Montana Law Review

Volume 19
Issue 2 *Spring 1958*

Article 9

January 1958

Workmen's Compensation—Assertion of Claims—Time Limitation

John P. Acher

and may be shown by parol. Under an identical statute in California,[13] it was held that unless the lease specifically limits the use, or raises a restriction necessarily implied from the language employed, it is not forfeited by a different use, even if illegal.[14]

The decision is specific: The Montana Supreme Court will not raise an implied covenant restricting the use of leased property to the use contemplated by the parties. The court may well have regarded the general prohibition against waste as a sufficient safeguard of the lessor's interest, but it is arguable that it is an inadequate safeguard in the light of the present decision.[15] At any rate it is clear that the apparent harshness of the present decision arises from the majority's position that the use of a food store building for the purpose of a garage, in and of itself, is not a substantial injury to the inheritance and therefore waste. Whether or not this is so, it seems, is a question to be resolved according to the facts of each case.

The instant case gives warning to lawyers, in their capacity as drafters of lease agreements, to deal explicitly with possibilities of use, and not to rely on reasonable implications which arise from the circumstances of the agreement.

WILLIAM CONKLIN

WORKMEN'S COMPENSATION — ASSERTION OF CLAIMS — TIME LIMITATION—Claimant was involved in an accident during an oil drilling operation of his employer, but suffered no apparent present harm. A rib injury was discovered approximately one year later. Within 120 days thereafter he brought action under the Kansas workmen's compensation statute, which required written claim "within one hundred twenty days after the accident." Claimant recovered judgment in the district court allowing compensation. On appeal to the Supreme Court of Kansas, *held,* reversed. Where the statute requires claim to be filed within 120 days from the date of accident, it is irrelevant that the resulting injury was not discovered until that time had elapsed. *Rutledge v. Sandlin,* 310 P.2d 950 (Kan. 1957).

The workmen's compensation laws of all states but two provide for time limitations on filing claims for compensation.[1] The statutes of a majority of the states include provisions that no claim for compensation will be allowed unless filed within a certain period of time after the *injury.*[2] The courts of those states whose limitation statutes use the word

[13]CAL. CIV. CODE, § 1930 (Deering 1949).

[14]Keating v. Preston, 42 Cal. App. 2d 110, 108 P.2d 479 (1950).

[15]The instant case points up a dilemma which may arise by reason of the holding. Alterations are permitted by the lease if deemed desirable for the lessee's use. Under the rule announced by the court there is no restriction regarding the use of the premises. Since any use of the building is allowed, any alterations consistent with that use would also be allowed. Under such a construction as this the lessor must have granted much more than he intended.

[1]See Landauer v. State Industrial Accident Commission, 175 Ore. 418, 154 P.2d 189, 197 (1944) (dictum).

[2]*Id.*, 154 P.2d at 201.

injury have generally held that the statutory period begins to run from the time the injury becomes apparent and compensable.[3]

In *Baldwin v. Scullion,*[4] a Wyoming case decided in 1936 under a limitation statute using the word *injury,* the court indicates the reasoning used to support the majority view. Citing decisions of the United States District Court for Maryland, and the supreme courts of Texas, Missouri, Arizona, California, Maine, Washington and Connecticut, and also Corpus Juris,[5] the court emphasized that the provisions of the Workmen's Compensation Acts should receive a liberal construction in order to accomplish the benevolent purpose for which they were promulgated. The court said that the employee should not be denied compensation merely because science could not recognize conditions produced at the time of the accident which have gradually and ultimately produced a compensable injury. This is in keeping with the underlying policy of workmen's compensation laws "that industry (and ultimately the consumer) should bear its fair share of the cost of injuries to workers without trying to place the blame on either party."[6]

The limitation statutes of a minority of the states provide that no claim will be allowed unless filed within a designated period after the accident.[7] With the exception of Nebraska,[8] the courts of those jurisdictions having limitation statutes using the word *accident,* and which have passed on the matter, have held that the period commences to run from the date the accident occurred, and not from the date that the injury becomes apparent.[9] This is the position of the instant case.

This approach appears to be based on judicial acceptance of the layman's definition of the word *accident* and a belief that the term is not open to interpretation. That the two terms are not interchangeable is well illustrated by the Idaho legislature's substituting the word *accident* for the word *injury.*[10] The Idaho court construing the statute said:

> If the legislature had intended that the commencement of the limitation period, within which claims could be made on employers, should continue to be from the date of the first manifestation of a compensable injury, and not from the date of the accident, it would not have made the substitution. We have no doubt that when the legislature substituted the word "accident" for the word "injury" it intended to change the date from which the time for making a claim should commence to run, and, to change that date from the first manifestation of a compensable injury to the date of the accident.

[3]Michna v. Collins Co., 116 Conn. 193, 164 Atl. 502 (1933); Griffin v. Rustless Iron & Steel Co., 187 Md. 524, 51 A.2d 280 (1947). See also 58 AM. JUR., *Workmen's Compensation* § 409 (1942).

[4]50 Wyo. 508, 62 P.2d 531, 108 A.L.R. 304 (1936).

[5]71 C.J., *Workmen's Compensation Acts* § 734 (1935).

[6]HOROVITZ, CURRENT TRENDS IN WORKMEN'S COMPENSATION 479 (1947).

[7]Landauer v. State Industrial Accident Commission, 175 Ore. 418, 154 P.2d 189, 197 (1944) (dictum).

[8]Keenan v. Consumers Public Power District, 152 Neb. 54, 40 N.W.2d 261 (1949).

[9]Landauer v. State Industrial Accident Commission, 175 Ore. 418, 154 P.2d 189, 197 (1944) (dictum); Ann., 108 A.L.R. 316 (1936).

[10]Moody v. State Highway Department, 56 Idaho 21, 48 P.2d 1108, 1110 (1935).

The Montana limitation statutes use the word *accident*. Section 92-601, Revised Codes of Montana, 1947, provides that a claim must be presented "within twelve months from the date of the happening of the accident." Section 92-807 provides that notice must be served upon the employer or insurer "within thirty days after the occurrence of the accident." The phraseology of Montana's limitation statutes would appear to compel the result of the instant case even more certainly than the Kansas statute, because it refers specifically to the "occurrence" and the "happening" of the accident.

The passing years have reflected an increasingly liberal tendency in judicial construction of workmen's compensation statutes.[11] An examination of the Montana decisions reveals that this state has followed the liberal trend.[12] The question which thus arises is whether, through a liberal inter-

[11]In some states, including Montana, liberal construction is expressly required by statute. REVISED CODES OF MONTANA, 1947, § 92-1838. Even so, this principle was not always adhered to in the early days of workmen's compensation litigation. HOROVITZ, CURRENT TRENDS IN WORKMEN'S COMPENSATION 472 (1947). A prime example of this tendency toward narrow interpretation is found in an early Michigan case, Cooke v. Holland Furnace Co., 200 Mich. 192, 166 N.W. 1013 (1918). The Michigan limitation statute contained the word *injury*. In this case, where a head injury did not become apparent until approximately a year after a metal bolt had struck the head of the workman, who thereafter did not file a claim for compensation within the statutory period from the date of the accident, compensation was disallowed on the ground that by using the word *injury* the legislature intended the period of limitation to begin at the time of the occurence which gave rise to the injury. The court relied upon cases involving common law or statutory actions for negligence where the statute of limitations commences to run from the happening of the negligent act. It said, "Our duty is not to enact, but to expound, the law; not to legislate but to construe legislation, to apply the law as we find it, and to maintain its integrity as it has been written by a co-ordinate branch of the state government. If the law as written works hardships in a special class of cases, the remedy lies with the branch of government charged with the duty of enacting law." It is significant that counsel for the claimant made a statement which today has become accepted. He said, "There must necessarily be a new definition of the word injury to embrace the circumstances that arise under the Workmen's Compensation Law."

[12]As was the tendency in most states, early Montana decisions manifested little liberality in construing the workmen's compensation statutes. In Chmielewska v. Butte & Superior Mining Co., 81 Mont. 36, 261 Pac. 616 (1927), compensation was refused when the widow of a worker killed in an industrial accident lived in Poland, and the processing of necessary claim documents through international channels required a longer time than the six-month statutory period. In 1934, in Clark v. Olson, 96 Mont. 417, 31 P.2d 283 (1934), the Montana court, citing Cooke v. Holland Furnace Co., *supra* note 11, reiterated the policy of strict construction for the preservation of the integrity of the law.

However, later decisions indicated that the court had begun to follow the general trend toward liberality. In Chisholm v. Vocational School for Girls, 103 Mont. 503, 64 P.2d 838 (1936), where a workman filed a faulty claim within the statutory period and the claim was refiled with the defect corrected after the expiration of the statutory period, compensation was allowed. It was there said, "The Industrial Accident Board . . . is a poorman's court or *rusticum forum*, wherein a claimant may present his cause without the assistance of counsel and, therefore, the strict rules of pleading and practice should not be applied."

More recently the Montana court again refrained from a strict technical construction of the act. In Gugler v. Industrial Accident Board, 117 Mont. 38, 157 P.2d 89 (1945), the claimant was struck in the eye by a piece of metal in 1936 but did not become aware of a deficiency in eyesight until 1940, when he filed his claim. Compensation was allowed on the ground that, since the claimant's doctor notified the Industrial Accident Board of the accident and filed his own claim for reimbursement for his services in treating the claimant, the requirement for filing a claim within the statutory period was satisfied. It was re-emphasized that there is

pretation, the Montana court could be expected to reach a result contrary to that of the present case.

Perhaps a contrary result is conceivable,[13] but it would appear much more likely that the Montana court would follow the instant case. This is because the Kansas court which rendered that decision itself adheres to the modern liberal trend,[14] and because every limitation statute using the word *accident* which has been construed, with the exception of Nebraska's, has been held to require that the period of limitation begins to run from the happening of the accident. Thus it would seem that although the acts are to be liberally construed, when a court is confronted with the word *accident* there is no room for construction and that holding *accident* to mean *manifestation of injury* would be unwarranted judicial legislation.[15]

That courts generally construe limitation statutes using *injury* to refer to manifestation of injury furnishes no authority for a statute which reads *accident,* since *injury* refers to effect while *accident* refers to occurrence.

The issue here involved has not yet been litigated in Montana,[16] but the probability of a result like that in the instant case should be avoided by legislative action, substituting the word *injury* or *discovery of injury* for the word *accident* in Montana's limitation statute. No workman should be denied relief merely because the injury he receives is not discoverable at the outset, if it later appears and causes a disability the act was intended to make compensable.

JOHN P. ACHER.

WORKMEN'S COMPENSATION — EFFECT OF POST-INJURY WAGES ON ELIGIBILITY FOR PAYMENTS — PRESERVING THE RIGHT TO COMPENSATION WHILE INELIGIBLE TO DRAW PAYMENTS—In December, 1948, claimant suffered an industrial accident. After filing a timely claim for compensation, he continued working at full pay until July, 1952. In October, 1953, the Montana Industrial Accident Board heard and denied the claim but was re-

---

a need for liberal construction in order to effectuate the humane purpose of the legislation.

In Yurkovich v. Industrial Accident Board, 314 P.2d 866 (Mont. 1957), an employee was injured and requested from the Industrial Accident Board information on procedure to be followed in obtaining compensation. The Board failed to inform him of the necessity of filing a claim under oath. The workman did not file a claim until later when he became aware of this requirement, after the statutory period had expired. The court allowed compensation, stating that the Industrial Accident Board stands in a fiduciary relationship to the injured workmen, and will not be heard to assert the running of the time limitation when its own inaction caused the claim to be filed too late.

[13]Keenan v. Consumers Public Power District, 152 Neb. 54, 40 N.W.2d 261 (1949).

[14]In fact, in 1944 the words "injury arising by accident" were construed by that court to include injury sustained in the performance of usual tasks performed in the usual manner even though there be no event in the nature of an outside or intervening cause. Murphy v. I.C.U. Const. Co., 158 Kan. 541, 148 P.2d 771 (1944). With this compare Murphy v. Anaconda Company, 321 P.2d 1094 (Mont 1958).

[15]See the language of the Idaho Supreme Court in Moody v. State Highway Department, 56 Idaho 21, 48 P.2d 1008, 1110 (1935), set out in the text at note 10 *supra.*

[16]But note the reference in Gaffney v. Industrial Accident Board, 324 P.2d 1063, 1064 (Mont. 1958), 19 MONTANA L. REV. 173 (1958), to a distinction between "accident" and "injury."