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Definition, Comparison, and Appliation of the In The Course Of Employment Requirement in Pennsylvania's Workmen's Compensation Act

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DEFINITION, COMPARISON, AND APPLICATION OF THE "IN THE COURSE OF EMPLOYMENT" REQUIREMENT IN PENNSYLVANIA'S WORKMEN'S COMPENSATION ACT

I.

INTRODUCTION

The Workmen's Compensation Act of Pennsylvania[1] is "an act defining liability of an employer to pay damages for injuries received by an employee in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; and prescribing penalties."[2] In most American jurisdictions and in England compensation for disability is conditioned upon the requisite that it be due to an accidental injury *arising out of and in the course of the claimant employee's employment.*[3] Pennsylvania, North Dakota, Texas, and Washington are exceptions to this in that their sole statutory requirement is that the accidental injury occur *"in the course of employment."*[4] Utah uses the disjunctive "or" instead of the conjunctive "and" between the phrases "arising out of" and "in course of."[5] The Wisconsin statute is worded "growing out of and incidental to" the employment.[6] Wyoming provides for injuries sustained "in hazardous employment."[7]

II.

DISTINCTION BETWEEN "ARISING OUT OF" AND "IN THE COURSE OF"

In jurisdictions demanding that the accidental injury "arise out of" and "in the course of," these two elements are not synonymous but are used conjunctively; and neither alone is sufficient for recovery.[8] In defining these terms, most jurisdictions hold that the term "arise out of" relates to the origin or cause of the accident,[9] or when the risk of such an occurrence is reasonably incident to employment[10] and such risk might have been

1. PA. STAT. ANN. tit. 77 (1952).
2. PA. STAT. ANN. tit. 77 § 1 (1952).
3. See Shatto v. Bardinet Exports, 170 Pa. Super. 16, 84 A.2d 388 (1951); Shindledecker v. Borough of New Bethlehem, 145 Pa. Super. 77, 20 A.2d 867 (1941). Note: Definition of the term "accident" is also open to a number of interpretations. See Obrzut v. Borough of Olyphant, 200 Pa. Super. 241, 188 A.2d 764 (1963).
4. 6 SCHNEIDER, WORKMEN'S COMPENSATION LAW, § 1542 (3d ed. 1948).
5. UTAH CODE ANN. § 35-1-44(5) (1953).
6. WIS. STAT. ANN. § 102.03(1)(c) (1958). The phrases "growing out of" and "incidental to" have been interpreted by Wisconsin Courts as meaning "arising out of" and "in the course of." See Armstrong v. Indust. Comm'n, 254 Wis. 174, 35 N.W.2d 212 (1948); Munson v. Indust. Comm'n, 248 Wis. 192, 21 N.W.2d 265 (1946).
7. WYO. STAT. § 27-50 (1957).
8. Gelbart v. N.J. Federated Egg Producer's Ass'n, 17 N.J. Misc. 185, 7 A.2d 636 (1939).
9. Gilligan v. Int'l Paper Co., 24 N.J. 230, 131 A.2d 503 (1957).
10. Burton v. Bd. of Educ., Borough of Verona, 21 N.J. Misc. 108, 31 A.2d 337 (1943). See 6 SCHNEIDER, *op. cit. supra* note 4.

contemplated by a reasonable man.[11] The term "in the course of" relates to the time, place, and circumstances of the accident.[12] One jurisdiction has stated the distinction between these terms to be

> . . . that in order for an accident to arise out of the employment a more definite and closer causal relationship is required than is necessary for an accident to arise in the course of the employment, but in the latter a closer relationship must exist as to time and place and as to the nature and type of work being performed. In other words, the requirement that the accident arise in the course of the employment is satisfied if it occurs while the employee is rendering service to his employer which he was hired to do or something incidental thereto, at the time when and the place where he was authorized to render such service.[13]

III.

PROBLEM OF DEFINING TERM "IN THE COURSE OF"

A great deal has been written in an attempt to define and apply the simple statutory requirement, "in the course of employment," which has been described as one of the most difficult problems in connection with claims for compensation.[14] It has been acknowledged that no exact formula can be stated which will be determinative of every case, and whether a given accident is so related or incident to the business must depend upon its own particular circumstances. The question is frequently a close one.[15] Although it is acknowledged that one should not apply a technical meaning to the words "in the course of employment" and that it was the legislature's intention that they be given their plain, usual, and ordinary meaning, the courts are still languishing in "a labyrinth of judicial utterances"[16] and lost in a "jungle of contradictions."[17]

To predict with any accuracy what effect this term will have in determining one's chances of an award, it is important to have a concept of the overall purpose of the act and how this influences the authorities' definition. The remedial and humanitarian nature of the act have often been expressed.

> Viewed in its entirety it is essentially a humanitarian measure motivated by a desire to afford workmen a medium of protection against the economic consequences of industrial accidents. These accidents and the economic privations emanating from them represent an unavoidable concomitant of an industrial society. The workman is

11. Clegg v. Motor Fin. Corp., 20 N.J. Misc. 437, 28 A.2d 533 (1942).
12. 6 SCHNEIDER, *op. cit. supra* note 15, at § 1542(b).
13. M & K Corp. v. Industrial Comm'n, 112 Utah 488, 493, 189 P.2d 132, 134 (1948).
14. Chicago, R.I. & Pac. Ry. Co. v. Industrial Comm'n, 288 Ill. 126, 123 N.E. 278 (1919).
15. Cudahay Packing v. Parramore, 263 U.S. 418 (1923); Spry v. Polt, 186 Pa. Super. 326, 142 A.2d 484 (1958); Rybitski v. Lebowitz, 175 Pa. Super. 265, 104 A.2d 161 (1954).
16. Kansas City Fiber Box Co. v. Connell, 5 F.2d 398, 400 (8th Cir. 1925).
17. *In re* Betts, 66 Ind. App. 484, 494, 118 N.E. 551, 554 (1918). "We can no more follow them (the definitions) than one can follow all the roads. In every contest it is an easy matter to arrange a long list of cases. . . ."

> not normally in a position to shoulder the burden as it affects himself and his family, and resort to the remedies of the common law revealed glaring inadequacies in their efficacy as a protective instrument. Since the genesis of the problem is the industrial type economy, it was thought appropriate that the burden be borne by industry and perhaps ultimately by the consuming public. Such a price is not too high to pay for the supposed benefits derived from modern industry. The act was intended to accomplish this objective of cloaking the workman with a protective mantle by placing the risk of loss in the first instance upon the direct recipient of the worker's efforts — Industry.[18]

IV.

ANALYSIS OF DEFINITION OF THE TERM IN PENNSYLVANIA

Of the four states whose statutes require only that the accident occur "in the course of" the employment, North Dakota provides that the accident or disease be fairly traceable to the employment.[19] Texas, though referring only to accidents occurring "in the course of employment,"[20] has required by its decisional law that the injury arise out of and be received in the course of employment, neither alone being sufficient.[21] Washington uses the term "in the course of"[22] but interprets it to mean also "arising out of."[23]

Whereas the other three states which require only that the injury be "in the course" have in their decisions also required either explicitly or impliedly that it arise "out of,"[24] Pennsylvania has not gone so far. Indeed, the decisions state explicitly that such injury need not arise out of, but only in the course of.[25] That part of the act which concerns this problem reads as follows:

> . . . the term "injury by an accident in the course of his employment" as used in this article shall not include an injury caused by an act of a third person intended to injure the employe because of reasons personal to him, and not directed against him as an employe or because of his employment; but shall include all other injuries sustained

18. Girardi v. Pa. Power & Light Co., 174 F. Supp. 813, 816 (E.D. Pa. 1959), *aff'd*, Girardi v. Lipsett, 275 F.2d 492. See 1 SKINNER, PENNSYLVANIA WORKMEN'S COMPENSATION LAW 14–35 (4th ed. 1947). See also Taylor v. Ewing, 166 Pa. Super. 21. 70 A.2d 456 (1950); Smrekar v. Jones & Laughlin Steel Corp., 137 Pa. Super. 183, 8 A.2d 461 (1939).

19. N.D. CENTURY CODE ANN. § 65-01-02(8) (1960).

20. CIVIL STAT. STATE OF TEX. ANN. art. 8309 § 1 (1959). Statute defines injury as one ". . . having to do with and originating in the work, business, trade, or profession of the employer received by the employee while engaged in or about the furtherance of the affairs or business of his employer, whether upon the employer's premises or elsewhere." It has been suggested that this is another way of saying "arising out of." See 6 SCHNEIDER, *op. cit. supra* note 4.

21. See Vasper v. Tex. Employer's Ins. Ass'n, 206 S.W.2d 646 (Ct. Civ. App. 1947).

22. REV. CODE WASH. ANN. § 51.08.013 (1961). "Acting in the course of employment" means the workman acting at his employer's direction or in the furtherance of his employer's business.

23. See 6 SCHNEIDER, *op. cit. supra* note 4.

24. 6 SCHNEIDER, *op. cit. supra* note 4.

25. See Mitchell v. Holland Furnace Co., 189 Pa. Super. 82, 149 A.2d 662 (1959); Elliott v. Delmont Fuel Co., 183 Pa. Super. 13, 127 A.2d 777 (1957); Weiss v. Friedman's Hotel, 176 Pa. Super. 98, 106 A.2d 867 (1954).

> while the employe is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer's premises or elsewhere, and shall include all injuries caused by the condition of the premises or by the operation of the employer's business or affairs thereon, sustained by the employe, who though not so engaged, is injured upon the premises occupied by or under the control of the employer, or upon which the employer's business or affairs are being carried on, the employe's presence thereon being required by the nature of his employment.[26]

In cases where there is no dispute as to the essential facts,[27] the question as to whether a person was in the course of his employment or was actually engaged in furtherance of business or affairs of the employer at the time of the injury is one of law,[28] and in resolving it each case must be determined in the light of specific facts[29] and circumstances[30] of the employment. In trying to understand any approach to this problem, there are three well established propositions which should be kept in mind: (1) the Workmen's Compensation Act is a remedial statute and is to receive a liberal construction,[31] (2) findings of fact by the compensation board if supported by substantial evidence are binding upon the appellate court,[32] and (3) on appeal from an award the evidence must be received in the most favorable light to the claimant.[33]

In an attempt to find a limiting factor or factors with respect to such a liberal compensation statute, it is necessary to turn to the case law. It has been held that an injury in the course of employment embraces all injuries received by the employee while engaged in furthering the business of the employer. Injuries received on the premises are subject to the following limitations: (1) the employee's presence must ordinarily be required at the place of injury[34] or (2) if not so required,[35] the departure from the usual place of employment must not amount to an abandonment of employment[36] or be an act wholly foreign[37] to his usual work. An

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26. PA. STAT. ANN. tit. 77 § 411.
27. Spry v. Polt, 186 Pa. Super. 326, 142 A.2d 484 (1958).
28. Dupree v. Barney, 193 Pa. Super. 331, 163 A.2d 901 (1960); Kramer v. City of Philadelphia, 179 Pa. Super. 129, 116 A.2d 280 (1955); Rybitski v. Lebowitz, 175 Pa. Super. 265, 104 A.2d 161 (1954). Findings of fact by the compensation board if supported by substantial evidence are binding upon the appellate court.
29. Ristine v. Moore, 190 Pa. Super. 610, 155 A.2d 456 (1959); Dunphy v. Augustinian College of Villanova, 129 Pa. Super. 262, 195 Alt. 782 (1937).
30. Hiles v. Hecla Coal & Coke Co., 296 Pa. 34, 145 Atl. 603 (1929); Hopwood v. City of Pittsburgh, 152 Pa. Super. 398, 33 A.2d 658 (1943).
31. Pater v. Superior Steel Co., 263 Pa. 244, 106 Atl. 202 (1919); Keim v. Burkholder & Johnson, 182 Pa. Super. 460, 127 A.2d 752 (1956).
32. *Ibid.*
33. Eberle v. Union Dental Co., 182 Pa. Super. 519, 128 A.2d 136, *aff'd*, 390 Pa. 112, 134 A.2d 559 (1957).
34. PA. STAT. ANN. tit. 77 § 411 (1952).
35. Henry v. Lit Bros., 193 Pa. Super. 543, 165 A.2d 406 (1960); Geibel v. Paoli Area High School Sys., 9 Chest. Co. Rep. 201 (Pa. 1959).
36. Dupree v. Barney, 193 Pa. Super. 331, 163 A.2d 901 (1960); Kramer v. City of Philadelphia, 179 Pa. Super. 129, 116 A.2d 280 (1955).
37. Weiss v. Friedman's Hotel, 176 Pa. Super. 98, 106 A.2d 867 (1954); Haas v. Brotherhood of Transp. Workers, 158 Pa. Super. 291, 44 A.2d 776 (1945); Adams v. Colonial Colliery Co., 104 Pa. Super. 187, 158 Atl. 183 (1932).

incident necessary to constitute a break in the continuity or course of employment must be of pronounced character[38] and a slight and temporary departure from work and administering to employee's personal comforts or conveniences does not break the course of employment.[39] The fact that the employee was not actually performing work at the instant he was injured is not controlling in determining whether *vel non* he was in the course of employment, so long as he was occupying himself consistently with his contract of employment and in a manner reasonably incidental thereto.[40] This requirement that the employee occupy himself consistently and in a manner reasonably incidental to his contract is the closest Pennsylvania Boards and Courts have come to requiring that the injury arise out of the employment.[41] However, this requirement is not applied in all cases. It is submitted that if this limitation were used and strictly interpreted, it would be equivalent to the term "arise out of."

V.

Definition Modified With Respect to Traveling Worker

With respect to the traveling worker not on the premises, it has been held that the course of employment is necessarily broader than with respect to an ordinary employee.[42] Such injury occurring off the premises of the employer is compensable when the employee is actually engaged in furthering the business or affairs of his employer rather than constructively engaged therein,[43] but the phrase "course of employment" must be given more liberal construction than in the case of employment to be performed on the employer's premises.[44] However, at least one court in this state has required that if one is injured off the premises of the employer in an act not connected with the employer's business it must appear that the employer ordered or directed the act, since mere permission to the employee to do the act without directing or ordering its performance will not support

38. White v. Morris, 182 Pa. Super. 454, 127 A.2d 748 (1956); Conley v. Pittsburgh Coal Co., 157 Pa. Super. 567, 43 A.2d 605 (1945); Haas v. Brotherhood of Transp. Workers, 158 Pa. Super. 291, 44 A.2d 776 (1945).

39. Mitchell v. Holland Furnace Co., 189 Pa. Super. 82, 149 A.2d 662 (1959); Geibel v. Paoli Area High School Sys., 9 Chest. Co. Rep. 201 (Pa. 1959).

40. Muir v. Wilson Coal Co., 33 Northumb. Leg. Jour. 9 (Pa. 1960), *aff'd*, 194 Pa. Super. 487, 168 A.2d 588 (1961); Elliott v. Delmont Fuel Co., 183 Pa. Super. 13, 127 A.2d 777 (1957); Kramer v. City of Philadelphia, 179 Pa. Super. 129, 116 A.2d 280 (1955).

41. Compare with note 15, *supra*. New Jersey defines the term "out of employment" to mean that the accident must have been due to a risk which might have been contemplated by a reasonable person as incidental to the employment and that such risk is incidental to the employment when it is connected with the employee's obligation under his contract.

42. Wolfingbarger v. Addressograph-Multigraph Corp., 188 Pa. Super. 136, 146 A.2d 309 (1958).

43. French v. Coff Decorators, 199 Pa. Super. 482, 185 A.2d 646 (1962); Miller v. Schiffner, 196 Pa. Super. 84, 173 A.2d 707 (1961).

44. Mitchell v. Holland Furnace Co., 189 Pa. Super. 82, 149 A.2d 662 (1959).

an award.[45] Even where the injured employee has voluntarily performed a service off the premises after working hours and where such service is part of the contract, although mainly for the convenience of the employee, Pennsylvania courts have required a positive direction or order by the employer for recovery.[46] It must be noted that the peculiar duties and relations of a traveling salesman in securing orders for his employer[47] are not to be generally extended and applied to other kinds of employment.[48]

> True, the roving nature of such employment, the discretion allowed with reference to hours and methods, sometimes give this employment an elasticity not found in others where activities are more circumscribed. But it will be found in every case where an award has been upheld that the salesman was engaged in an act by direction of his employer, express or implied, and not merely for his own convenience. Being a salesman does not change an activity not in the course of employment to one that is.[49]

VI.

"IN THE COURSE OF" REQUIREMENT AS APPLIED IN "CLOSE CASES"

In applying these requirements to cases involving traveling workers,[50] the courts are faced with interpreting the already liberal Workmen's Compensation Act even more liberally, and as the following cases will show, perhaps to the abandonment of any limitation whatsoever upon the term "in the course of employment." In the case of *Mitchell v. Holland Furnace Co.*, a workmen's compensation claim was brought on behalf of the widow and minor children of the deceased employee. The decedent was working as a door-to-door salesman soliciting orders for furnaces. He and an assistant sales engineer for the employer were working alternate sides of a street. The decedent finished his side of the street and met his partner at the home of a prospective customer where the sales engineer remarked

45. Mitchell v. Argeros & Co., 61 Lack. Juris. 137 (Pa. 1959); *cf.* Gibson v. Blowers Paint Serv., 140 Pa. Super. 216, 14 A.2d 154 (1940); Palko v. Taylor-McCoy Coal & Coke Co., 289 Pa. 401, 137 Atl. 625 (1927).

46. Anetakis v. Salvation Army, 191 Pa. Super. 268, 156 A.2d 590 (1960); Haley v. City of Philadelphia, 107 Pa. Super. 405, 163 Atl. 917 (1933).

47. Chase v. Emery Mfg. Co., 271 Pa. 265, 113 Atl. 840 (1921).

48. Holdsworth v. Pa. Power & Light Co., 337 Pa. 235, 10 A.2d 412 (1940). *But see*, Hadfield v. Am. Soc. of Composers, Authors & Publishers, 174 Pa. Super. 394, 101 A.2d 423 (1953).

49. Litus v. S. E. Sostmann & Co., 133 Pa. Super. 201, 209, 2 A.2d 580, 583–84 (1938). However, the court in Mitchell v. Holland Furnace Co., 189 Pa. Super. 82, 149 A.2d 662 (1959), apparently took exception to this statement. A comparison of these two cases shows the evolution of the liberal approach especially with resepct to traveling workers.

50. Courts have extended this liberal approach to occupations other than salesmen to include deliverymen, investigators, servicemen, policemen, surveyors, and others. See Susman v. Kaufmann's Dept. Store, 182 Pa. Super. 467, 128 A.2d 173 (1957); Kramer v. City of Philadelphia, 179 Pa. Super. 129, 116 A.2d 280 (1955); Elliot v. Delmont Fuel Co., 37 West. 175 (Pa. 1956), *aff'd*, 183 Pa. Super. 13, 127 A.2d 777; Hadfield v. Am. Soc. of Composers, Authors & Publishers, 174 Pa. Super. 394, 101 A.2d 423 (1953).

about a "loaded" cherry tree in the yard. They requested permission to pick some cherries and such was granted. The decedent commenced to climb the tree by means of a ladder, and while standing on a limb of the tree fell to the ground, sustaining a fractured skull from which he died while on the way to the hospital. The Workmen's Compensation Board granted the award whereupon the employer and the insurance carrier appealed; the Court of Common Pleas of Northampton County affirmed, as did the Superior Court of Pennsylvania on further appeal. It is submitted that this case must represent the most liberal definition of "in the course" that anyone could imagine. One could certainly not apply the reasonable man standard and arrive at such an outrageous and illogical conclusion, but note that it represents the essence of humanitarianism. In this case, the court reasoned that decedent's work as a canvasser or traveling salesman was principally off-premises employment and therefore the term "course of employment" must be given a more liberal construction than where the employment is to be performed on the premises. It was of the opinion that the evidence supported the finding and conclusion of the Workmen's Compensation Board which was as follows:

> The board's finding that the accident occurred in the course of employment is abundantly supported by the evidence on one of two theories: (1) Decedent's act of cherry picking on the premises of defendant's customer and in the presence of defendant's assistant sales manager was an integral part of decedent's sales duties and functions. It is the salesman's duty to gain the attention and favor of a prospective customer (cite omitted). The board has found that decedent's act was incidental to his primary task of selling. We cannot lightly dismiss the logic of such conclusion; (2) *Even if* decedent's act of cherry picking is *not construed* to be part of his employment, it nevertheless constitutes such a *slight departure* as *not* to break the course of employment.[51]

Is not such a conclusion beyond one's comprehension or can it be explained? The abundant evidence which the board and the court refer to in support of this decision disappears when the question is posed: If picking cherries from a tree while employed as a furnace salesman does not constitute an act of abandonment which is wholly foreign to the employment, what does? Realistically, was this merely a trivial, inconsequential break from the employment? Was it reasonably incidental to the employee's duties; was this act performed at the express or implied direction of his employer?[52] This was obviously for the convenience of the employee.[53] Picking cherries could hardly be an activity in the course of selling furnaces.[54] The commission and the court in this instance have seemingly abandoned any limitation upon the term "course of employment."

51. Mitchell v. Holland Furnace Co., 189 Pa. Super. 82, 87-8, 149 A.2d 662, 665 (1959).
52. Cases cited note 44, *supra*.
53. Davis v. Dahl Motors, Inc., 27 Lehigh Law Jour. 466 (Pa. 1957).
54. Litus v. S. E. Sostmann & Co., *supra* note 47.

In *Hadfield v. American Society of Composers, Authors & Publishers*,[55] a similarly liberal decision was reached. The claimant, widow of decedent, filed petition for workmen's compensation on behalf of herself and minor child. The decedent was an investigator employed by the American Society of Composers, Authors & Publishers and worked out of their Philadelphia office. As an investigator it was his duty to visit various restaurants, cafes and taprooms for the purpose of determining whether or not the music and entertainment furnished in these establishments was licensed by his employer. His territory was Eastern Pennsylvania and Delaware. He worked when it was appropriate for him to make such investigations, and he was supplied with a company car. The decedent, along with a fellow investigator while making a special investigation, had dinner with a young lady whom the decedent had met during the course of an investigation concluded just prior to the accident. Shortly after 7 p.m. the decedent, accompanied by the young lady, went to the garage where his company car was stored and there by chance met his superior, who expressed his disapproval when informed that Hadfield intended to take the young lady home and cautioned him not to do so again. Both Hadfield and the young lady lived in the same general area, West Philadelphia. On the way to the young lady's home the car skidded and struck a pole, killing Hadfield. The board found that decedent was actually engaged in the course of business at the time of the accident, since he was operating a company car, and that since defendant could not prove Hadfield was not working it must be assumed that the decedent was intending to continue with his employment that evening. The board granted the award and the court on appeal affirmed holding that "findings based on proper inferences must be sustained. Assuming that the evidence also permitted an inference that deceased was engaged on a mission of his own, the inference to be adopted was for the compensation authorities."[56] The court observed that since the board found in favor of the widow and minor child, the evidence must be viewed in the light most favorable to the claimant and claimant must be given the benefit of every inference reasonably deductible therefrom.[57] The controlling inferences are as follows: (1) since the bars in the area did not close until 2 a.m., the decedent could have made further investigations, (2) he worked no specified hours or specified places, (3) he customarily worked Friday nights and therefore it was reasonable to infer that this was his intention on the night of his death, and (4) it was reasonable to infer that he was on his way home at the time. It was found that these inferences were fairly deductible from the facts. The court made mention of the fact that to be a break in the continuity of employment such

55. 174 Pa. Super. 394, 101 A.2d 423 (1953).

56. Walden v. Williams Bros. Corp., 167 Pa. Super. 289, 292–93, 74 A.2d 762, 763 (1950).

57. Halloway v. Carnegie-Ill. Steel Corp., 173 Pa. Super. 137, 96 A.2d 171 (1953); Darmopray v. Budd Mfg. Co., 169 Pa. Super. 200, 82 A.2d 341 (1951).

activity must amount to an abandonment or something wholly foreign thereto and that it is enough if the employee is occupying himself consistently with his contract of employment in some manner reasonably incidental to his employment.[58]

This ultra-liberal approach can be seen in cases in which the injury occurred on the premises. In *Geibel v. Paoli Area High School Sys.*[59] decedent's widow filed petition for workmen's compensation. Decedent was employed by defendant school system as a custodian and on occasion as directed performed some duties in connection with care and use of the school's athletic fields which were located across a public highway from the buildings in which the decedent was usually occupied with his custodial duties. His hours of employment were from 9:30 a.m. to 6:00 p.m. On the day of his death, at about 4:45 p.m., a violent electrical storm struck the area. At this time the decedent received a telephone call from his wife who was alone at home with their two children, one and two years of age. The court also pointed out that the decedent's wife was six months' pregnant with their third child who was born following the decedent's death. His wife informed the decedent that she believed that their house had been struck by lightning and that she desired he come home. The decedent's home was approximately one mile away, and in walking this distance, he walked across the school's athletic field. The decedent left at 5:00 p.m. and was never seen alive again. The court reported in gory detail: " . . . his dead body was found lying face down on one of the athletic fields. He had been struck and killed by lightning and the metal keys which he used in his work were found on his person in a fused condition."[60] The board granted the award and it was affirmed by this court. In support of this finding the court stated that the decedent died while pursuing a matter of personal concern and there could be no recovery on the theory that he was engaged in furthering the employer's business. However, the accident occurred upon property under the custody and control of defendant. In general, to be considered happening on the "premises" the accident must have occurred on property owned, leased, or controlled by the employer and so connected with the business in which the employer is engaged as to form a component or integral part of it, and this is a question of law.[61] The problem which is of concern here and which was considered by the court is: Was the decedent's act one of abandonment or wholly foreign to his employment? The finding that this was not the case was supported by the following: (1) there was no evidence that decedent did not intend to return to his job, since he could have returned within the time left before 6:00 p.m., (2) it was just as reasonable to assume he would have returned as to reach a contrary conclusion, and (3) a trivial and temporary

58. Conley v. Pittsburgh Coal Co., 157 Pa. Super. 567, 569, 43 A.2d 605, 607 (1945).

59. 9 Chest. Co. Rep. 201 (Pa. 1959).

60. *Id.* at 202.

61. Wolsko v. Am. Bridge Co., 158 Pa. Super. 339, 44 A.2d 873 (1946).

departure for the employee's personal benefit or for serving others has been held not to break the continuity of employment or prevent recovery for accidental injury occurring on the employer's premises.[62] However, it should be noted that in the case cited such service was rendered to another also on the premises. It has long been recognized that various acts by an employee for his own benefit, "performance of which while at work are reasonably necessary to his health and comfort,"[63] and "reasonable, and perhaps a necessary precaution to insure his peace of mind"[64] are not considered abandonment. Here the court extended this to include the decedent's ministration to his own peace of mind even though it necessitated his leaving the premises and the performance of his contract. The court looked to the departure as being innocent and inconsequential. It was innocent in that it was for a good reason; but inconsequential it was not, for to abandon means to leave or vacate, and it would appear the decedent had done this. Despite this definition, the court concluded: "While the facts differ from those in any case the industry of counsel and our own research have developed, we are forced to the conclusion that decedent had not abandoned his employment when he met his death while present on premises occupied and controlled by his employer where he was required by the nature of his employment to be."[65]

In *Henry v. Lit Bros.*,[66] the claimant, a porter or cleaner, was found by the board to have been totally disabled as the result of an injury while in the course of employment and was granted an award. Court of Common Pleas and the Pennsylvania Superior Court affirmed. The claimant was required to "sign in" and "sign out" for lunch hour, 12 noon to 1 p.m. Behind the employer's store was a yard which was used by the employees for various outdoor games; however, although the employer had knowledge of this practice, he gave neither official permission nor any encouragement. Adjacent to this yard were several loading platforms and a loading platform in the process of construction. Vertical supports for this platform extended eighteen to twenty-four inches from the ground. The claimant, aware of this condition, while running for a "pass" tripped over a support, somersaulted in the air, landed on the ground and broke his neck. The principle established by the court was ". . . that the continuity of employment is not broken by engaging in play and recreation on the employer's premises during lunch hour."[67] The court cites numerous "horseplay" cases and includes the present case under the approach used in such cases.

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62. Boyd v. Philmont Country Club, 129 Pa. Super. 135, 195 Atl. 156 (1937).

63. Weiss v. Friedman's Hotel, 176 Pa. Super. 98, 101, 106 A.2d 867, 868 (1954).

64. Adams v. Colonial Colliery Co., 104 Pa. Super. 187, 190, 158 Atl. 183, 184 (1932).

65. Geibel v. Paoli Area High School Sys., 9 Chest. Co. 201, 206 (Pa. 1959).

66. 193 Pa. Super. 543, 165 A.2d 406 (1960).

67. *Id.* at 549, 165 A.2d at 409.

The "horseplay"[68] cases present an excellent example of how liberal the term "in the course of employment" has come to be applied. In *Hall v. Carnegie Institute of Technology*, the decedent laboratory clerk took a special policeman's revolver, which he thought to be unloaded, placed it to his temple, pulled the trigger, discharged the "empty" gun and killed himself. Commission and court found him to have been "in the course" of his employment.[69] Although the decedent's presence was not required at the place of the accident, his presence did not amount to an abandonment of employment or constitute a departure wholly foreign to his usual work. The court stated in support of such finding that the decedent was on the employer's premises and that he had violated no positive orders and that he was not violating the law at the time of the injury.

VII.

CONCLUSION

It is submitted that the definition and application of the term "in the course" of employment is an area in which no single formula should be applied, but one in which a number of rules or limitations are to be used. These rules are to be liberally applied since the purpose of the act is to, whenever possible, compensate and reimburse the accidentally injured employee, and it is only just that his employer, industry, and eventually the public who benefit from his labors should bear this burden. In the majority of cases the determination as to whether the injury was "in the course" of employment is not difficult and the existing rules are adequate to dispose of them, but there exists a body of cases to which the existing rules, even though liberally applied, will not permit a reward. The cases heretofore discussed are representative of this type of case. The employee in these cases has been injured while doing an act which a reasonable man would consider to be an abandonment of his employment and such acts are certainly foreign thereto. Why then do workmen's compensation boards and courts allow rewards to be granted in these cases? Their liberal application of the limiting requirements in many instances amounts to a complete discarding of such requirements. These decisions are not *ad hoc* in the true sense of the term, but there are basic factors which are present in all of them which are considered and affect the decisions. Although not specifically stated as such by the boards and courts who create the illusion that the time tested and judicially recognized rules are still applied but only more liberally than usual, these factors are as follows: (1) the

68. Sinko v. Bethlehem Steel Co., 104 Pa. Super. 357, 159 Atl. 230 (1932); McCoy v. Spriggs, 102 Pa. Super. 500, 157 Atl. 523 (1931); Oldinsky v. Philadelphia & Reading Coal & Iron Co., 92 Pa. Super. 328 (1928); Hale v. Savage Fire Brick Co., 75 Pa. Super. 452 (1921).

69. Hall v. Carnegie Institute of Technology, 170 Pa. Super. 459, 87 A.2d 87 (1952).