



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 37 | Number 2

Article 18

2-1-1959

Workmen's Compensation -- Analysis of "Jurisdictional Fact" Review by Superior Courts

Robert L. Lindsey

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

Robert L. Lindsey, *Workmen's Compensation -- Analysis of "Jurisdictional Fact" Review by Superior Courts*, 37 N.C. L. REV. 219 (1959).
Available at: <http://scholarship.law.unc.edu/nclr/vol37/iss2/18>

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

than an additional factor to be noted. On the other hand, Rule 2, which allows the motorist to proceed uninterruptedly into the intersection and make his observation while in progress, operates effectively as to both purposes. Crossings are rendered less dangerous and the flow of traffic is facilitated.

WILLIAM H. HOLDFORD

Workmen's Compensation—Analysis of "Jurisdictional Fact" Review by Superior Courts

The North Carolina Workmen's Compensation Act empowers the Industrial Commission to make findings of fact which are binding on the parties and on courts on appeal. Appeals from rulings of the Commission may be taken only "for errors of law, under the same terms and conditions as govern appeals in ordinary civil actions."¹

Cases in North Carolina reveal two lines of authority concerning the extent to which findings by the Industrial Commission may be reviewed on appeal to the superior court. One group² of cases shows literal adherence to the language of the act in holding that the courts may review only questions of law. The other group³ departs from the literal language of the act and asserts that the superior court judge may not only review questions of law, but that he may also make his own findings of "jurisdictional fact"⁴ upon motion of the appellant.

¹ N.C. GEN. STAT. § 97-86 (1958) provides that the award of the Commission "shall be conclusive and binding as to *all questions of fact*; but either party to the dispute may . . . appeal from the decision of said Commission to the superior court . . . for errors of law, under the same terms and conditions as govern appeals in ordinary civil actions. . . ." (Emphasis added.)

² *Hawes v. Mutual Benefit Health & Acc. Ass'n*, 243 N.C. 62, 89 S.E.2d 739 (1955); *Thomason v. Red Bird Cab Co.*, 235 N.C. 602, 70 S.E.2d 706 (1952); *Smith v. Southern Waste Paper Co.*, 226 N.C. 47, 36 S.E.2d 730 (1946); *Hayes v. Elon College*, 224 N.C. 11, 29 S.E.2d 137 (1944); *Bivens v. Teer*, 220 N.C. 135, 16 S.E.2d 659 (1941); *Beach v. McLean*, 219 N.C. 521, 14 S.E.2d 515 (1941); *Birchfield v. Department of Conservation and Development*, 204 N.C. 217, 167 S.E. 855 (1933).

³ *Hart v. Thomasville Motors, Inc.*, 244 N.C. 84, 92 S.E.2d 673 (1956); *Aylor v. Barnes*, 242 N.C. 223, 87 S.E.2d 269 (1955); *Francis v. Carolina Wood Turning Co.*, 204 N.C. 701, 169 S.E. 654 (1933); *Aycock v. Cooper*, 202 N.C. 500, 505, 163 S.E. 569, 571 (1932) (dictum).

⁴ "[I]n every proceeding of a judicial nature, there are one or more facts which are strictly jurisdictional, the existence of which is necessary to the validity of the proceedings, and without which the act of the court is a mere nullity. . . ." *Nobel v. Union River Logging R.R.*, 147 U.S. 165, 173 (1893).

Professor Larson has said that practically every fact decided in compensation cases has some bearing on the tribunal's jurisdiction and that reduced to the absurd, the rule could be used to render the tribunal powerless to decide any question with finality. 2 LARSON, WORKMEN'S COMPENSATION § 80.41 (1952).

The North Carolina Supreme Court, however, has termed only three issues questions of "jurisdictional fact": (1) Was the injured worker an employee? N.C. GEN. STAT. § 97-2(2) (1958); *Francis v. Carolina Wood Turning Co.*, *supra* note 3; (2) Does the defendant regularly work five or more employees? N.C. GEN. STAT. § 97-13(b) (1958); *Aycock v. Cooper*, *supra* note 3; (3) If

The existence of these two lines of authority raises several questions. First, in what circumstances have the two approaches been used? Second, is the "jurisdictional fact" doctrine necessary? Third, why has the "jurisdictional fact" approach been used? It is the purpose of this note to explore the questions presented by these two divergent views.

*Aycock v. Cooper*⁵ is the earliest reported case in which the Industrial Commission's jurisdiction was challenged in a workmen's compensation case. The superior court was upheld in reversing an award of the full Commission because there was no competent evidence to support the "jurisdictional fact" that there were five employees. In dictum⁶ the court said that had there been competent evidence on this point, a proper construction of G.S. § 97-86 would have justified a redetermination of this "jurisdictional fact" by the superior court. It was conceded that all other facts are binding on appeal.

The *Aycock* dictum was followed in *Francis v. Carolina Wood Turning Co.*⁷ where the superior court was upheld in making an independent finding, from conflicting evidence, of the "jurisdictional fact" of employment and in setting aside the Commission's finding that plaintiff was an independent contractor.⁸

Until 1955 the *Aycock* and *Francis* decisions, although cited in several dicta,⁹ were not reaffirmed. For a time the court seemed to deal with jurisdictional matters as questions of law only. An example of this approach is found in *Beach v. McLean*.¹⁰ In that case the jurisdictional question was whether claimant was the employee of the appellant or of an independent contractor who was not subject to the act. The Commission's finding, from undisputed facts, that the appellant was claimant's employer was reversed by the superior court. In affirming the lower court's decision the court described the question of employment as a mixed one of law and fact. The contractual elements found to exist by the Commission were conclusive fact findings, but the relationship evidenced by those facts was treated as a reviewable question of law.

the injury occurred out of the state, are the place the employment contract was made, the place of business of the employer, and the residence of the employee all in North Carolina? N.C. GEN. STAT. § 97-36 (1958); *Aylor v. Barnes*, *supra* note 3.

The court has held that whether there was an injury resulting from an accident arising out of and in the course of the employment is conclusive as found by the Commission, if supported by competent evidence, and is not a reviewable "jurisdictional fact." *Francis v. Carolina Wood Turning Co.*, *supra*.

⁵ 202 N.C. 500, 163 S.E. 569 (1932).

⁶ *Id.* at 505, 163 S.E. at 571.

⁷ 204 N.C. 701, 169 S.E. 654 (1933).

⁸ See note 17 *infra*.

⁹ *Mallard v. F. M. Bohannon, Inc.*, 220 N.C. 536, 542, 18 S.E.2d 189, 192 (1941); *Buchanan v. State Highway & Pub. Works Comm'n*, 217 N.C. 173, 175, 7 S.E.2d 382, 383 (1940); *Thompson v. Johnson Funeral Home*, 208 N.C. 178, 180, 179 S.E. 801, 803 (1935).

¹⁰ 219 N.C. 521, 14 S.E.2d 515 (1941).

In *Smith v. Southern Waste Paper Co.*,¹¹ as in the *Beach* case, there was no dispute as to the facts. The superior court reversed the Commission's finding that claimant's deceased was an employee. The supreme court reversed, calling such a jurisdictional issue a reviewable question of law, but holding that where, as here, there is competent evidence to support the findings and *conclusion* of the Commission the award should be affirmed. This opinion seems to go further than any other in the direction of a liberal attitude toward the finality of Commission decisions. Although this case apparently stands for the proposition that the Commission's conclusions of law will be upheld if supported by competent evidence, the court in subsequent cases has not so interpreted it. On the contrary, it has been accepted along with *Beach*, a question of law case, as authoritative on the question of the scope of the courts' review powers in cases where the jurisdiction of the Commission was in issue. In *Aylor v. Barnes*,¹² however, the court reaffirmed the "jurisdictional fact" rule of the *Aycock* and *Francis* cases. The lower court affirmed the Commission's assumption of jurisdiction and award to the claimant and rejected appellant's argument for non-coverage based on allegations that claimant was a non-resident and that the injury occurred outside the state. On appeal, the superior court was reversed for failure to make an independent finding of the disputed "jurisdictional fact" of residence.

In *Hart v. Thomasville Motors, Inc.*,¹³ plaintiff, in a hearing before the Industrial Commission, attacked that body's jurisdiction to enforce a settlement agreement into which he had entered with defendant-employer on the ground that he was not an employee. The superior court, upon its independent finding of the disputed question of employment, affirmed the Commission's finding of no jurisdiction. The supreme court approved, invoking the "jurisdictional fact" rule, even though at times it labeled the employment question one of law. The case, however, was reversed on other grounds.

Shortly after the decision in the *Hart* case the fact that two lines of authority exist with regard to jurisdictional review was recognized for the first time by the Supreme Court of North Carolina in the case of *Pearson v. Peerless Flooring Co.*¹⁴ Defendant had appealed from an award to a worker's widow alleging that deceased was an independent contractor and not an employee as found by the Commission. Defendant assigned as error the failure of the judge below to make an independent finding of this "jurisdictional fact." The supreme court found, however, that such a finding had in fact been made. Since the superior court's

¹¹ 226 N.C. 47, 36 S.E.2d 730 (1946).

¹² 242 N.C. 223, 87 S.E.2d 269 (1955).

¹³ 244 N.C. 84, 92 S.E.2d 673 (1956).

¹⁴ 247 N.C. 434, 101 S.E.2d 301 (1958).

finding was the same as that of the Commission, as was the case in the *Hart* decision, the court did not have to adopt or reject either of the two lines of authority. The court did call attention to the conflict and noted that a considerable period followed the *Aycock* and *Francis* decisions during which the "jurisdictional fact" doctrine of those cases was not invoked. It was also pointed out by the court that when the doctrine was again used in the *Hart* and *Aylor* decisions it was not re-examined for its soundness.

An attempt to classify the situations in which the two approaches have been used yields the following generalities. First, the "jurisdictional fact" approach is taken where there is conflicting evidence as to basic facts upon which the ultimate conclusion as to jurisdiction turns. Second, the doctrine generally has gone unmentioned when there is no dispute as to the evidentiary facts.

What difference, if any, exists between a finding of "jurisdictional fact" and a legal conclusion regarding a circumstance on which a tribunal's jurisdiction depends? Where there is an agreed statement of facts the only possible issues for judicial determination are questions of law.¹⁵ Likewise it seems that when a tribunal has the power to find basic or evidentiary facts conclusively,¹⁶ that the ultimate or "jurisdictional fact" of employment, number employed, or place of residence of the worker, would be but a legal conclusion to be drawn from those facts.

Had the superior courts' power of review been expressly limited by the supreme court to questions of law, all of the cases discussed could have been decided as they were with the exception of the *Francis* case.¹⁷ The court has, on occasion, substantiated this assertion by citing, without distinction, cases which adopt both views.¹⁸

Why has appellate court redetermination of "jurisdictional facts" been permitted? Professor Larson has offered the following explanation: "The statute gives the administrative agency power to make decisions with reference only to certain situations; an agency with delegated powers may not enlarge those powers beyond the statutory

¹⁵ *Thomas v. Raleigh Gas Co.*, 218 N.C. 429, 11 S.E.2d 297 (1940).

¹⁶ See note 1 *supra*.

¹⁷ The *Francis* case stands out as a decision that seems to be irreconcilable with a "question of law" approach to review. The superior court judge was allowed to redetermine, from the conflicting evidence in the record, evidentiary facts bearing on the question of employment. The Commission called plaintiff, who worked at a table in defendant's shop, an independent contractor. The court sustained the lower court's independent finding that he was an employee. Perhaps the court in the *Francis* case stretched the "jurisdictional fact" rule to reach the result they felt justice demanded.

¹⁸ The *Aylor* and *Hart* decisions ("jurisdictional fact" cases) cite *Smith v. Southern Waste Paper Co.* (a "question of law" case) as authority for the review of "jurisdictional facts." The *Smith* case states that jurisdiction is reviewable as a question of law and cites *Aycock v. Cooper* (the original "jurisdictional fact" case) as authority for this proposition.

grant by its own act; it therefore cannot be allowed to make conclusive findings of the very facts on which the scope of its power and jurisdiction depends. Therefore the reviewing court must decide for itself whether the facts on which jurisdiction rests actually existed."¹⁹

In the dictum of *Aycock v. Cooper* it was stated that both a "proper construction" of the statute²⁰ and "well-settled principles of law" require a redetermination of the "jurisdictional facts" by the superior court on appeal. The court did not explain the construction or the principles upon which it relied in asserting the requirement of such review.²¹

It might be argued that the statutory wording, "under the same terms and conditions as govern appeals in ordinary civil actions," justifies a holding that "jurisdictional facts" are reviewable. The quoted words have been held to make appeals from the Commission analogous to those from justices of the peace.²² The superior court has appellate jurisdiction of all issues of law or *fact* determined by a justice of the peace.²³ The court later limited the justice of the peace analogy to the mechanics of appeal, *i.e.*, procedures for docketing and notice of appeal.²⁴ This holding seems to preclude justification of "jurisdictional fact" review—of the type seen in the *Francis* case—on the basis of this analogy.

In ordinary civil actions beginning in the superior court where the judge has found a "jurisdictional fact," such as domicile, his determination will be held conclusive on appeal if there is any competent evidence to support the finding.²⁵ This is true regardless of the conclusion that the supreme court might have reached upon the same evidence.²⁶ It seems that the court has attached less significance to the findings of "jurisdictional fact" by the Industrial Commission.

Perhaps the "jurisdictional fact" doctrine sprang from a desire on the part of the court to vest in the judiciary a greater amount of control over the scope and coverage of the Workmen's Compensation Act. This control would naturally be exercised by reversals of the Commission's finding or non-finding of "jurisdictional facts." Yet in only one case²⁷ has the supreme court upheld a superior court reversal of the Commission by invoking the "jurisdictional fact" doctrine.

¹⁹ 2 LARSON, *op. cit. supra* note 4.

²⁰ See note 1 *supra*.

²¹ Connor, J., speaking for the court, expressed the opinion that a failure to recognize the review power over "jurisdictional facts" might raise a serious constitutional question as to the validity of the statute that is now G.S. § 97-86. 202 N.C. at 505, 163 S.E. at 571.

²² *Higdon v. Nantahala Power and Light Co.*, 207 N.C. 39, 175 S.E. 710 (1934).

²³ N.C. GEN. STAT. § 7-66 (1953).

²⁴ *Fox v. Cramerton Mills, Inc.*, 225 N.C. 580, 35 S.E.2d 869 (1945).

²⁵ *Bangle v. Webb*, 220 N.C. 423, 17 S.E.2d 613 (1941).

²⁶ *Ibid.*

²⁷ See note 17 *supra*.

Although the "jurisdictional fact" rule if greatly extended would tend to deprive the Commission of its ability to perform its duty effectively and reduce its proceedings to "meaningless preliminary skirmishes,"²⁸ the rule has not, as yet, reduced the effectiveness of the Commission in settling compensation claims in North Carolina. The rule has, however, given rise to confusion in federal compensation cases and has been the topic of several well-reasoned dissenting opinions.²⁹ In addition, a recent treatise on workmen's compensation states that the rule has been "largely discredited."³⁰

Another objectionable feature of the rule that "jurisdictional facts" are excepted from the binding facts found by the Commission is that the superior court, without seeing any witnesses or hearing any testimony, may go into the record and determine for itself not just the "jurisdictional fact" but also the basic facts which, considered together, afford a basis for determination of the "jurisdictional fact."³¹ This practice seems not to be justified by G.S. § 97-86.

The return of the "jurisdictional fact" rule in the *Aylor* and *Hart* cases could indicate a desire on the part of the court to re-vest in the judiciary a measure of control seemingly disclaimed in the *Beach* and *Smith* cases. A more likely reason for the return of the rule is that mentioned in the *Pearson* case, namely, that the court apparently ap-

²⁸ 2 LARSON, *op. cit. supra* note 4.

²⁹ In *Crowell v. Benson*, 285 U.S. 22 (1932), the United States Supreme Court held that administrative findings of fact as to the employment relationship and the location of the accident were "jurisdictional facts" which could be determined anew upon appeal to the district court under the Longshoremen's and Harbor Workers' Compensation Act. Speaking for a three-justice minority, Mr. Justice Brandeis criticized the majority opinion by saying: "Whatever may be the propriety of a rule permitting special re-examination in a trial court of so-called 'jurisdictional facts' passed upon by administrative bodies having otherwise final jurisdiction over matters properly committed to them, I find no warrant for extending the doctrine to other and different administrative tribunals whose very function is to hear evidence and make initial determinations concerning those matters which it is sought to re-examine. . . . Logically applied it would seriously impair the entire administrative process." *Id.* at 92, 93. In this case the review provisions of the compensation act in question were similar to those of G.S. § 97-86. See note 1 *supra*.

In *Estep v. United States*, 327 U.S. 114 (1946), where appellant sought to have a judicial redetermination of "jurisdictional facts" found by a draft board, in his concurring opinion Mr. Justice Frankfurter said: "This argument revives, if indeed it does not multiply, all the casuistic difficulties spawned by the doctrine of 'jurisdictional fact.' In view of the criticism which that doctrine, as sponsored by *Crowell v. Benson*, . . . brought forth and of the attritions of that case through later decisions, one had supposed that the doctrine had earned a deserved repose." *Id.* at 142.

Although the "jurisdictional fact" doctrine has been widely criticized both by members of the United States Supreme Court and legal writers, and later decisions have failed to extend the rule of the *Crowell* case even to similar situations, it has never been specifically overruled. LANDIS, *THE ADMINISTRATIVE PROCESS*, 133 (1938). See *Voehl v. Indemnity Ins. Co.*, 288 U.S. 162 (1933); Mr. Justice Frankfurter's dissenting opinion, *Yonkers v. United States*, 320 U.S. 685, 695 (1944); *Pittsburgh S.S. Co. v. Brown*, 81 F. Supp. 285 (N.D. Ill. 1947).

³⁰ 2 LARSON, *op. cit. supra* note 4.

³¹ See note 17 *supra*.

plied the rule of the *Aycock* and *Francis* cases without a reappraisal of its soundness.

When a proper case comes before the court, the suggested reappraisal should be made and the "jurisdictional fact" rule should be abandoned in North Carolina. This abandonment is suggested not because the rule has led to abuse by the courts, but in the interest of lending consistency to legal terminology. There appears to be little need for perpetuating two phrases to express the same idea and to accomplish the same legal purpose. If the motivation for adopting the rule was the desire to exercise greater control over the policy of the act, past experience does not show that it has been necessary. If no such motive was present, then there is no apparent need for using the two phrases interchangeably. It is felt that abandonment of the term "jurisdictional fact" would not require the court to relinquish any control over compensation policy which it may have exercised in the past; and certainly, such a course would lend greater clarity to this area of the law.

ROBERT L. LINDSEY