Workmen's Compensation

Wex S. Malone

Repository Citation
Available at: https://digitalcommons.law.lsu.edu/lalrev/vol19/iss1/24
tory 35-day waiting period previously required by R.S. 26:278; such permits may now be issued immediately after investigation but remain probationary for 35 days. 68

The reports on which the distribution of the PARISH ONE-CENT GASOLINE FUND 69 is made must now be filed by the wholesaler; 70 formerly, such reports were filed by retail dealers. 71 Parishes may still require such dealers to file reports under Section 1 of Act 181 of 1958.

Sections 773 and 774 of Title 47 were amended to make it clear that petroleum products' bonds must be in an amount not less than the average monthly taxes during the preceding twelve months. 72 Prepayment of taxes is now permitted in order to reduce the amount of bond required. 73 Section 784 was amended to provide that the Collector could regulate or prohibit nighttime transportation of petroleum products; 74 prior to amendment, this section prohibited such transportation but permitted the Collector to allow such transportation by regulation. Section 786 was amended to eliminate certain information formerly required of transporters of petroleum products; under the amendment, such transporter, if a bonded dealer, need only have written evidence disclosing the origin and quantity of the taxable products being transported and, where possible, certain delivery information. 75

Workmen's Compensation

Wex S. Malone*

HAZARDOUS EMPLOYMENTS

Only one amendment to the substantive compensation law was made during the past legislative term; 1 but this single change was significant: Compensation insurers are estopped by the amendment to deny the hazardous character of the employment that they have insured. This appears to be a wise and prac-

68. Id. 26:278, as amended by La. Acts 1958, No. 186.
69. Id. 47:727.
71. Id. 47:722.
74. Id. 47:784, as amended by La. Acts 1958, No. 434, § 3.
*Professor of Law, Louisiana State University.
tical disposition of the antiquated provision in our statute restricting compensation to hazardous businesses and employ-
ments. Restrictions to dangerous businesses appear in only a few statutes, and even here the restrictions are relics of a period when workmen’s compensation was a novel, daring undertaking that faced supposed serious constitutional objections and that ran the risk of adverse criticism from many employers. This epoch has now passed into ancient history. In the meanwhile the restriction to hazardous employments has given rise to complicated problems of interpretation and sometimes this has served as a judicial entrapment for worthy claimants. Despite the sensible and often ingenious administration of the hazardous employment provision by our courts, fantastic results have sometimes cropped up in the decisions. For example, a worker whose regular duties involved the loading and unloading of motor vehicles (and who was hurt while so engaged) has been denied compensation because his work was not hazardous within the meaning of the statute, while compensation has been awarded to a beauty parlor operator who was injured while sunning herself on the deck of a pleasure liner at sea. Her duties were regarded as hazardous because they were performed on board a power-propelled vessel! Compensation has been awarded to a farm hand whose eye was injured by a broken stick that he was using to chase cows into a barn, but an award was denied a gun-toting watchman who was shot while on duty. His work was not hazardous! Similarly, compensation was refused to a clerical employee in a dynamite plant, but the employee of a dress shop received an award because she was injured while on an incidental automobile trip. A bicycle messenger boy received no compensation when he was struck down in heavy traffic, but the employee of a beer parlor who was injured inside the establishment obtained an award because he occasionally drove a truck.

The recent estoppel provision offers a happy solution, and in

---

7. LaFleur v. Johnson, 37 So.2d 869 (La. App. 1st Cir. 1948).
this writer's mind this is preferable to an outright repeal of the sections of our act restricting compensation to hazardous employments. In Louisiana, unlike most states, there is no exclusion of small employers. Likewise the employer of casual labor is covered in this state—a coverage that does not generally obtain elsewhere. Since the hirer of only a few workers or the user of strictly casual labor is likely to be the type of employer who will most likely fail to procure compensation insurance, this employer is relieved of his compensation burden unless his business is a hazardous one. If, however, the business is of sufficient magnitude that the procurement of compensation insurance is to be expected, the worker will not likely lose by the fortuitous circumstance that his employment cannot be classified as hazardous. For this reason, the new amendment tends to bring the Louisiana statute more nearly in line with compensation statutes elsewhere.

As a corollary of the estoppel amendment it is provided that so long as the insurance is in effect, the employee cannot resort to a tort suit against his employer on the ground that his employment was not hazardous and hence was not covered by the statute. This corollary carries out the established principle that wherever compensation is available, the employee should have no other remedy against his employer. Were it not for this provision the employee in an insured non-hazardous employment would have available the choice either of suing the insurer for compensation or instituting a tort claim directly against his employer.

REMOVAL

In an effort to discourage the removal of compensation suits to the federal courts on the ground of diversity of citizenship the legislature provided that in the event of removal by the employer the employee who later prevails shall be awarded reasonable attorney fees not in excess of the amount provided generally by the statute. It is hardly necessary to observe that such a provision raises serious questions as to constitutionality. It is doubtful,

11. Businesses with less than a designated number of employees are excluded from coverage in thirty-nine states. The minimum number of workers varies from two (in Oklahoma) to fifteen (in South Carolina).
12. The casual temporary worker is excluded from compensation under varying conditions in all but eight states. The provisions of exclusion differ immensely, however, in the various acts.
however, that the section will be brought into play. Congress has amended Section 1445 of Title 28 of the United States Code so as to preclude removal of a compensation controversy to the federal courts.\textsuperscript{14}

\textbf{ATTORNEYS' FEES}

Formerly attorneys' fees, based on twenty percent of the amount of the award, were subject to an overall limitation of $1,000.00.\textsuperscript{15} By amendment, the overall limitation has been removed and fees are limited to twenty percent of the first five thousand dollars of the award and to ten percent of any recovery in excess of that amount.\textsuperscript{16}

\textbf{PENALTY FOR DELAY IN PAYMENT OF COMPENSATION}

In 1952 the Supreme Court extended the provisions of La. R.S. 22:658 to the employee of an insured employer.\textsuperscript{17} Thus the insurer is subject to a penalty of twelve percent of the total amount of the claim together with reasonable attorneys' fees if he fails arbitrarily, capriciously, or without probable cause to satisfy the claim within sixty days after receipt of proof. At the last legislative term the same penalties were imposed upon the employer himself.\textsuperscript{18} The provisions track those of La. R.S. 22:658. In addition it is made clear that the same penalties attach where the employer discontinues payment of compensation. It is noteworthy here that there is no sixty-day period from the time of discontinuance that must elapse before the penalty attaches. Thus the court of appeal's interpretation of La. R.S. 22:658 in Daigle v. Great American Indemnity Company\textsuperscript{19} is embodied into the new provision. It is noteworthy that limitations on attorney's fees, discussed supra, do not apply in a proceeding under the new section.

\textbf{VENUE}

Suits against the compensation insurer, which formerly were required to be filed at the domicile of the employer or at the place where the accident occurred,\textsuperscript{20} now, by reason of an amend-

\begin{footnotesize}
\begin{enumerate}[14.]
\item 72 Stat. 415, § 5(a), Public Law 85-554, 85th Congress (1956).
\item 70 So.2d 697 (La. App. 1st Cir. 1954).
\item La. R.S. 23:1313 (Supp. 1968).
\end{enumerate}
\end{footnotesize}
ment may in the alternative be instituted at the domicile of the plaintiff. This applies to cases both of injury and of death. The provision is silent with respect to the possible situation where there are several dependents, each of whom resides in a different parish.

Segregation

Charles A. Reynard*

At its 1958 regular session the Legislature adopted a dozen acts intended to apply to six areas of racial segregation. Education was the subject of five of these measures. Public transportation provisions contained in two sections of the revised statutes were repealed by two others. Registrars of voters and school employees were promised continued payment of their salaries during absence from their jobs by two other acts, provided such absence is a consequence of federal action relating to voting or integration of the races in public schools. In three other areas single acts imposed (1) a requirement that blood to be used for transfusions be labeled to indicate the race of the donor, (2) a prohibition against the conduct of social, educational or political activities by any local organization affiliated with any out-of-state group if any of the officers or board members of the latter are members of "Communist, Communist-front or subversive organizations," and (3) a duty upon the attorney general to assist registrars of voters when questioned by federal authorities. The provisions of these acts will be discussed in the order of the topical arrangement just mentioned.

Education

Adhering to its steadfast course of circumventing the Supreme Court's decisions forbidding the enforced segregation of the races in public education, the Legislature took steps to provide for the closing of public schools threatened with desegregation and authorized a system of publicly financed private education in lieu thereof. A pupil assignment law, applicable to the public schools, was also adopted. These measures were designed

---

*Professor of Law, Louisiana State University.