

Constitutional Law--Workmen's Compensation Law--Section 20 Providing that the Decision of the State Industrial Board "Shall Be Final as to All Questions of Fact" Not Violative of Due Process (Matter of Helfrick v. Dahlstrom, M.D. Co., 256 N.Y. 199 (1931))

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allowance to plaintiff of the earnings which he lost by reason of the wrongful expulsion was proper.¹⁰

R. L.

CONSTITUTIONAL LAW—WORKMEN'S COMPENSATION LAW—SECTION 20 PROVIDING THAT THE DECISION OF THE STATE INDUSTRIAL BOARD "SHALL BE FINAL AS TO ALL QUESTIONS OF FACT" NOT VIOLATIVE OF DUE PROCESS.—Appellant-employer challenges an award of the State Industrial Board on the ground that the procedure under the New York State Workmen's Compensation Law deprives the employer of his property without due process of law in that the board has been made the final arbiter of the facts without any review upon the weight of evidence in a court of law. *Held*, order affirmed and contention of appellant dismissed. *Matter of Helfrick v. Dahlstrom, M. D. Co.*, 256 N. Y. 199, 176 N. E. 141 (1931).

Although the decision of the board upon questions of fact is conclusive, an appellate court will review the findings to determine whether there is any evidence to support the award and it may reverse the award if there be a failure of evidence to support it.¹ The provisions of section 20 should be read "decision by the board shall be final as to all questions of fact which are supported by legal evidence."² To leave to the decision of the board questions of conflict in evidence or reasonable inferences to be drawn from the evidence is not a denial of due process. The due process clause does not guarantee to the citizen of any state any particular form or method of state procedure. Its requirements are satisfied if he has reasonable notice and reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it.³ The United States Supreme Court, while not passing on the particular question of the finality of the board's decision on questions of fact, has said in treating with the New York Compensation Law "no question is made but that the procedural provisions of the act are amply adequate to afford the notice and opportunity to be heard, required by the Fourteenth Amendment."⁴ Directly bearing on the

¹⁰ *Mersheim v. Musical Mutual Protective Union*, 55 Hun 608, 8 N. Y. Supp. 702 (1890).

¹ *Glatzi v. Stumpp*, 220 N. Y. 71, 114 N. E. 1053 (1917), and cases cited therein.

² *Kade v. Greenhut Co.*, 193 App. Div. 862, 185 N. Y. Supp. 9 (3d Dept. 1920).

³ *Dohany v. Rogers*, 281 U. S. 362, 369, 50 Sup. Ct. 299, 302 (1930).

⁴ *New York Central R. R. Co. v. White*, 243 U. S. 188, 207, 37 Sup. Ct. 247, 254 (1917).

point of the instant case is a decision of the Supreme Court relative to the finality of determination as to value of commissioners in a condemnation proceeding: " * * * there is no denial of due process in making the findings of fact by the triers of fact, whether commissioners or a jury, final as to such facts, and leaving open to the courts simply the inquiry as to whether there was any erroneous basis adopted by the triers in their appraisal, or other errors in their proceedings."⁵

The requirements of due process in connection with fixing rates to be charged by a Public Service Corporation are to be distinguished. Rate fixing has been held to be legislative in nature and, consequently, is subject to review by the courts when claimed to be an illegal taking of the property.⁶ Considerable criticism has been directed against so characterizing rate fixing⁷ but the weight of authority is to that effect and if theory falls before the onslaught, at least necessity, due to complications in determining the question of fair return, may warrant the conclusion. On the other hand, the question of determining the status of an injured workman embracing such matters as the employment, the wages, the accident, the injury, etc., involves events that have passed which readily submit to oral proof so as to make the process of finding them of a judicial nature.

The decision is eminently sound and the only apparent basis for the appellant's contention lies in an attempt to apply the questionable rules of rate-making procedure.

E. P. W.

CORPORATIONS—DUTY OF DIRECTORS TO DECLARE DIVIDENDS.—

Plaintiff entered into a contract with the defendant which provided for the employment of the plaintiff and also for the purchase by him of a large number of shares of stock of the defendant corporation. The stock was to be held by the defendant until payment of the full purchase price. It was also agreed that the dividends from the stock should belong to the employee but might be applied by the corporation upon any unpaid balance of the purchase price, though the plaintiff should be entitled to receive up to fifty per cent of the dividends, not exceeding a stated sum. Plaintiff was subsequently legally discharged by the defendant. No dividends had been declared during the period of his employment, and no cash had been advanced by the plaintiff toward the purchase price of the stock. Upon his discharge,

⁵ Long Island Water Supply Co. v. Brooklyn, 166 U. S. 685, 695, 17 Sup. Ct. 718, 722 (1897).

⁶ Bluefield Water Works & Improvement Co. v. Public Service Comm., 262 U. S. 679, 43 Sup. Ct. 675 (1923); Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287, 40 Sup. Ct. 527 (1920).

⁷ See (1921) 30 YALE L. J. 681, 781; (1921) 34 HARV. L. REV. 862.