

## Workmen's Compensation Law--Injury Incidental to Employment (In the Matter of the Claim of Holst v. N.Y. Stock Exchange, et al., 252 App. Div. 233 (3d Dept. 1937))

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WORKMEN'S COMPENSATION LAW—INJURY INCIDENTAL TO EMPLOYMENT.—The respondent, Holst, a page in the employment of the New York Stock Exchange, was injured while playing on a soccer team maintained by his employer. The game took place at an hour when the Exchange was closed. The team was organized and encouraged by officials of the employer, who had the receipts of the games, and who guaranteed and paid any deficit arising therefrom. The State Industrial Board made an award, holding that the injury took place in the course of the respondent's employment. *Held*, award affirmed. The maintenance of the team was a matter of business, not of charity or benevolence. The claimant was injured while engaged in his employment. *In the Matter of the Claim of Holst v. N. Y. Stock Exchange, et al.*, 252 App. Div. 233, 299 N. Y. Supp. 255 (3d Dept. 1937).

"Every employer \* \* \* shall \* \* \* secure compensation for his employees and pay or secure compensation to his employees and pay or provide for their disability or death from injury arising out of and in course of the employment \* \* \*." <sup>1</sup>

It is settled that the word "and" in the phrase, "arising out of and in course of the employment" has conjunctive force.<sup>2</sup> Therefore, the injury, to be compensable, must arise during the course of the employment as well as out of it.<sup>3</sup> Furthermore, it must have been received while the employee was engaged in the work for which he was employed, and it must have arisen in a risk naturally incidental to the work.<sup>4</sup>

Although the preceding are recognized principles, the courts have exercised wide discretion in determining what is an injury "incidental" to, and "arising out of and in course of the employment." "Each case must to a certain extent stand alone."<sup>5</sup> Consequently, awards have been upheld in the following cases: for an injury sustained while

<sup>1</sup> N. Y. WORKMEN'S COMPENSATION LAW (as amended 1933) § 10.

<sup>2</sup> "The general rule of liability is laid down in 'Matter of Heitz v. Ruppert,' 218 N. Y. 148, 112 N. E. 750 (1916) (where it is held that the accident must arise not only out of the employment but during course of same and that the words 'arising out of' and 'in the course of the employment' are conjunctive". McCann, J., in *McMahon v. Mack*, 220 App. Div. 375, 222 N. Y. Supp. 79 (3d Dept. 1927); *Harris v. Cheney Hammer Corp.*, 221 App. Div. 199, 223 N. Y. Supp. 738 (3d Dept. 1927).

<sup>3</sup> *Matter of Heitz v. Ruppert*, 218 N. Y. 148, 112 N. E. 750 (1916); *Scholtzhauer et al. v. C. & L. Lunch Co., et al.*, 233 N. Y. 12, 134 N. E. 701 (1922).

<sup>4</sup> *Scholtzhauer et al. v. C. & L. Lunch Co.*, 233 N. Y. 12, 134 N. E. 701 (1922); *Newman v. Newman*, 169 App. Div. 745, 155 N. Y. Supp. 665 (3d Dept. 1915); *Gleisner v. Gross & Herbener*, 170 App. Div. 37, 155 N. Y. Supp. 946 (3d Dept. 1915).

<sup>5</sup> *Pound, J.*, in *Matter of Heitz v. Ruppert*, 218 N. Y. 148, 112 N. E. 750 (1916).

dancing at a dinner given by the employer;<sup>6</sup> for an injury sustained while fixing a shoe to relieve hurting;<sup>7</sup> for an injury sustained by a janitress while washing her own windows;<sup>8</sup> for an injury sustained while recovering a lunch box;<sup>9</sup> and, cited in the instant case, for an injury sustained by a tree trimmer while helping a farmer's wife to start her car.<sup>10</sup>

Without substantial evidence to the contrary, it is presumed that the claim comes within the provisions of the Act.<sup>11</sup> These presumptions are operative and binding on the courts upon appeals as well as in the Commission.<sup>12</sup> Wherever reasonably and legally possible, in keeping with the spirit of the Workmen's Compensation Law, the courts have affirmed the awards of the State Industrial Board.<sup>13</sup>

In the course of its decision in the instant case the court said, "The officials of a corporation may not extend largess from the stockholders' money."<sup>14</sup> This must be considered *dictum* here, since the appellant, the New York Stock Exchange, is an unincorporated association,<sup>15</sup> and, therefore, principles of corporation law can have no direct application.

L. J.

<sup>6</sup> Kenney v. Lord & Taylor, 254 N. Y. 532, 173 N. E. 853 (1930).

<sup>7</sup> Elliott v. U. S. Gypsum Co., 202 App. Div. 766 (3d Dept. 1922).

<sup>8</sup> Hanna v. Pierson Co., 194 App. Div. 944 (3d Dept. 1920); Poupart v. Myers, 242 App. Div. 720 (3d Dept. 1934).

<sup>9</sup> Schibiliske v. City of Kingston, 207 App. Div. 882 (3d Dept. 1923).

<sup>10</sup> Here the claimant was employed to supervise the trimming of trees for the purpose of keeping the telephone wires clear of foliage. It was necessary for him to procure the consent of the owners in order that he might do his work, and to that end he had received instructions to do everything possible to obtain good will while on the job. Therefore, it became his practice to do small favors for the property owners while engaged in his work. While he was aiding the wife of a farm owner—from whom he had received permission to trim the necessary trees—to start her car, he was injured. The award made for the injury so received was sustained. Matter of Gross v. Davey Tree Expert Co., 248 App. Div. 838 (3d Dept. 1936), *aff'd*, 272 N. Y. 657, 5 N. E. (2d) 379 (1936).

<sup>11</sup> N. Y. WORKMEN'S COMPENSATION LAW (1923) § 21.

<sup>12</sup> Rheinwald v. Builders' Brick & Supply, 168 App. Div. 425, 153 N. Y. Supp. 598 (3d Dept. 1915).

<sup>13</sup> "The act was passed to benefit workmen in hazardous employments who were without a legal remedy. Compensation is given without regard to the fault of the master at common law or under the employers' liability acts. The law has been and should be construed fairly, indeed liberally, in favor of the employee. Against its justice or economic soundness nothing can be said." Pound, J., in Matter of Heitz v. Ruppert *et al.*, 218 N. Y. 148 at p. 154.

<sup>14</sup> Matter of Holst v. N. Y. Stock Exchange, 252 App. Div. 233, 299 N. Y. Supp. 255 (3d Dept. 1937).

<sup>15</sup> 2 PRASHKER, PRIVATE CORPORATIONS (1st ed. 1937) 620; THE SECURITY MARKETS, TWENTIETH CENTURY FUND, INC. (1935) 223, "The New York Stock Exchange is a voluntary, non-profit association of stock brokers."