

FILE NAME: Baldwin (BALD)

DATE: 1946

DOC#: BALD059

DOCUMENT DESCRIPTION: Legal - Bingaman vs. Baldwin Appeal Decision

AMERICAN BRIDGE CO. v. UNEMPLOYMENT COMPENSATION BOARD OF REVIEW.

Superior Court of Pennsylvania.

April 17, 1946.

Master and servant ⇨78

A determination of the Unemployment Compensation Board of Review that five days did not allow a welder who had theretofore been employed at \$1.10 per hour a reasonable time in which to secure suitable work was not an error of law.

Appeal No. 133, April term, 1946, from the decision of the Unemployment Compensation Board of Review upon the claim of Evelyn Theresa Davis, at Appeal No. B-44-94-A-3043, Decision No. B-4707.

Proceeding under the Unemployment Compensation Law by Evelyn Theresa Davis, claimant, opposed by the American Bridge Company, employer. From a decision of the Unemployment Compensation Board of Review allowing the claim, the employer appeals.

Decision affirmed.

Before BALDRIGE, P. J., and RHODES, HIRT, RENO, DITHRICH, ROSS and ARNOLD, JJ.

P. K. Motheral and Reed, Smith, Shaw & McClay, all of Pittsburgh, for appellant.

R. Carlyle Fee, Asst. Sp. Deputy Atty. Gen., Charles R. Davis, Sp. Deputy Atty. Gen., and James H. Duff, Atty. Gen., for appellee.

RENO, Judge.

In this unemployment compensation case the board found that the claimant had been employed by appellant, American Bridge Company, as a welder at \$1.10 per hour from January 26, 1944 to June 15, 1945, when she was laid off because of lack of work. On June 20, 1945, she was offered employment at a filling station at \$18 per week which she refused because the salary was too low. For this, the bureau disallowed the worker's claim for benefits. Upon her appeal, the referee reversed the bureau, and the referee's decision was sustained by the board upon the employer's appeal.

The appeal raises the same questions decided this day in American Bridge Com-

pany v. Unemployment Compensation Board of Review, Pa.Super., 46 A.2d 510. The board held that in the circumstances prevailing at the time the offered employment was refused five days in which to find suitable work was not a reasonable time. In that conclusion we cannot discover an error of law.

Decision affirmed.



BINGAMAN v. BALDWIN LOCOMOTIVE WORKS, Inc., et al.

Appeal of OLDT.

Superior Court of Pennsylvania.

April 12, 1946.

1. Workmen's compensation ⇨53

The Occupational Disease Act should be given the same liberal construction that has been given the Workmen's Compensation Act, but, where the requirements of the statute are clear, intention and meaning of the Legislature, as expressed therein, may not be ignored. 77 P.S. § 1401(d, g), 1408(a).

2. Workmen's compensation ⇨549

While a claimant may combine periods of exposure to a silica hazard in order to reach the required aggregate, he may not include in the computation periods of employment in a different and nonhazardous occupation because he happens to have the same employer for both jobs. 77 P.S. § 1401(d, g).

3. Workmen's compensation ⇨549

Employment in an occupation having a silica hazard exists only where an employee is subjected to the hazard of exposure to the dust of silicon dioxide. 77 P.S. § 1401(d, g).

4. Workmen's compensation ⇨549

Although the Occupational Disease Act gives a claimant the benefit of any and all employment during a period of eight years preceding date of his disability due to silicosis, the aggregate employment for four years during the eight years must be in an occupation having a silica hazard. 77 P.S. § 1401(d, g).

5. Workmen's compensation §1365

The mere continuation of a contract of employment does not determine a claimant's right to recover under the Occupational Disease Act for disability due to silicosis. But proof of the silica hazard is an essential part of claimant's case. 77 P.S. § 1401(d), (g).

6. Workmen's compensation §549

Where during the eight years preceding employee's death, his employment with defendant in an occupation having a silica hazard did not exceed 3½ years, compensation was not recoverable for death of employee as due to exposure to silica hazard. 77 P.S. §§ 1401(d), (g), 1408(a).

Appeal No. 11, March term, 1946, from judgment of Court of Common Pleas, Mifflin County, No. 27, May term, 1945; William W. A. M., President Judge.

Proceeding under the Occupational Disease Act by Dallas M. Bingaman, claimant, opposed by Baldwin Locomotive Works, Inc., successors to Standard Steel Works Company, employer, and others, wherein, after the death of claimant, Dorothy M. Bingaman filed a claim petition in her own right and for her dependent minor children. Awards of compensation made in both cases were set aside by the Court of Appeals and, upon the death of Dorothy M. Bingaman, appeals were taken by Charles M. O'Lea, administrator of estates of Dallas M. Bingaman, deceased, and Dorothy M. Bingaman, deceased.

Affirmed.

Before BALDRIGE, P. J., and RHODES, HIRT, RENO, LITHRICH, ROSS, and ARNOLD, JJ.

F. Brewster Wickersham, of Metzger & Wickersham, and Huette F. Dowling, all of Harrisburg, and Henry J. Sommer, of Selinsgrove, for appellants.

Paul S. Lehman, of Lewistown, for appellee.

RHODES, Judge.

The question for determination on this appeal has been stipulated as follows: Did Dallas M. Bingaman's employment with defendant satisfy the statutory requirement of "an aggregate employment of at least four years in the Commonwealth of Pennsylvania, during a period of eight

years next preceding the date of disability, in an occupation having a silica or asbestos hazard"?

Dallas M. Bingaman filed a claim petition on September 9, 1940, and set forth therein that he became totally disabled on December 8, 1939, as a result of silicosis while in the course of his employment with defendant. The employee died on December 6, 1940, and his widow, Dorothy M. Bingaman, then filed a claim petition in her own right and for her dependent minor children on January 13, 1941. The referee awarded compensation under both petitions. The Workmen's Compensation Board eventually affirmed the awards and the findings of fact and conclusions of law of the referee. From the board the defendant and the Commonwealth appealed to the Court of Common Pleas of Mifflin County; the employers were sustained, the awards were set aside in both cases, and compensation disallowed. Dorothy M. Bingaman having died, suggestion of death was filed. Charles M. O'Lea, Administrator of the Estate of Dallas M. Bingaman, deceased, appealed to this court, No. 19, March Term, 1946, and Charles M. O'Lea, Administrator of the Estate of Dorothy M. Bingaman, deceased, appealed, No. 11, March Term, 1946, which appeal is now before us.

It has been stipulated that the same question is involved in both appeals, and that the decision of this court in No. 11, March Term, 1946, will be controlling in the appeal to No. 19, March Term, 1946.

Deceased had been employed as a chipper in defendant's foundry; and the compensation authorities found that he had been engaged in an occupation having a silica hazard, and that his total disability and subsequent death were caused solely by silicosis.

The pertinent provisions of the Pennsylvania Occupational Disease Act of June 21, 1939, P.L. 566, are paragraphs (d) and (g) of section 301, 77 P.S. § 1401(d) (g), and paragraph (a) of section 308, as amended, 77 P.S. § 1408(a).

To sustain the awards it is necessary that the proofs and findings establish that deceased had had an aggregate employment of at least four years in this Commonwealth, during a period of eight years next preceding his disability, in an occupation having a silica hazard, and that defendant was the last employer in whose employment deceased was exposed to such hazard.

Appellant's contention is that deceased's contract of employment continued with defendant from May 11, 1934, until December 8, 1939, a period of five and one-half years. Appellees assert that deceased's employment with defendant, in an occupation having a silica hazard, during the period of eight years next preceding December 8, 1939, the date of his total disability, did not exceed three years, six months, and twenty-four days.

The referee and the board found that during the period of eight years next preceding December 8, 1939, Dallas M. Bingham actually worked in defendant's foundry during the following periods of time: May 11, 1934, to October 15, 1934; February 4, 1935, to June 13, 1935; April 9, 1936, to June 13, 1938; May 1, 1939, to and including December 8, 1939. They also found that deceased worked for defendant in 1923, 1925 to 1928, in 1929, and in 1930; that during these periods he was employed in the capacity of a chipper; that during the eight years preceding December 8, 1939, he had no employment other than with defendant with the exception of lumbering and farm work; and that he accepted from defendant every call for work. It thus appears that deceased's period of employment in 1934 was five months, four days; in 1935, four months, nine days; in 1936 to 1938, two years, two months, and four days; in 1939, seven months, seven days, or a total of three years, six months, and twenty-four days.

[1] Appellant apparently misconceives the import of section 301(d) of the Occupational Disease Act, 77 P.S. § 1401(d), and insists that the continuation of a contract of employment controls this type of case. The board subscribed to this theory and concluded that deceased's employment extended from May 11, 1934, to December 8, 1939, a period of five and one-half years, notwithstanding its finding as to the periods when deceased was employed as a chipper in defendant's foundry. We fully recognize that the Pennsylvania Occupational Disease Act of June 21, 1939, P.L. 566, 77 P.S. § 1201 et seq., should be given the same liberal construction that has been given the Workmen's Compensation Act. *Roschak et ux. v. Vulcan Iron Works*, 157 Pa.Super. 227, 235, 42 A.2d 280. But, as the court below in its opinion very well stated, where the requirements of the statute are clear, the intention and meaning of the legisla-

ture, as expressed therein, may not be ignored.

[2] Had deceased worked for defendant between the intervals of his employment as a chipper in another occupation having no silica hazard, there could be no recovery although he had been employed by defendant for five and one-half years between 1934 and 1939. In *Tokash v. Early Foundry Co. et al.*, 157 Pa.Super. 467, at page 471, 43 A.2d 553, at page 554, in an opinion by Judge Ross, we held: "While a claimant may combine periods of exposure in order to reach the required aggregate, he may not include in the computation periods of employment [in] a different and non-hazardous occupation because he happens to have the same employer for both jobs."

During the periods when deceased was not engaged in defendant's plant as a chipper, he was not exposed to any silica hazard. He was not working at all, or he was farming or lumbering for others.

[3] It is significant that in paragraph (a), section 308 of the act, 77 P.S. § 1408 (a), the Commonwealth can be held liable for a part of the compensation only where the occupational disease has developed to the point of disablement after an exposure of five or more years. A proviso contains similar language in section 301(g) of the act, 77 P.S. § 1401(g). We desire to make it clear that in our opinion employment in an occupation having a silica hazard, section 301(d) of the act, 77 P.S. § 1401(d), exists only where an employee is subjected to the hazard of exposure to the dust of silicon dioxide. Act of June 21, 1939, P.L. 566, § 108(k), 77 P.S. § 1208(k); *McGarvey v. Butler Consolidated Coal Co. et al.*, 157 Pa.Super. 353, 356, 43 A.2d 623. See, also, *Agostin v. Pittsburgh Steel Foundry Corp. et al.*, 157 Pa.Super. 322, 43 A.2d 604; *Tokash v. Early Foundry Co. et al.*, supra, 157 Pa.Super. 467, 43 A.2d 553.

[4-6] Section 301(d) of the act, 77 P.S. § 1401(d), gives a claimant the benefit of any and all employments during a period of eight years preceding the date of his disability. But the aggregate employment for four years during the eight years must be in an occupation having a silica hazard. The aggregate employment must carry with it the hazard for the required time. The extended periods of

nonemployment or employment elsewhere involved no such hazard on the part of deceased. It is not, as appellant contends, the mere continuation of a contract of employment that determines a claimant's right to recover under the act. More is required than the continued relationship of employer and employee. Proof of the silica hazard is an essential part of a claimant's case. *Hurtuk v. H. C. Frick Coke Co.*, 157 Pa.Super. 317, 321, 43 A.2d 559.

The application of appellant's theory would require substantial change in the statutory law.

We think deceased's noncompliance with the act is clear, and precludes recovery by appellant. On the findings of fact an award could not be sustained.

Judgment for defendants affirmed.



HARTMAN v. STANDARD STEEL WORKS CO.

Superior Court of Pennsylvania.
April 12, 1946.

Workmen's compensation — 549

Where claimant, seeking compensation for disability due to silica hazard, had worked for same employer off and on during a period of eight years, but during that time claimant also worked for others where he was not subject to a silica hazard, and the period of his employment when he was subject to such hazard was less than four years, compensation was properly disallowed. 77 P.S. § 1201 et seq.

Appeal No. 2, March term, 1945, from order of Court of Common Pleas, Mifflin County, No. 45, October Term, 1943; William W. Uttley, President Judge.

Proceeding under the Occupational Disease Act by Grover H. Hartman, claimant, opposed by Standard Steel Works Company, employer. From a judgment affirming the decision of the Workmen's Compensation Board disallowing compensation, claimant appeals.

Affirmed.

Before BALDRIGE, P. J., and RHODES, HIRT, RENO, DITHRICH, ROSS and ARNOLD, JJ.

F. Brewster Wickersham, of Metzger & Wickersham, all of Harrisburg, and Donald M. Johnson, of Middleburg, for appellant.

Paul S. Lehman, of Lewistown, for appellee.

RHODES, Judge.

This is an appeal by claimant under the Pennsylvania Occupational Disease Act of June 21, 1939, P.L. 366, 77 P.S. § 1201 et seq. The claim for compensation was disallowed by the referee. The Workmen's Compensation Board affirmed the referee's findings of fact, conclusions of law, and order of disallowance. The court below affirmed the board and dismissed claimant's appeal.

The referee found that claimant was totally disabled on March 21, 1942, as the result of silicosis contracted while in the employ of defendant. Claimant had been employed by defendant at various times, and the periods in the eight years next preceding his disability on March 21, 1942, were as follows: March 21, 1934, to October 22, 1934; July 15, 1937, to June 14, 1938; November 14, 1939, to March 21, 1942. Claimant's period of employment with defendant in 1934 was seven months and one day; in 1937 and 1938, ten months and twenty-nine days; in 1939 to 1942, two years, four months, and seven days, or a total of three years, ten months, and seven days.

Claimant was employed by the Hill Brick Company, Beavertown, Snyder County, Pa., as follows: May 1, 1935, to November 12, 1935; January 19, 1937, to January 30, 1937; March 4, 1937, to July 15, 1937; April 18, 1939, to November 13, 1939. Claimant's employment with the Hill Brick Company did not subject him to a silica hazard. Claimant's employment as a chipper by defendant did involve such hazard.

The referee disallowed compensation for the reason that claimant did not have an aggregate employment for four years in the Commonwealth of Pennsylvania during a period of eight years next preceding the date of disability in an occupation having a silica hazard. The aggregate employment of claimant with defendant was three years, ten months, and seven days, during