

Merrill Ring Wilson, Limited, and others - - - - *Appellants*

v.

The Workmen's Compensation Board - - - - *Respondents*

FROM

THE COURT OF APPEAL FOR BRITISH COLUMBIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 28TH JULY 1933.

Present at the Hearing :

LORD BLANESBURGH.

LORD MERRIVALE.

LORD THANKERTON.

LORD RUSSELL OF KILLOWEN.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD RUSSELL OF KILLOWEN.]

This case comes before their Lordships on appeal from a judgment of the Court of Appeal for British Columbia affirming a judgment of the Supreme Court of that Province, which dismissed an action brought by the appellants against The Workmen's Compensation Board.

This Board (hereinafter referred to as the Board) is a body constituted for the administration of Part I of the Workmen's Compensation Act (R.S. B.C. 1924, chap. 278).

The scheme of Part I of the Act is to create and maintain a fund called the Accident Fund mainly by assessments on the employers in the industries within the scope of that part. The power and duty of assessing the employers are placed in the hands of the Board, as appears from the provisions of the Act herein recited.

The Act provides (Section 28) for the division of all industries within the scope of Part I into 18 specified classes, of which Class 1 includes " logging " ; but the Board had power (Section 35)

to establish "such sub-classifications, differentials and proportions in the rates as between the different kinds of employment in the same class as may be deemed just." Acting under this power, the Board has constituted "logging west of the Cascades" as Sub-class 2 of Class 1.

The present proceedings are a consolidation of two actions commenced against the Board by various companies (employers of labour) suing on behalf of themselves and all other members of Sub-Class 2 of Class 1. In other words the plaintiffs represent the industry classified separately as "logging west of the Cascades."

The relief claimed covered an extensive area; but the sole point which has survived for the consideration of their Lordships' Board may be stated thus: Whether (as the appellants contend) assessments made under the Act for the purpose of raising funds for medical aid must be so made that all employers liable to be so assessed shall be assessed at the same rate upon their pay rolls irrespective of the hazards of their respective industries, or whether (as the respondents contend) the Board may make those assessments in such a way that regard shall be had to the respective hazards of the various industries of the employers liable to be assessed for the particular purpose.

There is, it would appear, no dispute that as regards assessments for the purpose of raising funds for the purposes of the Act other than medical aid the respective hazards of the various classes of industries must be a determining factor in the making of the assessments, but the appellants contend that upon the true construction of the Act and in particular of Section 33 thereof, the Board is bound in making assessments in respect of medical aid to disregard this factor.

The question in dispute is therefore one which is solely concerned with assessments in respect of medical aid and which depends upon the true construction of the Act.

In the course of the argument before their Lordships, for the purpose of illustrating the hardships which it was said would ensue if the contention of the respondents prevailed, it was alleged that the Board had adopted a particular method of assessment which embodied not only the feature complained of in the action, but other features alleged to be in contravention of the Act. Their Lordships had no means of ascertaining whether these allegations were well founded or not. They were apparently not raised or suggested in the Courts of British Columbia; they certainly are not referred to in the judgments below. Their Lordships think that they must be disregarded, and that the point for decision must be confined within the limits indicated above.

The relevant provisions of the Act may now be cited:—

Section 2 (1) In this Act, unless the context otherwise requires:—

' Accident Fund ' shall mean the fund provided for the payment of compensation, outlays, and expenses under Part I :

' Compensation ' shall include medical aid

' Medical aid ' when used in Part I shall include the several matters and things which the Board under the provisions of Section 23 is empowered to provide for injured workmen :

After various sections which provide for payment of compensation for personal injury and where death results from the injury the Act makes the following provisions for medical aid :—

23.—(1) In addition to the other compensation provided by this Part, the Board shall have authority to furnish or provide for the injured workman such medical, surgical, and hospital treatment, transportation, nursing, medicines, crutches, and apparatus, including artificial members as it may deem reasonably necessary at the time of the injury, and thereafter during the disability to cure and relieve from the effect of the injury, and the Board shall have full power to adopt rules and regulations with respect to furnishing medical aid to injured workmen entitled thereto and for the payment thereof.

(4) Any plan for providing medical aid in force between an employer and his workmen or otherwise available to the workmen, and which in the opinion of the Board, after investigation of the facts, is found on the whole to be not less efficient in the interests both of the employer and of the general body of workmen than the provisions for medical aid contained in this section, may by order of the Board, subject to such conditions as the Board may require, be declared to be a plan approved by the Board. So long as the order of the Board approving the plan is in force and unrevoked the provisions of Subsections (1), (2), and (3) of this section and of Subsection (1) of Section 33 shall not apply to any of the workmen in any employment embraced in such plan.

Section 28 runs thus :—

28. For the purpose of assessment in order to create and maintain a fund, to be called the ' Accident Fund,' for the payment of the compensation, outlays, and expenses under this Part, all industries within the scope of this Part shall, subject to Sections 29 and 30, be divided into the following classes :—

Class 1.—Lumbering ; logging ; sawmills ; planing mills ; manufacture of pulp and paper :

The other relevant provisions of the Act are as follows :—

32.—(1) For the purpose of creating and maintaining an adequate Accident Fund, the Board shall every year assess and levy upon and collect from the employers in each class by an assessment or by assessments made from time to time rated upon the pay-roll, or in such other manner as the Board may deem proper, sufficient funds, according to an estimate to be made by the Board :—

- (a) To provide in connection with Section 33 a special fund to meet the cost of medical aid :
- (b) To meet all other amounts payable from the Accident Fund under this Part during the year :

- (c) To provide a reserve by way of a contingent fund in aid of industries or classes which may become depleted or extinguished :
- (d) To provide in each year capitalised reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all accidents which occur during the year ; and
- (c) To provide a reserve fund to be used to meet the loss arising from any disaster or other circumstance which, in the opinion of the Board, would unfairly burden the employers in any class.

(2) Assessments may be made in such manner and form and by such procedure as the Board may deem adequate and expedient, and may be general as applicable to any class or sub-class, or special as applicable to any industry or part or department of an industry.

(3) Assessments may, wherever it is deemed expedient, be collected in half-yearly, quarterly, or monthly instalments, or otherwise ; and where it appears that the funds in any class are sufficient for the time being, any instalment may be abated or its collection deferred.

(4) In case the estimated assessments in any class prove insufficient, the Board may make such further assessments and levies as may be necessary, or the Board may temporarily advance the amount of any deficiency out of any reserve provided for that purpose, and add such amount to any subsequent assessments.

(5) The Board shall give notice to each employer of the amount of each assessment due from time to time in respect of his industry and the time when the same is payable. The notice may be sent by post to the employer, and shall be deemed to be given to him on the day on which the notice is posted. 1916, c. 77, s. 29.

33.—(1) Every employer who is required to contribute to the Accident Fund by way of assessment under this Part is hereby authorized and required to retain from the moneys earned by each workman in his employment the sum of one cent for each day or part of day the workman is employed as a contribution toward the cost of medical aid, and to pay the sum so retained to the Board from time to time at the time each assessment is due and payable by the employer, and at such other times as the Board may direct.

(2) The moneys received by the Board under subsection (1) shall form part of the Accident Fund, and shall constitute a special fund to be used only in defraying the cost of medical aid. Such additional amounts as are required from time to time to meet the cost of medical aid shall be provided by the Board by assessment upon employers generally in all industries within the scope of this Part, except in respect of employments embraced in any plan for providing medical aid approved by the Board under Subsection (4) of Section 23. For the purpose of levying and collecting assessments under this subsection, the Board may charge the additional amounts required to meet the cost of medical aid against the funds to the credit of the several classes in such a manner as, on the annual adjustment of assessments under this Part, will result in a general assessment of such additional amounts upon those employers only who are liable to assessment under this subsection.

(3) In the case of any workman employed as a master, mate, engineer, seaman, sailor, steward, fireman, or in any other capacity on board of any vessel on which duty has been paid for the purposes of the Sick Mariners' Fund under Part V of the 'Canada Shipping Act,' being Chapter 113 of the 'Revised Statutes of Canada, 1906,' the provisions of Subsections (1) and (2) of this section shall not apply to such workman during the period in respect of which such duty has been paid or is payable. 1916, c. 77, s. 30 ; 1918, c. 102, s. 10 ; 1919, c. 93, s. 7.

35. The Board shall establish such sub-classifications, differentials, and proportions in the rates as between the different kinds of employment in the same class as may be deemed just; and where in the opinion of the Board any particular industry is shown to be so circumstanced or conducted that the hazard differs from the average of the class or sub-class to which the industry is assigned, the Board shall confer or impose upon such industry a special rate, differential, or assessment to correspond with the relative hazard of that industry; and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of the individual plant or undertaking of each employer. 1916, c. 77, s. 32.

42. Separate accounts shall be kept of the amounts collected and expended in respect of each class and of each fund set aside by way of reserve or as a special fund for any purpose, but for the purpose of paying compensation the Accident Fund shall, nevertheless, be deemed one and indivisible. 1916, c. 77, s. 37.

43.—(1) On or before the first day of March in each year the amount of the assessment for the preceding calendar year shall be adjusted upon the actual requirements of the class and upon the correctly ascertained pay-roll of each industry, and the employer shall forthwith make up and pay to the Board any deficiency, or the Board shall refund to the employer any surplus, or credit the same upon the succeeding assessment as the case may require.

(2) Where in any industry a change of ownership or employership has occurred, the Board may levy any part of such deficiency on either or any of the successive owners or employers, or pay or credit to any one or more of the owners such surplus as the case may require, but as between or amongst the successive owners the assessments in respect of such employment shall, in the absence of an agreement between the respective owners or employers determining the same, be apportionable, as nearly as may be, in accordance with the proportions of the pay-rolls of the respective periods of ownership or employership. 1916, c. 77, s. 38.

The point in dispute can now be focussed. It depends upon the true construction and inter-relation of Sections 32 and 33. The appellants contend that the power to assess employers for medical aid depends on and is controlled by Section 33 (2), and that the only power to assess for medical aid is by assessment upon employers generally in all industries within the scope of Part I, excepting employers with approved plans. These words, they say, exclude the idea of discriminating against employers by reason of the hazards of their industries, and compel the Board to assess the additional amounts upon the employers liable, in proportion to their respective pay rolls.

The respondents contend that the governing section is Section 32: that Section 32 (1) (a) is the provision which confers the power to assess employers for medical aid; and that the function of Section 33 (2) is not to confer a power of assessment, but to ensure that in exercising the power of assessment already conferred by Section 32 (1) (a) the Board shall not assess any employer with a plan approved under Section 23 (4).

Murphy J., who tried the action, was of opinion that Section 32 was the empowering section, and that the words in Section 33 "by assessment upon the employers generally," did

not cut down the power given to the Board by Section 32 to rate the assessments upon the payrolls or in such other manner as the Board may deem proper.

In the Court of Appeal the judges were unanimous. Macdonald C.J., while advancing some additional reasons based upon Section 43, agreed also with the reasons of the Trial Judge. McPhillips J.A. agreed with the judgment of the Trial Judge. Macdonald J.A., considered Section 32 to be the controlling section and was of opinion that an assessment was an assessment levied on employers generally even though varied in amount according to the classes affected. All must contribute but not necessarily the same amount.

Notwithstanding the full and careful argument of Mr. Mayers on behalf of the appellants, their Lordships find themselves in agreement with the Trial Judge and the Court of Appeal.

Medical aid is part of the compensation to be provided under the Act by means of an accident fund, which though split up into various separate accounts is to be deemed one and indivisible (Section 42). This accident fund is created and maintained by assessing, levying and collecting every year upon and from the employers in each class sufficient funds for five specified purposes, one of which is "a special fund to meet the cost of medical aid." This assessment levy and collection may be effected "by an assessment or by assessments made from time to time rated upon the pay-roll, or in such other manner as the Board may deem proper" (Section 32). The special fund for medical aid is composed of contributions by workmen and of contributions by employers. The contributions by workmen are fixed by Section 33 (1) and are to be deducted from wages by the employer and by him paid to the Board. The contributions of the workmen constitute in the first instance the special fund for medical aid. (See the first sentence of Subsection 2 of Section 33.) So far the meaning of Section 33 seems clear. The remainder of Subsection 2 deals only with the contributions of the employers to medical aid, and its purport and effect is in the opinion of their Lordships as follows:—In the first place it limits the contributions of the employers to such amount as may be required in addition to the contributions of the workman; and in the second place, just as the workmen of an employer who has an approved plan are exempted from contributions to medical aid by Section 23 (4), so this Subsection exempts all employers with approved plans from liability to contribute to medical aid either by assessment or by charge against moneys which might otherwise be refunded or credited to them by the operation of Section 43.

Their Lordships do not think that the words "assessment upon employers generally" and "a general assessment" necessarily involve that all assessable employers must bear an equal burden (*i.e.*, must be rated at an equal rate on their pay rolls), or that the contrast implied is other than the contrast between "general" and "special" which is to be found in Section 32 (2).

In any event the phraseology of Section 33 (2) is quite unequal to the task of cutting down the power given to the Board by Section 32 (1) (a). The assessment referred to in Section 33 (2) is but one of the assessments referred to in Section 32 (1); and any assessment under Section 33 (2) is merely an assessment made in exercise of the power conferred upon the Board by Section 32 (1) (a). In exercising that power the Board may make an assessment either rated upon the pay-roll or rated in such other manner as the Board may deem proper.

Their Lordships are therefore of opinion that this appeal should be dismissed, and they will humbly advise His Majesty accordingly. The appellants will pay the costs of this appeal.

In the Privy Council.

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OTHERS

v.

THE WORKMEN'S COMPENSATION BOARD.

DELIVERED BY LORD RUSSELL OF KILLOWEN.

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