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MINISTRY OF PENSIONS
AND NATIONAL INSURANCE

Reported Decisions of
the Commissioner
under the National Insurance
(Industrial Injuries) Acts

VOLUME I.

1948 to 1952



LONDON: HER MAJESTY'S STATIONERY OFFICE

1955

26,755'

REPORTED DECISIONS OF THE COMMISSIONER UNDER THE NATIONAL INSURANCE (INDUSTRIAL INJURIES) ACTS VOLUME ONE

C.S.I. 68/49 (K.L.)

3. On the question of "arising out of" as a separate point, the circumstances of the case seem to me to resemble fairly closely those of *Nisbet v. Rayne and Burn* [1910 2 K.B. 689] approved by the House of Lords in *Trim v. Kelly*. In dealing with the question as presented in the case of *Nisbet*, *Coxens-Hardy M.R.* said that "this really depends upon the nature of the man's duties and the extent to which those duties involved him in special risk" the risk in that case being the risk of being attacked as he was while travelling in a train in the course of a journey which he was in the habit of making for his employers to convey money for the payment of wages. Just as in that case it was held that "a man who is known to be carrying a bag of money is a tempting object for criminals to attack", it seems clear that at any rate in a neighbourhood where it was known that he was collecting insurance premiums the claimant was exposed to a similar risk, and a risk increased on the evening when he was so engaged till about 10 p.m. On that aspect of the case I think that there would have been enough in what might be called "the surrounding circumstances" to justify the inference that the ruffians who attacked the claimant did so because they knew that he had been collecting premiums. The matter, is, however, put beyond doubt by a supplementary statement by the claimant as to the result of inquiries the substantial accuracy of which I have no reason to question. On the broad facts of the case the basis of my decision, briefly stated, is that the risk of being attacked as he was in the course of his rounds and on his way home by thieves who knew him to be so engaged was a special risk of the claimant's employment and that accordingly the injuries so sustained were caused by accident within the meaning of Section 7 arising out of and in the course of that employment.

4. I disallow the appeal.

6.12.49

INDUSTRIAL DISABLEMENT BENEFIT

C.S.I. 68/49 (K.L.)

Ex-miner engaged in sorting non-ferrous metals including cables with asbestos covering.

Held that although the amount of asbestos was small, he was engaged in the "handling" of asbestos.

1. My decision is that pneumoconiosis is a prescribed disease in relation to the claimant.

2. Although the majority decision of the Local Appeal Tribunal—the Chairman dissenting—is "claim allowed", the grounds of their decision make it clear that, as pointed out by the Insurance Officer now concerned with the case, the only question so far under consideration is whether the claimant has been employed on or after the appointed day in any occupation set out in Part II of the First Schedule of the National Insurance (Industrial Injuries) (Prescribed Diseases) Regulations, 1948 [S.I. 1948 No. 1371.] On that issue the claimant maintained that he was entitled to succeed under the provisions of paragraph 9(a) of Part II and on the evidence before them as to the nature of his occupation the majority of the Local Appeal Tribunal held that it involved the . . . handling of asbestos or an admixture of asbestos

he was employed
Chairman dissented because
at further information
to the exact nature of
further information of the
not submitted for my consideration

3. The claimant's evidence
Appeal Tribunal is to the effect

"He was a mine
unemployed until 1
scrap metal. In it
such as aluminium
that slightly less than
asbestos. He maintained
by the asbestos he
certified by Board
His duties included
cable, burning the
bundles."

It is right to supplement
evidence—the National C
to the claimant's claim
decision of the Local App
at the claimant in his evidence

"The nature of the
copper . . . and aluminium
workshops in the . . .
and I have to supplement

In their replies the employers
and maintenance of colliery
a job sitting down, so
in reply to the question
"handling this claim?"
certainly prior to 24th April
explained by them in
Tribunal having been given
as a general labourer and

"The cables handled
of cables handled"
content is very small
or lead sheathed with

That statement is signed
affirmed, the position of

4. On that information
evidence justifying a finding
in a paragraph 9 of Part I
it is, I think, well-founded
the Tribunal seem to be
As regards paragraph 9 of

as "he was employed sorting out asbestos incidental to mining". The Chairman dissented because in his opinion "before a decision was arrived at further information should have been obtained from the employers as to the exact nature of the claimant's work and the duties entailed", and further information of that kind which I consider important has been obtained and submitted for my consideration.

3. The claimant's evidence as recorded at the hearing before the Local Appeal Tribunal is to the following effect :--

"He was a miner and worked at the coal face until 1931. He was unemployed until 1934 when he got a job at . . . workshops sorting scrap metal. In 1940 he got a job there sorting non-ferrous metals such as aluminium, zinc, copper brass, copper wire, etc. He states that slightly less than 50 per cent. of copper wire has a covering of asbestos. He maintains that his pneumoconiosis has been caused by the asbestos before referred to and dust from old cables. He was certified by Board as suffering from that trouble on 12th March, 1949. His duties included *inter alia* the removing of asbestos covering from the cable, burning the insulation off the copper and collecting copper in bundles."

It is right to supplement that record by reference to the replies of the employers the National Coal Board--to inquiries as to the particulars given to the claimant's claim and the further information obtained after the decision of the Local Appeal Tribunal. The description of his work as given by the claimant in his claim was as follows :--

"The nature of my work is to classify all the non-ferrous metals, copper . . . and aluminium that comes from all the collieries and electrical workshops in the . . . area. I have to burn copper wire to clean it and I have to supply brass foundry with non-ferrous metals."

In their replies the employers stated that "the industry" was "the repair and maintenance of colliery machinery" and that the claimant's job was "a job sitting down, sorting out copper wire from old electric cables". In reply to the question "Have you any further observations to make regarding this claim?" they replied "His condition is of long standing. Certainly prior to 24th April, 1935". That information was supplemented and explained by them in a letter dated 13th May, 1949--the decision of the Tribunal having been given on 27th April--in which the claimant is described as a general labourer and it is stated that :--

"The cables handled by him containing asbestos comprise one per cent. of cables handled", and that "throughout the year the asbestos content is very small--approximately nil. All other cables are bitumen or lead sheathed with single or double wire armour."

That statement is signed by an official of the employers holding, I am informed, the position of Welfare Officer.

4. On that information the Insurance Officer maintains that there is no evidence justifying a finding in favour of the claimant either under paragraph 10 or paragraph 9 of Part II. So far as the contention relates to paragraph 10 it is, I think, well-founded and both the claim and the majority decision of the Tribunal seem to be based--as I have indicated--on paragraph 9(a). As regards paragraph 9 the Insurance Officer, naturally and I think properly

relying on the report of the Welfare Officer which I have quoted, maintains that the presence of such a small amount of asbestos amongst all the materials handled by the claimant does not justify the view that his occupation is one "involving the working or handling of asbestos or any admixture of asbestos". He maintains in particular that on a reasonable interpretation of the word "handling" as used in the phrase "working or handling" it should be read as meaning "handling to a substantial extent". I feel, however, that the provisions of Part II and of the particular paragraph do not justify—in relation to the question of presumption which I have to decide—a restriction of the meaning or scope of the phrase in that way. As was stressed in relation to some of the similar provisions and phrases considered in cases under the Workmen's Compensation Acts, so here it must be observed that the word "substantial" or "substantially" is not used to qualify the effect of the term—and also that it is used frequently in other parts of Part II. Another consideration which I regard as probably of equal weight against such a restriction at this stage of the case is the fact the present decision does not and is not intended to amount to an allowance of the claim. It merely gives the claimant the benefit of a presumption under Regulation 4(2) that the disease is due to the nature of the employment "unless the contrary is proved", and obviously proof of the extent of the "handling", whether substantial or not, is material to the consideration and decision of the ultimate question of allowance or disallowance of the claim.

5. I disallow the appeal.

6.12.49

INDUSTRIAL DISABILITY BENEFIT

C.S.I. 60/49 (K.L.)

Boiler fireman employed above ground at a colliery shovelling coal and coal dust.

Held to be engaged in "handling" minerals extracted from the mine.

1. My decision is that pneumoconiosis is a prescribed disease in relation to the claimant.

2. For some time before 5th July, 1948 and until October, 1948, the claimant was employed as a boiler fireman working above ground at a colliery, the boiler house at which he worked being situated approximately 30 yards from No. 1 shaft and the same distance from No. 2 shaft. The record of evidence at the hearing before the Local Appeal Tribunal shows that "his duties entail *inter alia* shovelling coal and coal dust according to the claimant's evidence seven or eight tons per shift—the coal dust, etc. entering the boiler house by a chute".

3. The Local Appeal Tribunal, reversing the decision of the Insurance Officer, held that under the provisions of the National Insurance (Industrial Injuries) (Prescribed Diseases) Regulations, 1948 [S.I. 1948 No. 1371] pneumoconiosis, from which he has been certified to be suffering, was a prescribed disease in relation to the claimant in respect that "he has been occupied in an occupation set out in Part II paragraph 10(b) of the First

...entire to those involving the work of minerals extracted from the claimant's coal and being so "above" the work in which could not be described, but the whole purpose described "handling" as an opinion on a connection to the apparent scope of under sub-paragraph

1. I disallow the

30.5.49

Claimant from making was at a

1. My decision is that the Industrial Injury of her husband, caused after the 5th of his employment

2. Deceased was suffering by visited the port I am satisfied the disease and was a 5th July, 1948.

3. The injury is an injury by in the normal course was merely one of the port was, and was life and the of life, or because to attack and in

4. It is suggested as being unexpected. But by accident. The