DePaul Law Review

Volume 5
Issue 2 *Spring-Summer 1956*

Article 19

Workmen's Compensation - Injury Occurring During Participation in Intra-Company Softball League Game Held Compensable

DePaul College of Law

sentence in a will had greater legal effect than a succession of undisputed utterances and acts by the testator which clearly evidenced his intention.

WORKMEN'S COMPENSATION–INJURY OCCURRING DURING PARTICIPATION IN INTRA-COMPANY SOFTBALL LEAGUE GAME HELD COMPENSABLE

Claimant sustained serious accidental injuries while playing softball with a team of company employees in an intra-company league competition game played after the hours of employment and off the employer's premises in a public ball park. At the request of the employees, the employer cooperated in the program by furnishing balls, bats, and T-shirts with the name "Jewel Food Stores" on the back. Team awards and trophies were presented by company executives at a special banquet held by the company. Information about the games was reported in the company publications distributed to the employees, and on the company operated FM radio station to the company stores before they were opened to the public. The Jewel personnel chief testified that the games were encouraged and used to promote the health, welfare, and happiness of the employees, a condition advantageous and desirable both for the employees and for the company because it furthered the joint effort. Participation in the league was voluntary and without pay, nor was there any time off granted from work for practice. The Superior Court of Cook County set aside an award entered by the Industrial Commission against the employer. On certiorari proceedings, the Supreme Court of Illinois, Justice Maxwell dissenting, held that the injuries were compensable as arising out of and in the course of employment within the meaning of the Workmen's Compensation Act. *Jewel Tea Company, Inc. v. Industrial Commission*, 6 Ill. 2d 304, 128 N.E. 2d 699, and 128 N.E. 2d 928 (dissenting opinion) (1955).

For an injury to be compensable under the usual Workmen's Compensation Act, it must "arise out of" and "in the course of" the employment. Since the phrases are used conjunctively, there must be a concurrence of both elements for an accident to be compensable.[1] The Act is not applied to every accidental injury which might occur to an employee during his employment, and the employer is not an insurer of his employees at all times during employment.[2] Each case is decided on its own particular circumstances.[3] The burden is on the plaintiff to show by positive evidence, or by evidence from which the inference can fairly and reasonably

[1] Dietzen Co. v. Industrial Board of Ill., 279 Ill. 11, 116 N.E. 684 (1917).

[2] Klug v. Indus. Comm., 381 Ill. 608, 46 N.E. 2d 38 (1943).

[3] Figgins v. Indus. Comm., 379 Ill. 75, 39 N.E. 2d 353 (1942).

be drawn, that he suffered accidental injuries arising out of and in the course of his employment.[4]

This was a case of first impression in Illinois. An earlier case, *Becker Asphaltum Roofing Co. v. Industrial Commission*,[5] did not allow recovery where the employee was injured while driving to a picnic sponsored jointly by the employees and the employer on a work holiday. The court held that the injury did not arise out of or in the course of his employment since he was not engaged in any work connected with his employment at the time he was injured, and if an employee is not ordinarily entitled to compensation when he is injured while going to or from his work, he should not be entitled to compensation for injuries sustained while he was on his way to a celebration which had no connection with the purpose for which he was employed. The case was held not to be determinative of the instant case, since the accident did not occur while the employee was participating in an employer sponsored activity.

In deciding compensation cases arising from injuries sustained while the employee was participating in recreational activities, courts generally consider the extent of the employer's supervision or direction, the presence of pressure or compulsion, actual or inferred, the amount and type of aid given, and essentially, the over-all benefit received by the employer from the employee's participation in the activity. The presence or absence of any one of these factors is not determinative unless it is so integrated with the employment as to come within its scope. However, where there is actual compulsion or direction to participate,[6] or the recreation was run as a business venture,[7] or the injury resulted from a recreation which was a settled practice on the premises of the employer,[8] or participation is an

[4] Northwestern Yeast Co. v. Indus. Comm., 378 Ill. 195, 37 N.E. 2d 806 (1941).

[5] 333 Ill. 340, 164 N.E. 668 (1929).

[6] Stakonis v. United Advertising Corp., 110 Conn. 384, 148 Atl. 334 (1930); Salt Lake City v. Indus. Comm., 104 Utah 436, 140 P. 2d 644 (1943); Huber v. Eagle Stationery Corp., 254 App. Div. 788, 4 N.Y.S. 2d 272 (3d Dep't, 1938); Sinclair v. Wallach Laundry, 252 App. Div. 715, 298 N.Y. Supp. 686 (3d Dep't, 1937).

[7] Chadwick v. New York Stock Exchange, 252 App. Div. 714, 299 N.Y. Supp. 256 (3d Dep't, 1937); Holst v. New York Stock Exchange, 252 App. Div. 233, 299 N.Y. Supp. 255 (3d Dep't, 1937). But cf. Auerbach v. Indus. Comm., 113 Utah 347, 195 P. 2d 245 (1948).

[8] Thomas v. Proctor & Gamble Co., 104 Kan. 432, 179 Pac. 372 (1919); Geary v. Anaconda Copper, 120 Mont. 485, 188 P. 2d 185 (1947); Brown v. United Services for Air, 298 N.Y. 901, 84 N.E. 2d 810 (1949); Piusinski v. Transit Valley Country Club, 283 N.Y. 674, 28 N.E. 2d 401 (1940); Winter v. Indus. Accident Comm., 129 Cal. App. 174, 276 P. 2d 689 (1954); Conklin v. Kansas City Public Service Co., 226 Mo. App. 309, 41 S.W. 2d 608 (1931); Dowen v. Saratoga Spring Comm., 267 App. Div. 928, 46 N.Y.S. 2d 822 (1944). Contra: Clark v. Chrysler Corp., 276 Mich. Rep. 24, 267 N.W. 589 (1936); Luteran v. Ford Motor Co., 313 Mich. 487, 21 N.W. 2d 825 (1946); Stevens v. Essex Fells Country Club, 136 N.J.L. 656, 57 A. 2d 496 (1948). But cf. Liberty Mutual Insurance Co. v. Indus. Accident Comm., 39 Cal. 2d 512, 247 P. 2d 697 (1952).

actual incident of the employment,[9] recovery is usually granted. Injuries sustained by an employee which result from an act done for his own individual benefit and unrelated to the employment do not arise out of and in the course of employment.[10]

Where the activity is run by the employer as a business investment, the connection between the activity and the employment is self-evident. In the case of *Holst v. New York Stock Exchange*,[11] an employee was injured while playing on a company sponsored soccer team after working hours. Employees were encouraged to participate and time off was given for practice and games. The employer arranged the games, pocketed the receipts, and paid the deficits which arose from the venture. The court stated:

> We are not required to decide whether the employer was actuated by a belief that the venture was wise because of its advertising features, or because of the improved health and morale of the employees. The maintenance of the teams was a matter of business, not of charity or benevolence. The officials of a corporation may not extend largess from stockholders' money. The claimant was injured while engaged in his employment.[12]

Courts also take into account the presence or absence of indirect pressure or compulsion by the employer which tends to encourage participation. Because of the employer-employee relationship, a mere hint or suggestion by the employer can have the effect of a command.[13] In *Miller v. Keystone Appliance, Inc.*,[14] compensation was awarded where deceased was killed in an automobile collision while returning home for a "get acquainted" picnic arranged by the sales department for the company's salesmen. The manager said that attendance was not compulsory but that

[9] Milwaukee v. Indus. Comm., 160 Wis. 238, 151 N.W. 247 (1915); Adams v. East Penn. Conf., 49 Pa. Dist. & Co. 61 (1943).

[10] McManus Case, 289 Mass. 65, 193 N.E. 732 (1935); Congdon v. Klett, 307 N.Y. 218, 120 N.E. 2d 796 (1954); Leventhal v. Wright Aeronautical Corp., 25 N.J. Misc. 154, 51 A. 2d 237 (1946); Porowski v. American Can Co., 15 N.J. Misc. 316, 191 Atl. 296 (1937).

[11] 252 App. Div. 233, 299 N.Y. Supp. 255 (3d Dep't, 1937); Chadwick v. New York Stock Exchange, 252 App. Div. 714, 299 N.Y. Supp. 256 (3d Dep't, 1937) (same facts as in Holst case). Accord: Le Bar v. Ewald, 217 Minn. 16, 13 N.W. 2d 729 (1944).

[12] Holst v. New York Stock Exchange, 252 App. Div. 233, 234, 299 N.Y. Supp. 255, 256 (3d Dep't, 1937).

[13] Stakonis v. United Advertising Corp., 110 Conn. 384, 148 Atl. 334 (1930); Wilson v. General Motors Corp., 298 N.Y. 468, 84 N.E. 2d 781 (1949) (dissenting opinion). Kelly v. Hackensack Water Co., 10 N.J. Super. 528, 77 A. 2d 467 (1950); Ross v. Sunrise Food Exchange, 273 App. Div. 835, 75 N.Y.S. 2d 897 (3d Dep't, 1948); Huber v. Eagle Stationary Corp., 254 App. Div. 788, 4 N.Y.S. 2d 272 (3d Dep't, 1938); Kelly v. Ochiltree Electric Co., 125 Pa. Super. 161, 190 Atl. 166 (1937). But cf. Dearing v. Union Free School, 272 App. Div. 167, 70 N.Y.S. 2d 418 (3d Dep't, 1947), rev'd on other grounds 297 N.Y. 886, 79 N.E. 2d 280 (1948).

[14] 133 Pa. Super. 354, 2 A. 2d 508 (1938).

he wanted all the men to be there because he "sure would appreciate it." The court held that it would be natural to assume that the deceased would wish to avoid anything that might jeopardize his employment and that, in effect, he was directed to attend.

The amount and type of aid given is an important factor to be taken into consideration.[15] In the case of *Wilson v. General Motors Corp.*,[16] claimant was injured while participating in an intra-company league softball game played without pay after working hours in a public park. The league was organized by the employees but the company furnished teams from their Buffalo plant with playing necessaries, uniforms with the letters "M & A"[17] across the front, and a paid foreman to supervise the league. League meetings and conferences were permitted on company time. The majority of the court, in a four to three decision, did not find any appreciable benefit to the company and that the slight support given was a gratuitous contribution to the recreational life of the employee and not so bound up with the employment as to be an incident thereof. The court in the instant case stressed the dissenting opinion, which found a business benefit accruing to the employer.

The general rule is that where the employer receives a substantial direct benefit from the recreation, compensation will be awarded.[18] Some courts have found that the benefit which arises from the increased efficiency, higher morale, and closer employee-employer relationship is an important factor.[19] Usually, courts are inclined to dismiss this argument by the claimant[20] because, as stated in the *Wilson* case: "Too tenuous and ephemeral is the possibility that such participation might perhaps indirectly benefit the employer by improving the workers' morale or health or by fostering employee good will."[21]

The utilizing of the activity for advertising is important in determining whether or not the employer received a substantial benefit.[22] If the games

[15] Tadesco v. General Electric Co., 305 N.Y. 544, 114 N.E. 2d 33 (1953); McFarland v. St. Louis Car Co., 262 S.W. 2d 344 (Mo. App., 1953); Ott v. Indus. Comm., 83 Ohio App. 31, 82 N.E. 2d 137 (1948).

[16] 298 N.Y. 468, 84 N.E. 2d 781 (1941).

[17] Signifying Motor and Axle Division, the team name and corporate department.

[18] 6 Schneider Workmen's Compensation 519 (3d ed., 1948); 1 Larson Workmen's Compensation Law, § 22 (1952).

[19] Tadesco v. General Electric Co., 305 N.Y. 544, 114 N.E. 2d 33 (1953); Fagen v. Albany Evening Union Co., 261 App. Div. 861, 24 N.Y.S. 2d 779 (3d Dep't, 1941).

[20] Clark v. Chrysler Corp., 276 Mich. 24, 267 N.W. 589 (1936); Pate v. Plymouth Mfg. Co., 198 S.C. 159, 17 S.E. 2d 146 (1941); McFarland v. St. Louis Car Co., 262 S.W. 2d 344 (Mo. App., 1953).

[21] Wilson v. General Motors Corp., 298 N.Y. 468, 473, 84 N.E. 2d 781, 784 (1949).

[22] Le Bar v. Ewald Bros. Dairy, 217 Minn. 16, 13 N.W. 2d 729 (1944); Linderman v. Cownie Furs, 234 Iowa 708, 13 N.W. 2d 677 (1944); Porowski v. American Can

are played in a large park and the spectators are not mainly fellow employees, the courts are more willing to allow compensation. In the case of *Federal Mutual Liability Insurance Co. v. Industrial Acc. Commission*,[23] an employee was injured while playing baseball on a team composed exclusively of employees. The company furnished uniforms with the company name across the front of each uniform. An award of compensation was sustained where it was found that the team was organized to advertise the employer's name and as a recreation for the employees for the purpose of increasing morale.

The court, in the instant case, in applying these factors, found that the games had become a custom between employer and employee with the consequent stimulation of good will and an *esprit de corps*. There was opportunity for the employees to fraternize with the executives and the improvement of relations resulted in a "significant if not tangible benefit to the employer." Advertising benefits could reasonably be inferred from the fact that the defendant's trade name appeared on the T-shirts of the team, which tended to establish good will with the public. There was a close integration between the company and the team; the company encouraged the games by publicizing them within the company and through the presentation of awards. Subtle pressures were brought to bear, e.g., the team was named after the district manager, who recommended promotions, appointed the team captain and watched the games. Plaintiff also testified that the team captain made him feel like a fool for refusing at first to play on the team. The court further stated:

> Admittedly the employee would not lose his job for refusal to be on the team; however, he might be concerned about his acceptance in the company, particularly with the district manager, if he rejected the invitation to play on the district manager's team. Thus, although plaintiff was not hired to play softball, it is not an unreasonable inference that participation with the "Jeffrie's Gems" could legitimately be regarded as an incident of plaintiff's employment.[24]

Justice Maxwell, in dissenting, stated that the granting of an award in such a case tends to penalize employers who cooperate in the recreational life of their employees.

In a recent New York case,[25] an employee sustained an injury while playing softball in an interdepartmental league. The league was headed by

---

Co., 15 N.J. Misc. 154, 191 Atl. 296 (1937); Fishman v. LaFeyette Radio Corp., 275 App. Div. 876, 89 N.Y.S. 2d 563 (1949).

[23] 90 Cal. App. 357, 265 Pac. 858 (1928).

[24] Jewel Tea Co. v. Indus. Comm., 6 Ill. 2d 304, 315, 128 N.E. 2d 699, 705 (1955).

[25] Sorino v. Remington Rand, Inc., 147 N.Y.S. 2d 34 (3d Dep't, 1955).

a fellow employee who prepared the schedules of the games. The games were played on company property on a diamond maintained by the employer. The equipment was paid and supplied by the employer. No uniforms were worn but the players wore T-shirts on which their department number was printed. The court held that even though there was no advertising advantage accruing to the employer, the award would be affirmed because the facts indicated that the employer had the ultimate control over the league activities.

With the increasing amount of company-sponsored recreational activities, a greater amount of compensation cases arising out of these activities can be expected. Some courts have been reluctant to grant awards because of the posibility that employers will stop recreational activities rather than become health insurers of their employees.[26] But, as stated in the instant case, a "court cannot adjudicate rights in a vacuum, and predicate decisions on legal concepts divorced from practical realities."[27] And, "practical realities" should depend on a careful consideration of all the circumstances surrounding company sponsored sports programs in order to determine if injuries resulting from such activities actually arose out of, and in the course of employment.

[26] Industrial Commission v. Murphy, 102 Colo. 59, 76 P. 2d 741 (1938); Clark v. Chrysler Corp., 276 Mich. 24, 267 N.W. 589 (1936); McFarland v. St. Louis Car Co., 262 S.W. 2d 344 (Mo. App., 1953).

[27] Jewel Tea Company, Inc. v. Industrial Commission, 6 Ill. 2d 304, 316, 128 N.E. 2d 699, 705 (1955).