Chicago-Kent Law Review

Volume 3 | Issue 8 Article 3

April 1925

Notice and Claim under the Illinois Workmen's Compensation Act

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This note has to do first with the requirements of the Illinois Workmen's Compensation Act as to the giving of notice and the filing of claim within the periods prescribed by the terms of the Act.

The cases of

Haiselden v. Industrial Board, 275 Ill. 114;

Bushnell v. Industrial Board, 276 Ill. 262,

establish the rule that the giving of notice and the filing of claim according to the provisions of the Workmen's Compensation Act are jurisdictional and no decision on an award under the Act can be sustained in the absence of evidence showing that these requirements have been met by the petitioner. The section which contains the matter under discussion is Section 24 and reads in part as follows:

> "Provided no proceedings for compensation under this Act shall be maintained unless claim for compensation has been made within six months after the accident, or in the event that payments have been made under the provisions of this Act unless either claim for compensation has been made within six months after such payments have ceased and a receipt therefor or a statement of the amount of compensation paid shall have been filed with the Commission. Provided, that no employee who after the accident returns to the employment of the employer in whose services he was injured shall be barred for failure to make such claim if an application for adjustment of such claim is filed with the Industrial Commission within eighteen months after he returns to such employment * * *"

The words: "payments have been made under the provisions of this Act" have been subjected to judicial interpretation on several occasions. The last and now controlling authority on the subject is the case of **Marshall Field & Co. v. Industrial Board, 305 Ill. 134.** This case involved injuries sustained by a female employee of Marshall Field & Co., who developed hysteria resulting from a fall undergone during the course of her employment. The accident occurred February 18, 1919. From the 18th of February, the injured person worked until March 3rd when she was absent for a year, returning to her former employment on March 15, 1920, where she remained until November 17, 1920. Marshall Field & Co. paid the petitioner half pay from March 3, 1919 to July 1, 1919, in accordance with a benefit plan. On June 30, 1919 the petitioner, when absent from her employment, wrote the division superintendent of the respondent propounding the following query:

> "If I am entitled to any more money will you please have it sent me?"

Payments were made to her on July 2nd in an aggregate amount of $110.00. On September 20, 1919 the petitioner wrote her immediate superior asking her to see a certain official in regard to "any money coming," adding that she could well make use of it. The respondent answered this last letter saying that under the circumstances all had been done that was reasonable.

The employer raised several questions for the consideration of the Supreme Court, and argued that neither notice was given nor claim made under the terms of the Act within the time required. The court disposed of the notice

question by holding that the facts and circumstances of the accident were known to the petitioner's division superintendents and that the Company had reasonable knowledge of the accident within the time prescribed, 30 days. This was so, even though the employee had not given what is known as a technical notice.

In reference to the question whether or not claim had been made under the terms of the statute, the court reviewed the facts mentioned above pertaining to the payment of benefits and held that the plaintiff's letters to the Company of June 30, 1919 and September 20, 1919, having been mailed and received within the six months after the date of the last payment, constituted claims for compensation within the meaning of the Act. The court's opinion was based on the fact that the demands contained in the letters were quite clearly for money believed by the writer to be owed to her from her former employer. This holding raised the question as to whether or not the payments made by Marshall Field & Co. from March 3rd to July 1st were within the meaning of the language quoted above from the Act so that demands made within six months after the date of the last of such payments, would meet the requirements of the Act. This necessitated a discussion of the nature of these payments and the court said in this regard:

> "Though the plaintiff in error, in making the payments, was simply following out a policy which it had adopted with reference to its employees without regard to any liability to them for compensation, yet, where compensation was actually due, the employee had a right to regard such payments as made under the Compensation Act and was not bound to make demand for any further compensation so long as they continued."

The court then distinguished the case at bar from **Ohio Oil Co. vs. Industrial Commission,** 293 Ill. 461, where the employer, to the knowledge of the employee's attorney, expressly denied liability under the Act. The Supreme Court then went on to say that as notice had been given within 30 days after the accident and as claim had properly been made by the injured employee within six months after the date of the last of the payments mentioned above, her claim with the Industrial Commission was properly filed within eighteen months after the date, March 15, 1920, upon which she returned to Marshall Field & Co. to work.

In the Ohio Oil Co. case *supra* the action was brought by an administratrix to recover compensation for the death of her intestate husband. The deceased, on August 29, 1916, while working at his employment with the Oil Company, received a blow from a flying stick, which necessitated an operation in the latter part of March 1917. The deceased had worked during the intervening period. It was found on March 22, 1917, at the time of the operation, that the deceased was suffering from cancer, and, while he returned on August 13, 1917 to work, he was forced to stop October 22, 1917 and on April 2, 1918 he died from the effect of the cancer. The Oil Company, from December 18, 1917 until March 27, 1918, paid the deceased at the rate of $10 per week and the Company also paid his hospital bills until October 1, 1917. The matters in dispute, among others, were that no notice had been given within 30 days and that no claim for compensation had been made within six months. The only evidence of the notice was the testimony of the administratrix, whom the court held was clearly incompetent to testify by virtue of the common

law and sections 1 and 5 of the Evidence Act, and the petitioner's case was, therefore, defeated because of the lack of notice. But the court went on to discuss the question as to whether claim had been properly made under section 24 of the Act.

After saying:

> "The notice within thirty days and claim for compensation within six months are jurisdictional, and an award cannot be sustained in the absence of evidence of the compliance with these requirements of the statute"

the court considered the facts having to do with the dispute concerning the claim. As the administratrix had served a written claim for compensation on the Oil Company on June 25, 1918, which was within six months after the last of the weekly payments, the last payment having been made March 27, 1918, the question resolved itself into the same matter which concerned the court in the Marshall Field case, viz: Were these payments such as to be "payments—under the provision of this Act"? The Supreme Court in the Ohio Oil case then laid stress on the fact that the employer had denied liability to make the payments, the nature of which was in dispute, and this denial was known to the deceased and the defendant in error. It will be remembered that the Marshall Field case distinguished the facts in that case with the facts of the Ohio Oil Co. case on this very ground.

It is well to note the nature of the denial of liability by the Ohio Oil Co. upon which the Supreme Court placed so much importance. This opinion shows that after the operation, March 22, 1917, an attorney representing the injured man called at the offices of the Oil Company and requested compensation for his client. He was notified a few days later that the Company refused to make payments and that proceedings would have to be instituted before the Industrial Board. Later, however, the Oil Company, apparently moved by the destitute condition of the injured man's family, said that they would "do something for him." No definite agreement was made as to just what they would do, that is nothing was said by the representative of the employer as to what amount would be paid or as to how long the payments would be made. These facts, in the opinion of the court, constituted a denial of liability, which would preclude the possibility of the employee considering either that the payments were being made under the provisions of the Act or that a claim made within six months after the payments ceased would be within the time stipulated by the Act.

The Supreme Court in the Ohio Oil Co. case was forced to distinguish a still earlier opinion, that of **Tribune Co. v. Industrial Commission, 290 Ill. 402.**

In the Tribune Co. case, a contract of settlement was entered into between the employer and the employee, presented to the Commission and by it approved. The Court in the Tribune Co. case said that as the settlement agreement had been presented by the employer for the approval of the Industrial Commission the employer had submitted to the jurisdiction of the Commission and waived any question of time limitation then existing. This was so even though the settlement contract expressly provided that it should not constitute a submission to the jurisdiction of the Commission or a waiver of any rights of defense the employer had under the Act. The court in the Ohio Oil case laid stress on the fact that in the case before it no agreement whatever was made and that, therefore, the payments received by the em-

ployee, coming as they did after denial of liability, could only be considered as mere gratuities and that, therefore, as the claim was not made within six months after the injury, it was not made in time, even though the claim was made within six months after the date of the last gratuitous payment.

The court then discussed the question as to whether or not claim was filed before the Commission within the time stipulated by the Act. The Act provided that in the event an employee returns to the employment of the employer in whose service he was injured he shall be allowed to file a notice of his claim within eighteen months after the return. In the Ohio Oil Co. case the administratrix had filed a claim for compensation within eighteen months after August 13, 1917, which was the date Brown returned to work after leaving the hospital. The court held that this was not a compliance with the statute. In speaking of the statute the Court said:

> "Its intention is to extend, for eighteen months after his return to work, the right of an employee to maintain an existing claim and not to grant a right."

The clear meaning of this language is that if an employee, who has been injured, has not made a claim upon the employer within the proper six months' period, he cannot, by filing a claim before the Industrial Commission within eighteen months after his return to work, obtain a right to prosecute his claim to compensation, which he has already lost.

The decision of the Supreme Court of Illinois in the Ohio Oil Co. case, as noted above, made mention of the opinion written in **Tribune Co. v. The Industrial Commission, 290 Ill. 402.** A consideration of this question renders necessary a discussion of this case. The case raises an additional question which is important in its possible implications concerning the waiver of jurisdictional defects by submission to arbitration. The discussion of the Ohio Oil Co. case (Supra) makes mention of the fact that in the Tribune Co. case a contract of settlement was agreed upon and presented to and approved by the Industrial Commission. This contract provided for a lump sum settlement and by its terms stipulated that it should not constitute an admission on the part of the employer that the Industrial Board could properly acquire jurisdiction or as a waiver of the employer's right to insist upon such jurisdictional defects as did exist.

The defects had to do with the failure to meet the requirements of section 24. The facts are as follows:

An employee of the Tribune Co. was injured August 23, 1915 and was paid compensation by the Tribune Co. at the rate of $6 a week, being one-half of his weekly wage, for a period of nine weeks, the last payment being made in October of 1915. In March of 1917 the Tribune Co. and the injured employee, whose condition had not been entirely healed, entered into the contract of settlement. At this time the Industrial Commission entered an award under the Workmen's Compensation Act based on the settlement agreement. On July 23, 1918 the employee filed a petition for review under that section of the Workmen's Compensation Act, 19H, which provides for review by the Commission in cases where the disability of the employee "has subsequently recurred, increased, diminished or ended." After due notice to the Tribune Co., the decision of the Commission was made on March 5, 1917 and provided for an award in behalf of the injured man. The Circuit Court of Cook County confirmed the decision of the Industrial Commission and the

case was brought to the Supreme Court. The Tribune Co., among other matters, raised the point that as the statutory period, six months, during which, by the terms of the Act, an employee must make his claim, had expired at the time the settlement contract was executed and approved, the Industrial Commission was without jurisdiction and the petition under 19H to review the provisions of the settlement contract should not have been considered by the Commission. Seventeen months had elapsed since the last payment made by the Tribune Co., October 1915, when the settlement contract, March 1917, was executed and approved. The employee's counsel argued that the settlement contract conferred jurisdiction on the Industrial Commission by consent. The Tribune Co.'s position was that under the authority of **Haiselden v. Industrial Board, 275 Ill. 114, Bushnell v. Industrial Commission, 276 Ill. 262,** and **Barrett Co. v. Industrial Commission, 288 Ill. 39,** the jurisdictional requirements of section 24 were basic, and that therefore, the acts of the parties could not confer jurisdiction on the Industrial Commission. The Tribune Co. also urged that the settlement contract itself stipulated that no jurisdiction was being conferred, nor was any right to object being waived. The court then considered the effect of entering into a settlement agreement and referring the same for the approval of the Industrial Commission. The court cited **Wabash Ry. Co. v. Industrial Commission, 286 Ill. 194** where it was held that any settlement or agreement must be considered to have been made under the provisions of the Act, and applied the reasoning and holding of the Wabash Ry. case to the case at bar, saying:

> "Section 24 of the Workmen's Compensation Act contains a provision to the effect that technical notice is not necessary provided the employer has actual notice, and the general rule seems to be that while the defendant may make a quasi appearance for the purpose of objecting to the manner in which he is brought before the court, and, in fact, to show that he is not legally there at all, 'if he ever appears to the merits he submits himself completely to the jurisdiction of the court and must abide the consequences.' Krull vs. Keener, 18 Ill. 65; Supreme Hive Ladies Maccabees vs. Harrington, 227 Ill. 511."

and again

> "By the settlement agreement both parties submitted to the jurisdiction of the Industrial Commission on the merits of the case, and the conclusion necessarily follows that they waived jurisdiction as to the time limitation with reference to voluntary payment, even though the agreement stated to the contrary. * * * We do not agree with the argument of counsel that the question of the time when the application was filed is one of jurisdiction of the subject matter rather than jurisdiction of the person."

It seems that on the facts presented for decision the attitude of the Supreme Court in the Tribune Co. case was correct. But where the court quoted from the cases, the language seems unfortunate. The subsequent cases, the Ohio Oil case and the Marshall Field case, clearly show a consistent ruling by the court that a denial of liability, even when payments are made, will protect the employer and under no circumstances will give to the employee a right to relieve himself from the obligation of meeting the requirements of the Act in making claim within the proper period. But this is one thing, and, as the court in the Ohio Oil Co. case has directly said, the submission of a case for the approval of the Commission amounts to a decidedly different matter. But the language of the court is more general; indeed, the court says that they do not agree that the question of the time when the

application was filed is one of the jurisdiction of the subject matter rather than jurisdiction of the person, and the court says that an appearance to the merits is a complete submission to the jurisdiction of the court. At this point it should be mentioned that the cases cited by the court in support of this last statement, **Krull v. Keener, 18 Ill. 65; Supreme Hive Ladies Maccabees v. Harrington, 227 Ill. 511**; are not Industrial Board cases but simply apply the familiar rule that a general appearance in a law suit waives the right to protest against improper service of summons and kindred jurisdictional matters.

The decision in the Tribune Co. case, therefore, raises the following question: Does participation by the respondent in a voluntary hearing before the arbitrator waive the respondent's right to later insist before the Industrial Commission or before the Circuit Court that the petitioner has not met basic jurisdictional requirements because of a failure to give notice to or serve a claim upon the employer within the period stipulated by the Workmen's Compensation Act? It is believed that the law is well settled that such a waiver does not take place.

In this regard the case of **Bushnell v. Industrial Board, 276 Ill. 262** stands as authority. The petitioner in the Bushnell case, while engaged in his work on November 4, 1913 twisted his leg and sustained the injury in question. No formal notice was served upon his employer within the 30 days prescribed and this defect was sought to be remedied by testimony concerning a conversation held between the injured man and his foreman on the following day. During this conversation the petitioner told the foreman he had hurt his leg while tearing up the floor and a few days later he told the foreman that he had a "game leg." In reference to the question as to whether or not this would constitute a proper notice within the meaning of the compensation act, the court said:

> "While the statute is very liberal in its provisions as to the character of the notice to be given and provides that no defect or inaccuracy therein shall bar the proceedings unless the employer proves that he is unduly prejudiced by such defect or inaccuracy, and that the failure to give such notice shall not relieve the employer from liability when the facts and circumstances of such accident are known to the employer or his agent or vice-principal, still we think it is both the spirit and intention of the act that the employer shall have notice, either by formal notice or knowledge of such facts and circumstances of the accident as will apprise him that his employee has sustained injuries of such a character as to entitle him to compensation under the Act and that he may reasonably expect that such claim will be made.
>
> "The mere fact that Stewart told the foreman, in response to the question as to what caused him to limp, that he had wrenched his leg in attempting to tear up the floor, without making any claim for compensation for such injury or suffering any interruption of his work, was not sufficient notice of the facts and circumstances of the accident to entitle him to compensation under the provisions of section 24 of that Act without giving of any other notice."

The authority cited by this court in support of this language was the case of **Parker-Washington Co. v. Industrial Board, 274 Ill. 498.**

The next question presented for the decision of the Supreme Court in the Bushnell case was whether or not a proper claim had been made within six months after the accident as required by section 24. No formal demand was made by the injured man, until May 21, 1914, which was more than six months after November 4, 1913, the date of the injury. The injured man, however, on April 17, 1914 told his employer that he had hurt his leg tearing

up the floor, but the records showed no proof that any formal or informal claim was made at that time for compensation under the Act. The court in its discussion of this question clearly indicates that a claim, to be a claim under the Act, must be one for compensation under the Act for the injury in question. In speaking of the nature of the requirements of the Act, that notice must be given and claim made, the court said:

> "In Haiselden v. Industrial Board, 275 Ill. 114 we held the provisions of section 24 of this Act were mandatory, and that unless claim was made within six months from the time of the injury it would be barred by the foregoing provisions of the Act."

The Supreme Court in the Bushnell case then gave its answer to the query, mentioned above, and said:

> "Defendants in error concede that it may be true that the record fails to show any specific demand was made within six months, but insist that if such is the case demand was waived by the failure to raise the point on the hearing before the committee of arbitration, the Industrial Board or on the hearing in the Circuit Court. With this contention we do not agree. The making of a claim for compensation is jurisdictional and a condition precedent to the right to maintain such action, and the burden of proof was upon the claimant to establish such fact as a part of his case in chief, and in the absence of such proof the committee of arbitration and the Industrial Board were without jurisdiction to proceed in the matter.
>
> "For the reasons given, the judgment of the Circuit Court must be reversed."

In this regard it is interesting to note that the Supreme Court in the Tribune Co. case did not discuss the holding of the Bushnell case, although it was called to the attention of the court by counsel. The Bushnell case was a case concerned with the Act itself and still stands as authority for the propositions discussed. As stated above, the Bushnell case was cited with approval by the Supreme Court in the Ohio Oil case, which was a later pronouncement than the opinion rendered in the Tribune Co. case.

In reference to the proper time to raise the question as to whether or not claim has been made, the opinion in the case of **Storrs v. Industrial Commission, 285 Ill. 595,** is interesting. In that case the court held that the question as to whether or not claim had been made must be raised by the respondent before the Industrial Commission or before the Circuit Court and that it could not be raised for the first time in the Supreme Court.

American Milling Co. v. Industrial Board, 279 Ill. 560.

Here the court held that the question as to whether claim had been properly made within the requirements of the Act should be raised before the arbitrator or at least not later than during the hearing before the Board of Commissioners, but the case does not hold that a hearing on the merits before the arbitrator waives the right to raise the jurisdictional point. In this regard, see **Chicago Packing Co. v. Industrial Board, 282 Ill. 497** where the court uses similar language.

Jackson v. Industrial Commission, 302 Ill. 281 is a very late opinion where the Supreme Court says that the question as to whether or not claim was properly made within the requirements of the Compensation Act would be waived by the respondent if the contention was not raised before the Industrial Commission. See **Wabash Ry. Co. v. Industrial Commission, 286 Ill. 194** and **Ridge Coal Co. v. Industrial Commission, 298 Ill. 532.**

The leading case where the language employed by the Supreme Court in

the Tribune case is repeated in a way which might conflict with the better opinion is the case of **Pocohontas Mining Co. v. Industrial Board, 301 Ill. 462, 475-477.** While the opinion in this case might be considered to support and reaffirm the unfortunate Tribune case doctrine, it must be remembered that the point under discussion in the Pocohontas Mining Co. case was considerably different from the question with which we are presently concerned. Our point is as to when the contention should or can be made that notice or claim was not properly given or made. The Pocohontas case simply held that the objection that the stenographic report had not been filed within the required time should be made before the Industrial Board and not for the first time during the hearing on review in the Circuit Court. It is not believed that the time limitation governing the filing of the stenographic report of the hearing before the arbitrator, is a jurisdictional requirement in any degree comparable to the giving of notice or the making of claim.

CHICAGO-KENT MASTERS CLUB.

The Chicago-Kent Masters Club, incorporated May 9, 1923, is the only functioning alumni association which is composed of those who have had the degree of Master of Law conferred upon them by the Chicago-Kent College of Law. Its second annual election was held Saturday, February 14, 1925, in the rooms of the Chicago Bar Association, in the Burnham Building.

The following officers were elected for the ensuing term:

President—George F. Scheck, Burnham Building.
Vice President—Michael V. Ostronski, 2827 E. 88th Street.
Secretary—W. Clarence Thomas, 814 City Hall.
Treasurer—Martin E. Corcoran, First National Bank Building.
Chairman Board of Directors—Byron Tyler, Conway Building.
Vice Chairman—Miss Jessie A. Williamson, Juvenile Court.
Members of Board of Directors:
James N. Putman, 2427 W. Division Street.
A. Jefferson Schultze, 1545 W. Division Street.
A. H. Ingraham, Reaper Block.
Miss E. Akin, 902 Sunnyside Avenue.
Mrs. Mary Davenport, Kesner Building.

The Club meets the first Saturday afternoon in each month at the Chicago Bar Association, Burnham Building.

All persons having a Master's degree, who are interested, are requested to communicate with the officers.

NEW CLASS IN SPEECH.

The organization of the new class in public speaking, conducted by Professor Marsh, instructor of Speech at Northwestern University, has been completed, with a present enrollment of eighteen members. The size of the class is limited to twenty members, the purpose of Professor Marsh being to give individual attention to each man, in aiding him to overcome his handicaps. The present enrollment includes R. S. Bennett, Sam Barth, Chas. Bullard, Edward Dunne, John Gould, Morris Haft, R. W. Ibenfeldt, L. C. Kopacz, J. P. Loughnane, Miss Ostrom, W. H. Murphy, Paul Pretzel, R. T. Populorum, H. E. Roberts, J. C. Stastny, J. Svoboda, J. R. Tews and Miss Weinman.