Workmen's Compensation Act. Injury "Arising Out of and in the Course of Employment." Going to and from Work.

An employe, injured about one mile from place of employment, while riding a motorcycle to work, is not entitled to compensation as it was not an injury "arising out of and in the course of his employment."

March 3, 1917.

Industrial Accident Board,
Helena, Montana.

Gentlemen:

You have submitted to me the question of the right to compensation under the Workmen's Compensation Law of an employe who was

injured while riding a motorcycle on the public highway on his way to work. The accident happened one mile from the mine at which the employe was working, and was caused by a passerby stepping in front of the injured employe and thus causing him to fall from the motorcycle.

The question presented is whether or not this is an "injury arising out of and in the course of his employment" within the meaning of Section 16 of the Workmen's Compensation Act, Chapter 96 of the 1915 Session Laws. To be entitled to compensation it must appear that it was (a) an accident, (b) arising out of and (c) in the course of his employment. Even though the injury arose out of and in the course of the employment, if it be not "an accident" within the meaning of the Act, there can be no recovery. Even if there be an accident which occurred "in the course of" the employment, if it did not "arise out of the employment", there can be no recovery; and even though there be an accident which arose "out of the employment", if it did not arise "in the course of the employment" there can be no recovery.

It was said by the Supreme Court of New Jersey, in the case of Bryant v. Fissell, 86 Atl. at 460:

> "For an accident to arise out of and in the course of the employment, it must result from a risk reasonably incidental to the employment. As was said by Buckley, L. J., in Fitzgerald v. Clark & Son (1908) 2 K. B. 796, 77 L. J. K. B. 1018: 'The words 'out of' point, I think, to the origin and cause of the accident; the words 'in the course of,' to the time, place, and circumstances under which the accident takes place. The former words are descriptive of the character or quality of the accident. The latter words relate to the circumstances under which an accident of that character or quality takes place. The character or quality of the accident as conveyed by the words 'out of' involves, I think, the idea that the accident is in some sense due to the employment. It must be an accident resulting from a risk reasonably incident to the employment.' We conclude, therefore, that an accident arises 'in the course of the employment' if it occurs while the employe is doing what a man so employed may reasonably do within the time during which he is employed, and at a place where he may reasonably be during that time."
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> "It would be entirely too narrow a construction to limit the benefit of the statute to the time the workman is actually employed at his machine. He must have time to reach his machine and get away from his employer's premises. In fact, it is a necessary implication of the contract of employment that the workman shall come to his employment and shall leave with reasonable speed when the work is over. The preparation reasonably necessary for beginning work after the employer's preemises are reached and for leaving when the work is over is a part of the employment. A workman is none the less in the course of employment because he is engaged in changing his street clothes for his working clothes,

> or in changing his working clothes for his street clothes. In the present case it was reasonably necessary that the petitioner comb her hair and remove the particles of wool before leaving the factory."

Terlecki v. Strauss, 89 Atl. 1024 N. J.

In a case where workmen were accustomed to be transported in a wagon furnished by their employer to and from their work, and such employees with the knowledge and consent of their employer could go back at the end of each day's work in this wagon to the employer's barn, if they wished to do so, this can be found to have been one of the incidents of their employment; and if one of these workmen is injured while thus going home in the wagon at the end of his day's work, his injury can be found to have been one "arising out of and in the course of his employment."

Donovan's Case, 217 Mass. 76, 104 N. E. 431, 4 N. C. C. A. 549.

But where a workman was killed by a train on his way home from work, it can be found that the injury did not arise "out of and in the course of his employment."

Fumiciello's Case, 219 Mass. 488, 107 N. E. 349.

The court saying on page 490: "The contract of employment did not provide for transportation or that the employee shall be paid for the time taken in going and returning to his place of employment, and when the day's work had ended the employee was free to do as he pleased. If he had chosen to use the public ways and had been injured by a defect or passing vehicle the administrator could not recover against the employer because there would be no casual connection between the conditions of employment and the injuries suffered. McNichols' Case, 215 Mass. 497, Holmes v. Mackey & Davis, (1899) 2 K. B. 319."

It was held in the case of Milwaukee v. Althoff, 156 Wis. 68, 145 N. W. 238, L. R. A. 1916 at 329, that when a servant reported to his foreman and received his instructions for the day, and proceeded to carry out these instructions by starting for the place where he was to work, the relation of master and servant commenced, and that in walking to the place of work the servant was performing service growing out of and incidental to his employment.

The Supreme Court of West Va. in the case of DeConstantin v. Public Service Commission, 83 S. E. 88, L. R. A. 1916 A at page 331, in discussing the question of recovery of compensation for injuries received while going to and coming from work stated as follows:

> "The employment is not limited to the exact moment of arrival at the place of actual work, nor to the moment of retirement therefrom. It includes a reasonable amount of time before and after actual work. Gane v. Norton Hill Colliery Co. (1909) 2 K. B. 539, 78 L. K. B. N. S. 921, 100 L. T. N. S. 979, 25 Times L. R. 640, 2 B. W. C. C. 42; McKee v. Great Northern R. Co. 42 Ir. Law, Times 132, 1 B. W. C. C. 165 Bradbury, Workmen's Compensation, pp. 404-407. A reasonable time after the termination of actual work is allowed. If a workman is injured on the premises of the employer, and

while leaving his place of actual work by the usual course of travel, the injury is deemed to have arisen out of the employment. Kinney v. Baltimore & O. Employes' Relief Asso. 35 W. Va. 385, 15 L. R. A. 142, 14 S. E. 8. Since injury after termination of actual work, while on the premises of the employer and in pursuit of the usual way of leaving the same, is held to be within the course of employment and to have arisen out of the same, it seems clear that an injury to a workman while coming to his place of work on the premises of the employer, and by the only way of access, or the one contemplated by the contract of employment, must also be regarded as having been incurred in the course of the employment and to have arisen out of the same. If, in such case, injury does not occur on the premises, but in close proximity to the place of work, and on a road or other way intended and contemplated by the contract as being the exclusive means of access to the place of work, the same principle would apply and govern. If the place at which the injury occurred is brought within the contract of employment by the requirement of its use by the employee, so that he has no discretion or choice as to his mode or manner of coming to work, such place and its use seem logically to become elements or factors in the employment, and the injury thus arises out of the employment and is incurred in the course thereof. But, on the contrary, if the employee, at the time of the injury, has gone beyond the premises of the employer, or has not reached them, and has chosen his own place or mode of travel, the injury does not arise out of his employment, nor is it within the scope thereof.

The Supreme Court of Michigan, in passing upon this same question, in the case of Hills v. Blair, 182 Mich. 20, 148 N. W. 243, 7 N. C. C. A. 409, uses the following language on pages 25, 26 and 27:

"Under the provisions of this act, only that employee is entitled to compensation who 'receives personal injuries arising out of and in the course of his employment.' It is to be borne in mind that the act does not provide insurance for the employed workman to compensate any other kind of accident or injury which may befall him. The language of the Michigan Compensation Law is adopted from the English and Scotch act on the same subject, and, in harmony with their interpretations, has been construed by this court, in Rayner v. Furniture Co., 180 Mich. 168 (146 N. W. 665), as meaning that the words 'out of' refer to the origin, or cause of the accident, and the words 'in the course of' to the time, place, and circumstances under which it occurred. * * * ."

"While occasional exceptions are noted, as in the case of most rules, it is laid down by the authorities as a general rule that accidents which befall an employee while going to or from his work are not to be regarded as in the course or arising out of his employment. Boyd on Workmen's Compensation,

Sec. 486; 1 Bradbury on Workmen's Compensation (2nd Ed.), p. 404."

"In applying the general rule that the period of going to and returning from work is not covered by the act, it is held that the employment is not limited by the exact time when the workman reaches the scene of his labor and begins it, nor when he ceases, but includes a reasonable time, space, and opportunity before and after, while he is at or near his place of employment. One of the tests sometimes applied is whether the workman is still on the premises of his employer. This, while often a helpful consideration, is by no means conclusive. A workman might be on the premises of another than his employer, or in a public place, and yet be so close to the scene of his labor, within its zone, environments, and hazards, as to be in effect at the place and under the protection of the act, while, on the other hand, as in case of a railway stretching endless miles across the country, he might be on the premises of his employer and yet far removed from where his contract of labor called him. The protection of the law does not extend, except by special contract, beyond the locality, or vicinity, of the place of labor."

In view of the foregoing, I am of the opinion that the injury rereived by the employee in the case submitted by you, was not one arising out of and in the course of his employment, and therefore the injured employee is not entitled to compensation under the terms of the Workmen's Compensation Act.

Respectfully,

S. C. FORD,

Attorney General.