involved, precedent can be found in some jurisdiction to either deny or allow compensation under any factual situation involving an assault upon a fellow-employee.

J. S. T.

---

[12] E.g., Long v. Schultz Shoe Co., 257 S.W.2d 211 (Mo. App. 1953); Jacquemin v. Turner & Seymour Mfg. Co., 92 Conn. 382, 103 Atl. 115 (1918).

[13] E.g., Sanders v. Jarka Corp., 1 N.J. 36, 61 A.2d 641 (1948); Anderson v. Hotel Cataract, 70 S.D. 376, 17 N.W.2d 913 (1945).

[14] Stephen v. Spuck Iron & Foundry Co., 358 Mo. 372, 214 S.W.2d 534 (1948).

[15] Hinchuk v. Swift & Co., 149 Minn. 1, 182 N.W. 622 (1921).