

WORKMEN'S COMPENSATION IN NEW BRUNSWICK

Finding of Commission Which Investigated Operation of Ontario and Nova Scotia Acts

The following is the text of the report presented to the provincial legislature of New Brunswick by a commission appointed for the purpose of investigating workmen's compensation:—

We have the honor to present to you the conclusions at which we have arrived with regard to the operation of a workmen's compensation law in this province.

The order-in-council of January 3, 1917, authorized us to consider the operation of the Ontario and Nova Scotia acts, in their respective areas, in regard to their applicability to this province. This was enlarged by the legislative assembly at its last session, and further power given to us under Chapter 35 of the acts of this province, passed in the present year of his Majesty's reign. The consideration of these acts necessarily led, to a greater or less degree, to the consideration of other acts in Europe, Australia, New Zealand, the United States and South America.

Common Law Liability.

It may be well to explain fully, in express terms, the common law liability, as between the employer and the employee. Under the common law the employer is liable to the employee for certain injuries sustained by him in the course of, or arising out of the employment. This principle of the common law was enforced against the employer, but subject to three defences, which may be stated as follows:—

First, negligence on the part of the employee.

Second, the doctrine of common employment, which, shortly stated, means that if one employee is injured by the act of a fellow-employee, an action would not lie against the employer.

Third, what is called the doctrine of the assumption of risk, wherein the employee was assumed to know the hazard upon which he entered, and therefore, by accepting money for his services he contracted himself out of the liability by the employer. That is the common law doctrine. This, however, was modified by the passing in England of Lord Campbell's act, which was re-enacted in this province and which may now be found in the Consolidated Statutes, Chapter 79. The effect of this act was to vest in the heirs of the injured person the right of action against the employer. At common law the right of action died with the death of the injured man, this statute gave the right to the injured man's heirs to proceed against the employer. There is, therefore, the common law right to consider, which we may discuss in this way; the liability of the employer to the employee, subject to the defences which we have suggested above, and enlarged by Lord Campbell's Act.

In the year 1884 legislation was implemented in Germany by which the common law doctrine of that country was varied, and the Workmen's Compensation Act was passed. This was followed by Norway in 1887, and successively by nearly all the European nations, as time went on.

Principle Widely Accepted.

In point of fact there are 46 nations or peoples in Europe and portions of the British Empire, as well as in South America, which have accepted the principle of workmen's compensation. Turkey is perhaps the one European nation which has not yet passed legislation of this kind. In America and Canada during the last seven years about forty acts have been passed which adopt the principle.

The principle means that there shall be fastened upon the industry in which the workmen is engaged the hazard of that industry. Or 5 per cent. of the assessment, of the workmen to be compensated, and the liability of the employer to pay assessments of some sort in order to meet his liability. So that the modern doctrine would seem to run in this wise, that the industry which has caused loss to the individual, whether it be that of life or otherwise, should pay the loss. Or practically that the statutory law should restore to the individual the loss occasioned by the industry itself, and this proposition we venture to suggest for your honor's careful consideration.

It will probably be found to be true generally, that modern workmen's compensation costs more than the old plan of employer's liability; but, on the other hand, it confers larger benefits upon the employee, while it relieves the employer of

a heavy personal liability. The material question to consider is the expense of doing business by way of a government commission. It has been found, broadly speaking, that the commissions have transacted the business at much less cost than the insurance companies, and in this connection it is necessary to say that the government of the province should pay part of the expense of the commission, probably all of its administrative expenses.

In the province of Ontario, where, of course, the income of the commission is large, the cost has only run to about 4½; putting it still more broadly, the right whereas the ratio of expense of insurance companies is probably not less than 35 per cent. It is therefore clear that of the total amount collected by a commission, a much larger amount is returned to the employee than is returned by the systems at present in force. One reason, and probably it is a sufficiently sound one, why the province should contribute to the expense, is that in some cases those who are left behind by the injured workman become a charge upon the public, and the assessment which is made under the workmen's compensation plan upon all industries does away with the possibility of these public charities, and the contribution should, therefore, be made partly by the public. This is true in all the provinces of Canada where the commissions are in force, but on account of the short time they have existed in British Columbia, Manitoba and Nova Scotia it is not feasible to give exact details of cost.

Nova Scotia's Legislation.

The Nova Scotia Act runs in this wise: Fifty-five per cent. of the injured workman's wages is paid when he is incapacitated, and less in proportion to the injury when partially incapacitated. If death ensue, \$20 a month to his widow until death or re-marriage, in the latter event two years' annuity and \$5 a month for each child but the latter not in all to exceed \$20 a month, no matter how many children, until each attain the age of sixteen years.

A certain number of occupations are excluded in Nova Scotia by regulation, on account of the smallness of the number employed, or for some other reason, for those which are so excluded the common law rights are preserved. In cases where the statutory right to collect is given to the employee, the common law right of action and all other statutory rights are taken away.

On the practical side of the question, and accepting the principle of workmen's compensation, we venture to say that the act of Nova Scotia is more nearly applicable to New Brunswick than any other. The acts of British Columbia, Manitoba, Ontario and Nova Scotia, are too drastic to be applied in their entirety in New Brunswick. In fact, in those provinces there is generally assumed liability, ended in some cases only by death of the workman, or his or her dependant, if the latter is a widow. While all of these acts may be open to question at one point or another, yet each has strong features, and after full consideration we suggest that an act along the lines of that of Nova Scotia, modified in some particulars, but enlarged in others, be submitted to the legislative assembly of New Brunswick, strict provision being made:—

Firstly, to limit by way of weekly or monthly payments, the amount payable to any one person, or his or her dependants to \$3,500. This suggestion varies radically the other acts, but we believe the limit should be fixed in the public interest.

Secondly, that the Nova Scotia act be again varied by a provision for first medical aid of a character to be determined by the commission itself.

Thirdly, that a system of merit rating be adopted so that the rate of assessment to each employer will be fixed to some extent upon the record of his own particular business. And, therefore, if the record of any particular industry were especially good, it could be noted in a general consideration of all rates.

Fourthly, if it is possible that consideration be given to a scale of specified payments in lieu of the weekly or monthly one as above described in case of certain specified injuries.

Fifthly, that the act only apply to those whose employers have filed their payrolls as may be provided by the act, but that failure to comply shall leave the employer open to action at law, and that he should be placed under heavy penalty as well for such failure.

Sixthly, that in order to keep as close watch over each industry as possible, that the provisions of the Factory Act be extended, so that it will be necessary for each engineer to have a certificate for the special industry in which he is engaged which shall set forth the date of his employment,