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Book Reviews

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BOOK REVIEWS

INJURY AND DEATH UNDER WORKMEN'S COMPENSATION LAWS— By Samuel B. Horovitz. Wright & Potter Printing Co., Boston, Mass. (1944).—The economic loss which results from personal injury to employees in the course of their employment is now considered a part of the cost of production. Workmen's compensation laws are designed to give to the injured worker, at the employer's expense, prompt medical care and a reasonable part of the wages lost. Before these laws were enacted, an injured worker might sue his employer for damages, but, in order to recover damages, he was compelled to prove that the injury resulted from the employer's negligence. Contributory negligence, assumption of risk, and the fellow servant rule could be interposed as defenses by the employer. The court remedy was slow, costly and uncertain.

But now the picture has changed quite radically. Forty-seven of the forty-eight states of the United States, Mississippi alone opposing the tide, have enacted workmen's compensation laws. Of the 17,000,000 workers covered by existing laws, 2,000,000 yearly sustain compensable injuries, 18,000 of whom die, and over 100,000 are maimed for life. Over \$200,000,000 annually reach the hands of workers and their dependents by virtue of awards made under these acts. Thus in introducing the subject statistically, the author brings home quite forcibly the magnitude and scope of the whole field of compensation law. He classifies himself as a "liberal" by nature, having for many years represented claimants and labor unions, and he does not conceal his contempt for hypertechnical judges and insurance lawyers who, he feels, seek to nullify the remedial features of the workmen's compensation acts. The author is apparently guided by an intimate understanding of both the substantive and procedural aspects of compensation law, which comes only from years of experience before commissions and in the courts.

The book is not repetitious of more exhaustive works on the subject. It is unique in its capsule-like presentation. In only 400 pages, the author draws a comprehensive, over-all picture of the nature and workings of the compensation acts, comparing and contrasting parallel provisions the various state compensation schemes, in order to indicate the boundaries of legislative policy on particular points. The work is well annotated with citations to cases illustrating legal principles embodied in the text.

In the first few pages of his book, Mr. Horovitz deals with the historical background of compensation legislation, beginning with Bismarck of Germany, in 1884. The widespread industrialization of the United States was, in the author's opinion, the most significant factor in our reception of compensation law schemes of Europe.

The constitutional aspects of compensation law are taken up in succeeding parts of the book. The author indicates that the misgivings about the constitutionality of these laws in both federal and state courts have, by and large, been resolved in favor of their validity under the doctrine of state police power. The failure of the states to project their compensation systems to embrace injuries sustained on navigable waters resulted, according to the author, in the enactment by Congress of the Federal Longshoremens' and Harbor Workers' Act. The "penumbra or twilight zone" resulting from the uncertain scope of the federal act on the one hand, and the state acts on the other, has been a productive source of litigation. Employers hiring persons engaged in amphibious work are advised to obtain compensation insurance with a rider under the longshore act, so that they will be indemnified against loss in a proceeding under either system. For the benefit of amphibious workers, the United States Supreme Court has formulated the so-called "twilight zone doctrine" which allows recovery under a state compensation act where the employer fails to obtain federal coverage.

The extraterritorial application of compensation laws, where hiring and injury occur in different states, is discussed in the light of peculiar statutory provisions on the subject in some states, as the one in Minnesota, where the act insists on the right of the state of "business localization" to give the award, irrespective of where the injury occurred. The impact of the full faith and credit clause of the federal constitution is considered as a limitation in the employee's selection of the forum.

As to employees engaged in interstate commerce: all states now take jurisdiction of injuries in both intrastate and interstate commerce (trucks, airplanes, etc.) except rail carriers, where injuries are adjusted under the Federal Employers' Liability Act, as amended in 1939. This Act creates no commission or board comparable to the industrial boards in the various states, but merely seeks to increase the liability of railroads by abolishing certain common law defenses which would otherwise be available to them. Here again, as was seen in the case of amphibious workers, the decided cases do not define with desired certainty the depth of the coverage. The Federal Employers' Liability Act provides in substance that the employee, to benefit thereunder must, at the time of the injury, be engaged in interstate transportation "or in work so closely related to it as to be practically a part of it." Numerous case law refinements have grown up around this language. Some of the more important cases on this point are digested and reconciled by the author in the text. Legislative efforts to provide a remedy for all, but at the same time avoid overlapping with the federal act, are treated at considerable length.

To be eligible for compensation, the several acts provide quite uniformly that the worker must prove a "personal injury by accident arising out of and in the course of employment." The author then proceeds to devote about 200 pages to judicial interpretations of what constitutes "a personal injury," "an accident," "arising out of," and "in the course of employment," within the contemplation of the laws. Obviously, traumatic injuries, such as broken bones, would be "personal injuries." But what about nervous shock, without trauma? Would that be a basis of liability? Are occupational diseases, such as lead poisoning, developing only after years of exposure "accidental" within the meaning of these acts? Are aggravations of pre-existing diseases, such as paralysis due in part to a blow on the head, and in part to an underlying syphilis, compensable without apportionment? Is cosmetic surgery on a disfigured face compensable under the compensation laws? These and hundreds of other close but recurring questions are posed and answered. The role of the so-called occupational disease statutes as adjuncts to the general compensation set-up is noted and appraised.

In his chapter on Employee-Employer Relationship, the author observes that of the 45,000,000 estimated workers in the country, only about 40% or 17,000,000 are under compensation protection. Groups excluded are farm laborers, domestic servants, employees working in establishments employing fewer than the minimum statutory number, certain "non-hazardous" employments, casual employment exemptions, and charity employments. Convicts and prisoners, even those working in chain gangs, are usually denied compensation, says the author. The employment status of professional men and women under the compensation acts is also explored. For instance, a lawyer on a general retainer for an express company, but maintaining his own private offices, was denied compensation on the ground that he was selling professional services, and hence was an independent contractor.

Other parts of the book deal with practice and procedure before compensation boards, wherein it is noted that in most instances the formal rules of evidence (hearsay, *res gestae*, and private conversations) have been relegated to the scrap pile; notice and claim, wherein the doctrine of waiver of notice and claim by either worker or carrier is discussed; the waiting period, ranging from one to seven days, which the author severely condemns; also, schedules of payment for the loss of certain members of the body, as adopted in some states, is analyzed.

Compensation boards and commissions are essentially fact finding bodies. Judicial review is almost universally allowed where either the worker or carrier is dissatisfied with the award. Appeal is restricted to matters of law in the great majority of cases, and the commission's findings will not be disturbed unless against the manifest weight of the evidence. The reopening of cases by either party, even where a lump sum settlement has been made, is mentioned by the author. In

such cases the doctrine of *res judicata* will not apply unless the finality of awards is decreed by statute. Another section of the book, entitled "Medical Benefits," explores the compensability of services rendered by chiropractors, Christian Science practitioners, osteopaths and others whose status under the compensation acts is obscure. Generally, such services have been held to be compensable. Other sections of the work deal with common law suits, costs on hearings and appeal and by whom they are borne, the very interesting and important matter of medical and legal fees in compensation practice.

By way of conclusion, Mr. Horovitz recommends a greater continuity in industrial board personnel, broadening of compensation acts to include many groups not now covered, abolition of the waiting period and a general upward revision of minimum and maximum benefits, greater uniformity among the several states on basic features of compensation law, greater supervision of expert witnesses appearing before commissions, the expansion of state funds in place of private carriers, unlimited medical coverage and general enactment of occupational disease laws to supplement existing compensation legislation.

This book is a *must* for any lawyer or public official connected with the administration of compensation laws.

David S. Landis.

PROVIDING FOR UNEMPLOYED WORKERS IN THE TRANSITION—By Richard A. Lester, First Edition, McGraw Hill Book Company, New York, 1945.—This timely discussion of a problem which may seem far away today takes the form of a research study of the Committee for Economic Development. In a few months from now the problems discussed in this book will become living realities; then it will be too late to act. Now is the time to discuss, analyze, and plan for transition unemployment.

Mr. Lester makes it clear from the start that this is a problem for both the state and federal governments to solve. He also points out that this report is not an attempt to solve our long run unemployment problems, but merely a program for the transition period.

After explaining the nature of the problem, the author devotes chapters to: Reserves for Unemployment, Improvements In Unemployment Compensation, Issues In Unemployment Relief, Action By Private Industry, A Program of Education and Training and A Program of Public Works. Numerous summaries and conclusions appear throughout, and little doubt remains as to the program the author advocates.

Briefly these are the major conclusions drawn: (1) Unemployment compensation should be the chief means of providing for unemployed

workers during the transition. (2) Legislative bodies should extend unemployment compensation. (3) States, which do not now meet such standards, should provide uniform duration of 26 weeks for benefits and ceilings of at least \$20 a week for workers with base-year earnings of \$40 or more a week. (4) Congress should establish a guaranty fund, in order to encourage action by the states. (5) Although Congress should enact a program of federal grants to states for general relief, patterned after existing programs of public assistance for the aged, the blind, and dependent children, relief should remain a residual program. (6) Private industry, in addition to plans for dismissal compensation, should make a wage payment to compensate for failure to give two weeks notice of dismissal as well as return travel expenses for workers whose travel to the war plant was financed by the employer. (7) When reconversion takes place management should make every effort to use idle employees on maintenance, repairs, alterations, and development activities. (8) The hiring of workers in advance of the starting date should be done where possible. (9) A program of education and training, both general and vocational should be undertaken. (10) Federal state, and municipal programs of public work should be prepared to meet curtailed spending and unemployment. Such programs should be highly flexible.

Timing and coordination are stressed as highly important to the success of the program and Mr. Lester calls for immediate action by Congress and the state legislatures. This book discusses the problem from a practical standpoint and offers many concrete proposals for its solution. The material and reasoning for the above conclusions make interesting reading and should not be overlooked by anyone who recognizes the dangers of unemployment.

Arthur M. Diamond.

