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Workmen's Compensation—Failure to Observe Traffic Law as "Willful Misconduct"

The Georgia Workmen's Compensation Act provides that, "no compensation shall be allowed for any injury or death due to the employee's willful misconduct, including . . . willful failure or refusal to . . . perform a duty required by statute."¹ An employee was killed in a collision while violating a penal statute regulating the speed and manner of approaching railway crossings. *Held*: compensation denied.²

It has been held that the breach of a statute is not necessarily, as a matter of law, serious and willful misconduct.³ The violation of a city ordinance forbidding walking on elevated railway tracks was said to be *prima facie* evidence of negligence.⁴ As a general rule, something more than mere negligence is necessary to constitute the willfulness contemplated in the compensation statutes,⁵ and the act of the employee must show premeditated and intentional wrongdoing,⁶ or deliberate action with reckless disregard of the consequences.⁷

No such willfulness was found in cases where the breach of statutory duty was due to the employee's ignorance of a newly enacted statute,⁸ where a motor-truck was being operated in violation of a city ordinance,⁹ nor where the employer had notice of the deceased's habitual violation of a statutory regulation.¹⁰

However, the general rule seems to be that the violation of a statute which has been enacted in the interest of the safety of the workman is willful misconduct.¹¹ Although the majority of the decided cases have involved infractions of statutes governing hazardous

¹ Ga. Code 1926, Paragraph 3154 (14).

² *Aetna Life Ins. Co. v. Carroll*, 150 S. E. 208. (Ga. 1929), reversing *Carroll v. Aetna Life Ins. Co.*, 39 Ga. App. 78, 146 S. E. 788 (1928).

³ *Rumboll v. Nunnery Colliery Co.*, 8 D. L. T. 42, C. A. (1899).

⁴ *Alexander v. Industrial Board*, 281, Ill. 201, 117 N. E. 1040 (1917).

⁵ See *Berry, The Defense of "Serious and Willful Misconduct" Under the Workman's Compensation Laws* (1914) 78 CENT. L. JOUR. 436; Note L. R. A. 1916A 75, 355.

⁶ *Wick v. Gunn*, 66 Okla. 316, 169 Pac. 1087, 4 A. L. R. 107 (1917).

⁷ *Black Mtn. Corp. v. Higgins*, 226 Ky. 7, 10 S. W. (2d) 463 (1928).

⁸ *King v. Empire Collieries Co.*, 148 Va. 585, 139 S. E. 478, 58 A. L. R. 193 (1927), noted (1928) 6 N. C. L. REV. 227. *Contra*: *Dobson v. United Collieries*, 8 Sc. Sess. Cas. 5th. Ser. 241, 43 Scot. L. R. 260, 13 Scot. L. T. 644 (1905).

⁹ *Bohlen-Huse Coal & Ice Co. v. McDaniel*, 148 Tenn. 628, 257 S. W. 848 (1924).

¹⁰ *Union Colliery Co. v. Industrial Comm.*, 298 Ill. 561, 132 N. E. 200 (1921), 23 A. L. R. 1150 (1923).

¹¹ See Notes (1923) 23 A. L. R. 1161, (1924) 11 Brit. R. C. 165, 186.

occupations such as mining,¹² blasting,¹³ and the operation of dangerous machinery,¹⁴ the breach of traffic laws has been put in the same category.¹⁵ A California case,¹⁶ followed by the principal case, holds that an employee who, in the course of his employment was killed as a result of the overturning of an automobile being driven by him at a speed of 35-40 miles per hour when the legal limit was 30, was guilty of willful misconduct.

Although the conclusion reached in the principal case—that the violation of a penal statute is of itself willful misconduct—is supported by authority, it is submitted that the result, which leaves the dependents of an employee, killed in the service of his master, with no hope of compensation, is contrary to the fundamental theory of compensation legislation.¹⁷

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¹² A few recent cases are: *Fortin v. Beam Coal Co.*, 217 Mich. 508, 187 N. W. 352, 23 A. L. R. 1153 (1922); *Walcofski v. Lehigh Valley Coal Co.*, 228 Pa. 84, 122 Atl. 238 (1923); *Stuckoe v. Mickley Coal Co. Ltd.*, 138 L. T. R. 566 (1928), noted (1928) 166 L. T. 203, (1928) 72 Sol. J. 97 (compensation allowed.)

¹³ *Rudland v. Smith*, 50 N. S. 434, 33 D. L. R. 536 (1917); *Matthews v. Pomeroy*, 54 L. J. 223, A. C. (1919), Note (1919) 33 HARV. L. REV. 318.

¹⁴ *Bay Shore Laundry Co. v. Ind. Acc. Comm.*, 36 Cal. App. 547, 172 Pac. 1128 (1918).

¹⁵ *Fidelity etc. Co. v. Ind. Acc. Comm.*, 171 Cal. 728, 154 Pac. 834, L. R. A. 1916D, 903, noted (1916) 29 HARV. L. REV. 883, (1918) 4 VA. L. REG. (n. s.) at 487.

Other traffic law cases are: *Western Pac. etc. Co. v. Industrial Acc. Comm. of Cal.*, 193 Cal. 413, 224 Pac. 754 (1924) (employee struck by an automobile while he was riding on unlighted bicycle in violation of law; compensation allowed because of a constitutional provision making employers liable without regard to the fault of either party.); *Bohma v. Western Union Telegraph Co.*, 2 Cal. I. A. C. Dec. 246 () (riding a motorcycle along a crowded thoroughfare in a large city is willful misconduct.); *Standard Acc. Ins. Co. v. Pardue*, 39 Ga. App. 87, 146 S. E. 638 (1928) (The Georgia court says, "The mere violation, by an employee, of a criminal traffic law is not ground for denying compensation in case of injury," but doubtless this decision was reversed by *Aetna etc. Co. v. Carroll*, *supra* note 2); *Sun Indemnity Co. v. Ind. Acc. Comm. of Cal.*, 76 Cal. App. 165, 243 Pac. 892 (1926) (Truck-driver was injured when attempting to pass another automobile at 25 miles per hour on straight road, held, no willful misconduct); *Wood v. Snyder*, 83 Ind. App. 31, 147 N. E. 314 (1925) (Truck-driver guilty of misdemeanor—driving without license—was not barred from recovery of compensation.); *cf. Moore v. J. A. McNulty Co.*, 171 Minn. 75, 213 N. W. 546 (1927) (Violation of a statute in attempting to board train held not to defeat recovery of compensation.)

¹⁶ *Fidelity etc. Co. v. Ind. Acc. Comm.*, *supra* note 15.

¹⁷ For argument against penalizing dependents for misconduct of the employee see, Bohlen, *The Drafting of Workmen's Compensation Acts* (1912) 25 HARV. L. REV. 328, 333. England (W. C. Act, 1925, s. 1 (1) (b)), most of the Canadian Provinces and a few of the States (Workmen's Compensation of U. S. and Canada, U. S. Bureau Labor Bull. 423 (1926)) withhold defense of misconduct when the accident results in permanent disablement or death; California (Stat. Cal. (1929) c. 227, §6 (a) (4)) has adopted this provision since the *Fid. etc. Co. v. Ind. Acc. Comm.* case, *supra* note 15 and 16; North Carolina (N. C. CODE (Michie 1929 Supp.) §8081 (6)) reduces compensation 10 percent where injury was result of failure of employee to perform statutory duty.