North Dakota Law Review

Volume 2 | Number 7 Article 2

1925

Decisions Of N.D. Supreme Court

North Dakota Law Review

DECISIONS OF N. D. SUPREME COURT

State on behalf of N. D. Workmen's Compensation Bureau vs. Padgett and Northern Trust Co. Defendant Padgett had complied with the Compensation Law by filing a small estimated payroll, paying premium thereon, but failing to file actual payrolls or account, later. The action was brought for accounting and to recover balance of premiums due. The Trust Co. was made a party upon the theory that the condition of the bond for the protection of the State of North Dakota on highway contracts included premiums payable to the compensation fund. The case originated prior to the amendment of the law at the 1925 Session (Chap. 96 of 1925 Laws), and the only stipulation in the contract at that time was to the effect that the contractor would comply with the workmen's compensation law. The Surety Co. demurred. Held: That the Workmen's Compensation Fund is not synonymous with the State of North Dakota; that claims against the Fund are not claims against the State; that the Fund is not a State Fund; that the surety has a right to stand upon the strict terms of his obligation when such terms have been ascertained; and that the strict terms of the bond as ascertained do not include this liability.—(May, 1926.)

Todd vs. Board of Education. The City of Williston is a special school district. A large proportion of pupils in attendance at the high school of the district for a number of years have come from without the district. Though formerly there were no accommodations for such pupils, facilities have been provided for them and the cost per pupil of maintaining the high school was ascertained and fixed, and a tuition charge accordingly prescribed. Children of the plaintiff, who were high school pupils, sought admission to the high school and claimed the privileges thereof without paying the entire amount of tuition demanded by the board of education. This action was to enjoin the defendants from denying the privileges of the school under the circumstances. Held: That under Chapter 107, Session Laws of 1921, non-resident pupils from districts not affording high school facilities must be admitted into the high school departments of standardized schools when their facilities will warrant. The governing board of the receiving district may determine whether it has facilities warranting admission and its determination will be disturbed only in case of manifest abuse. The provisions of such chapter as to the amount of tuition which may be charged is intended to apply only in those cases where the district already has facilities which, in the judgment of the board, warrant the admission of non-resident pupils. Where the governing board determines that its ordinary facilities do not warrant the admission of non-resident pupils, but makes provision for such pupils as a matter of favor, it may impose a tuition charge sufficient to defray the additional expense. Where such a charge is imposed it must be alike to all and the board may not arbitrarily admit some pupils and exclude others. (May, 1925.)

Dehn vs. N. D. Workmen's Compensation Bureau. The claimant's husband died from encephalitis-lethargic, or sleeping sickness, the contention being that the disease resulted from working in dirty, dusty surroundings while remodeling a building. Medical and other expert testimony agreed that this is a germ infection of the brain through the blood stream, and that it is purely speculative whether or not the dust and impurities of the surroundings where the deceased was working were factors in starting the infection. There was no abrasion or other injury. In holding that the claimant had failed to establish the claim by a fair preponderance of the evidence, the Court said: "The Fund administered by the Compensation Bureau is collected from employers of labor and is to be husbanded by it in the manner directed by the Legislature for the benefit of workmen who receive injury in the coures of employment. It is not a general social insurance law justifying awards in cases of ordinary disease not arising in the course of the employment." (May, 1926.)

WORKMEN'S COMPENSATION DECISIONS

One engaged by village to collect and haul garbage, work being let on bids, held to be an employee and not independent contractor.—Schullo vs. Nashwauk, 207 N. W. 621 (Minn., 1926).

A compensation claimant's unjustified fear of operation for hernia, recommended by physician, is not reasonable ground for refusal to submit to operation, and compensation should be denied.—Palloni vs. Transit Co., 214 N. Y. Supp. 430 (N. Y., 1926).

An injury to employee while cranking automobile owned by him and preparatory to his driving to work, held not sustained in course of employment and not compensable, although he was employed because he owned the car and used it in the employer's business.—Grathwohl vs. Nassau, 214 N. Y. Supp. 496 (N. Y., 1926).

Compensation act does not authorize award in case of injury or death from a peril common to all mankind. Claimant's husband was killed by the falling of the building in which he was working, this building and a number of others being destroyed by a storm.—Gale vs. Krug Park Amusement Co., 207 N. W. 677 (Neb., 1926).

Workman engaged in cutting all trees of saw-log size on certain strip of land, for which he was to be paid at rate of 22 cents per log, was held to be an independent contractor and not an employee.—Kimberg vs. Murray, 207 N. W. 880 (Mich., 1926). Same holding under a similar state of facts in Dean vs. Johnson, 214 N. Y. Supp. 448 (N. Y., 1926).

Lightning causing death is an "Act of God," but where deceased was engaged in performance of duties subjecting him to greater hazard