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## WORKMEN'S COMPENSATION

WILLIAM H. NICHOLSON, JR.\*

### *Compensation, or Common Law Liability?*

The exclusiveness of the Workmen's Compensation remedy, and the liability of an owner for injury to an employee of a sub-contractor, as contained in Code of Laws of South Carolina, 1952, Sections 72-111 through 72-123, were subject to judicial construction in three opinions filed during the survey period.

In the case of *Adams v. Davison-Paxon Company*,<sup>1</sup> it was held that where a store owner contracted with a millinery company for the operation of a millinery department by such company whereby the owner received only a percentage of the sales, and the public conduct of the business was conducted in the name of the store, an employee in the millinery department, hired with the approval of the store manager and paid a salary by the store (later reimbursed by the millinery company), was limited to a Workmen's Compensation award against the owner of the store for the injuries sustained in employment by a fall on the stairway of the store.

The millinery department was held to be such a part of the "trade, business or occupation" of the owner under the language of Section 72-111 as to create Workmen's Compensation liability under that section, and the remedy was exclusive under the language of Section 72-121.

In the case of *Blue Ridge Rural Electric Cooperative v. Byrd*,<sup>2</sup> it was held that a workman's loss of arms in an accident while employed by a contractor hired by the electric power company to extend the company's lines, the company being authorized to do such work and having done such in prior years, the electric company incurred workmen's compensation liability, which remedy was exclusive, the extension of the lines being part of the "usual" trade or business of the electric company. It was held that the employee's acceptance of Workmen's Compensation from the immediate employer

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1. 230 S. C. 532, 96 S. E. 2d 566 (1957).

2. 238 F. 2d 346 (1956).

and not the electric company did not alter the immunity of the latter from common law liability. A comprehensive discussion of the law of exclusive remedy and sub-contractor employee situations is contained in both the *Adams* and *Blue Ridge Rural Electric Cooperative* cases.

In the latter case a verdict for the employee in a negligence action for \$126,786.80 was set aside (action of U. S. Supreme Court not yet reported). However, the rule of these two decisions benefited another employee in the case of *E. I. Du Pont De Nemours Company v. Hall*.<sup>3</sup> The company appealed from a verdict for plaintiff in an action for negligence on the ground that the remedy was by the South Carolina Workmen's Compensation Act and that the employee was limited thereto. The plaintiff, an employee of a sub-contractor, had finished work and "clocked out" for the day, and was riding in a friend's automobile which was involved in a collision with the contractor's truck some three miles from the area in which he worked. The site of the accident was within the security area controlled by the general contractor, and the employee still had to show his badge at the gate of the perimeter of the security area when the accident occurred. The case of *McDonald v. E. I. Du Pont De Nemours & Co.*<sup>4</sup> was held controlling wherein another employee, having left the immediate area of employment, was crossing a highway, and was struck by an automobile of a fellow employee. The Court held in this case that the only fact that could possibly bring about a different legal conclusion was the necessity of presenting the badge at the gate of the perimeter of the security area, which did not create an additional hazard of employment. Judgment in plaintiff's favor in the action for negligence was affirmed.

#### *Unusual Exertion Inducing Coronary Attack*

The Supreme Court applied and reaffirmed the unusual exertion or strain rule in regard to heart attacks occurring in the course of employment in the case of *Ricker v. Village Management Corporation*.<sup>5</sup> An award to a bus driver who transported textile workers to and from employment in the Savannah River Valley was upheld the unusual exertion or strain being found in a difficult traffic turn on Green St. in

3. 237 F. 2d 145 (1956).

4. 223 S. C. 217, 74 S. E. 2d 918 (1953).

5. 231 S. C. 47, 97 S. E. 2d 83 (1957).

Augusta, the claimant having experienced pain twice previously when making this turn but thinking it indigestion, the third and final attack at this point necessitating his stopping the bus.

This case was distinguished from the previous case of *Price v. B. F. Shaw Co.*<sup>6</sup> in that the claimant therein knew he had heart trouble but, in spite of an attack in the early morning hours, arose from bed and went to work as a "plumber" or "pipe fitter" lifting wrenches weighing from ten to twenty pounds each and a skid weighing twelve to twenty-two pounds, the latter held to constitute no unusual strain.

#### *Notice and Filing of Claim*

In the *Ricker case*, *supra*, the employer's position that formal notice was not given as required within thirty days was not held a bar to recovery. Failure to file such notice was held not prejudicial where the employer at the time of the claimant's final attack had to send another employee to get the bus, also where the claimant had to be hospitalized and was unable to see the manager of the employer who visited the hospital for "thirty or forty days" but was later visited by him at the hospital a number of times.

However, in the case of *Kirby v. Holliday Laundry and Dry Cleaners*<sup>7</sup> the claim of a laundry employee was held barred by failure to file a claim with the Commission within the statutory period of one year. A promise of permanent employment was held not in consideration of the workman's forbearance to file claim, but to counter an offer of employment to the employee by another company, and thus unrelated to the accident. Claimant's failure to file as required by law was held to be not induced by any "act or word" of the employer. A complete listing of cases holding employers estopped to assert the statute of limitations, and those contra in this jurisdiction, is set out in the Court's opinion.

#### *Injury on Personal Venture*

In the case of *Leonard v. Georgetown County*,<sup>8</sup> it was held that the foreman of a county chain gang who lived at a chain gang camp and who on a week-end off took a county truck, using county gasoline, to make a trip to visit and have dinner

6. 224 S. C. 89, 77 S. E. 2d 491 (1953).

7. 230 S. C. 412, 96 S. E. 2d 61 (1957).

8. 230 S. C. 388, 95 S. E. 2d 777 (1956).

with friends, the accident occurring en route, was on a purely personal venture, and his death arising from the accident was non-compensable. The use of the county truck, the fact that the deceased regarded himself as subject to call for duty at all times, and the fact that he, incidentally, inspected a drainage ditch near the friend's residence, were held not to alter the personal nature of the visit.

