

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

March 5, 1954
Opinion No. 54-13

TO: Mr. J. T. Weir, Secretary
Arizona State Apprenticeship Council
State Capitol Building
Phoenix, Arizona

RE: Workmen's Compensation for
Apprentices.

QUESTION: Under the provisions of
Section 56-1107, through
56-1111, A.C.A. 1939, as
amended, is the apprentice
covered by Industrial
Insurance or its equivalent
while participating in "re-
lated and supplemental
instructions" under the agree-
ment prescribed in Section
56-1110, A.C.A. 1939, as
amended?

This Apprenticeship Agreement is made under the provisions of Article 11, Apprenticeship, of Chapter 56, Employers and Employees, A.C.A. 1939, as amended. A sample form of the Apprenticeship Agreement approved by the Apprenticeship Council on June 9, 1945, was submitted. On the back of the agreement is the schedule relating to a glazier apprentice.

This schedule provides that the term of apprenticeship shall be four (4) years or eight thousand (8,000) hours as the minimum requirement, and the first five hundred (500) hours shall be a try-out or probationary period. It provides a schedule of major processes in which the apprentice is to be trained, and approximate number of hours for each process which, in this instance, has seven divisions of approximately four hundred (400) to fifteen hundred (1500) hours each. The wage provision provides that the apprentice shall be paid a progressively increasing schedule of wages beginning with forty-five per cent (45%) of the prevailing journeyman rates for the first one thousand (1,000) hours, and ending with eighty-five per cent

(85%) for the eighth (8th) one thousand (1,000) hours. The "Hours of Work, and Hours of Approved Related Instruction" provide that the work day and work week for the apprentice shall be the same as for the journeyman, and the related instruction shall be for not less than five hundred seventy-six (576) hours during the term of apprenticeship, or one hundred forty-four (144) hours per year. It also specifically provides: "Apprentices shall not be paid for hours in the classroom and this time shall not be considered as hours of work." Under "Special Provisions", subparagraph (d), it states that: "There shall be no liability on the part of the other contracting party for an injury sustained by an apprentice engaged in school work at a time when the employment of the apprentice has been temporarily or permanently terminated."

Payment of compensation under the Workmen's Compensation Act is provided by Section 56-931, A.C.A. 1939, which is as follows:

"56-931. Payment of compensation.--Every employee, hereinbefore designated, who is injured, and the dependents of every such employee who is killed, by accident arising out of and in the course of his employment, wheresoever such injury has occurred, unless purposely self-inflicted, shall be entitled to receive, and shall be paid such compensation for loss sustained on account of such injury or death, and such medical, nurse and hospital services and medicines, and such amount of funeral expenses, in case of death, as are herein provided."

There is no question as to the right to compensation while the apprentice is receiving his "on-the-job work experience through employment". In such case, he is clearly under the supervision and control of the employer, in the service of the employer, on the payroll of the employer, working during the working hours of his employment, and on premises under the control of the employer.

The question here relates to the time while, the place where, and the circumstances under which the apprentice receives "related and supplemental instruction" required under the Apprenticeship Agreement, the contents of which are prescribed in Section 56-1110, A.C.A. 1939, as amended.

This question is not specifically answered by any provision

of the Arizona statutes, and, although the Arizona Supreme Court has handed down many decisions concerning the Workmen's Compensation Act, announcing several tests and principles applicable to compensation cases, no Arizona case settles the point being considered.

Referring to the decisions of the courts of other states, we find the case of McQUERREY v. SMITH ST. JOHN MFG. CO., ET AL., a Missouri appeals case decided December 6, 1948, appearing in 216 S. W. 2d 534. The facts and circumstances in this case, and the provisions of the statutes and the apprenticeship agreement under which it was decided, are so identical to that of the case we are considering, that it might well have been made under the Arizona statutes and the prescribed form of Arizona Apprenticeship Agreement. Furthermore, in reaching its conclusions, the court cites and follows several tests approved in Arizona cases.

In this McQUERREY case, a number of millwork and cabinet manufacturing companies, associated in a manufacturer's association, and the labor union adopted certain rules and regulations for the employment and instruction of apprentices which were designated as: "Standards of Apprenticeship for Cabinet Makers, Stair Builders and Millmen." Included in the Standards was an approved copy of an Apprenticeship Agreement.

The provisions of the contract, described in the decision, were:

"* * *The contract provided that the apprentice and the employer desire to enter into an Apprenticeship Agreement in conformity with the provisions of the Standards, which were made a part of the agreement. The contract further provided 'that the Employer will provide employment and training opportunities in accordance with the Standards . . . For the purpose of enabling said apprentice to learn and acquire the trade of Cabinet Maker-Millman. . . . the Apprentice agrees to perform diligently and faithfully the work of said trade or craft during the period of apprenticeship, complying with the training program contained in said Standards. . . . That the Apprenticeship term begins on . . . and terminates upon the completion by the Apprentice of 8,000 hours of employment in said trade or craft, as stipulated

in the said Standards. Time spent in related instruction shall not be considered hours of work and the Apprentice shall not receive pay for time so spent. (Emphasis supplied)

There was also a contract between the Association and the Union providing, among other things, that all Apprentices employed by a member of the Association shall be members in good standing in the Union; and that 8 hours shall constitute a day's work for said Apprentice to be performed between the hours of 8 a.m. and 5 p.m.; and 5 days shall constitute a week's work, commencing at 8 a.m. Monday and ending not later than 5 p.m. the following Friday." (Italics underscored)

As under the Arizona code, provision was made for the appointment of a Joint Apprenticeship Committee and the Standards Code had provisions similar, if not identical to those in Arizona, as shown by the following:

"* * * The Standards Code also provided that before an Apprentice could complete his apprenticeship he must have 8,000 hours of reasonably continuous employment, supplemented by a minimum of 576 hours of related classroom instruction. The Apprentice was required to 'furnish such hand tools as are necessary in the various operations in the learning of his trade.' There also was set out a work schedule designating the type and character of work to be done and the number of hours to be spent thereon during the first four years of the apprenticeship, which hours total the required 8,000. The Standards Code also required the Apprentice to 'enroll in an approved school selected by the Committee and regularly attend at least 144 hours per year the classes provided for his instruction in subjects related to the trade.' If he failed to do so, without good cause, the Committee could suspend or revoke the agreement; and it also provided, 'Hours of related instruction shall not be considered as hours of work.'" (Italics underscored)

The Apprenticeship Committee made an arrangement with the

Mr. J. T. Weir, Secretary
Arizona State Apprenticeship Council

March 5, 1954
Page Five

Board of Education of Kansas City for the apprentice to attend a course in vocational training two evenings each week between 7 and 9 P. M., which schooling was referred to in the contract as "related instruction". These evening classes were conducted under the supervision of the Board of Education of Kansas City, the tools used in connection therewith belonged to the public school system, and the materials were furnished by the Committee.

The claimant in the McQUERREY case, while attending one of these evening classes, was using a shaper and caught his right index finger in the rotating blades, resulting in the loss of a portion of that finger for which compensation was claimed. Under these circumstances the court said:

"The question presented is whether the evidence discloses that claimant's injuries arose 'out of and in the course of his employment,' as required by Sec. 3691, R. S. 1939, Mo. R. S. A. The basic contention of the employer is that the relation of employer and employee did not exist between it and the claimant at the time of the injury; that there is nothing in the written instruments, above referred to, providing for the employer to have any connection with, obligation concerning, or right of control of the Apprentice while attending classroom work; that all things relating to the instruction program in the High School concerned the Apprentice, the Committee and High School authorities.

In general terms, the compensation law entitles an employee to compensation for any injury by accident arising out of and in the course of his employment, and the law should be liberally construed in furtherance of that end. But liberality does not authorize the allowance of a claim that lacks some of the essential elements required by the Act. No all-embracing definition of the phrase, 'arising out of and in the course of his employment,' has yet been framed, and every case involving this phrase should be decided upon its own peculiar facts and circumstances and not by reference to some formula. *Wamhoff v. Wagner Elect. Co.*, 354 Mo. 711, 190 S. W. 2d 915, 917, 161 A.L.R. 1454; *Leilich v.*

Chevrolet Motor Co., 328 Mo. 112, 40 S. W. 2d 601, 605. In Wahlig v. Krenning-Schlapp Gro. Co., et al., 325 Mo. 677, 29 S. W. 2d 128, 130, the court said:

'It has been quite uniformly held that an injury arises "out of" the employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury; and that an injury to an employee arises "in the course of" his employment when it occurs within the period of his employment, at a place where he may reasonably be, and while he is reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.' See, also, Watson v. Pitcairn, Mo. App., 139 S. W. 2d 552." (Italics underscored)

The tests applied in the last paragraph of the above quotation are those adopted by our Supreme Court in GOODYEAR AIR-CRAFT CORPORATION v. GILBERT, 65 Ariz. 379, 181 P. 2d, 624.

The decisions in the McQUERREY case continued as follows:

"All of the above written instruments declare that claimant's attendance at school classes in the evening was not 'work' and that he was not to be paid therefor. His work day, so far as the employer was concerned, began at 8 a.m. and was concluded at 5 p.m., for which he was paid an hourly wage. The Standards Code requires the employer to 'designate a particular person in the shop to be known as the Supervisor of Apprentices', who shall be responsible, with the advice of the Committee, for the apprentice's work experience and the recording of same in the record form supplied for that purpose. This would indicate that the employer is responsible for the training of the Apprentice while he is in the shop and during working hours. The Standards Code also requires that the Apprentice shall enroll in an approved school selected by the Committee and attend classes for at least 144 hours per year and if he fails to do so, the Committee may suspend or revoke the Apprenticeship Agreement. Nowhere is the employer charged with the

Mr. J. T. Weir, Secretary
Arizona State Apprenticeship Council

March 5, 1954
Page Seven

duty or responsibility of seeing that he enrolls or attends classes or does efficient work. The place and terms and conditions, as well as the tools and materials with which he carries on his training in the classroom, are provided by the Committee and the School Board. It is stipulated that 'these evening classes were conducted under the supervision of the Board of Education through the Department of Vocational Education of Kansas City.' The employer has no authority to supervise or control the apprentice's conduct at school classes or the conditions and circumstances under which his instruction is carried on. Under such a state of facts, can it be said that claimant's injuries arose 'out of and in the course of his employment, . . .'? We think not." (Italics underscored)

The decision then refers to "the right to control the means and manner of that service, as distinguished from the results of such service", a test applied in *INDUSTRIAL COMMISSION v. MEDDOCK*, 65 Ariz. 324, 180 P. 2d 580.

The *McQUERREY* decision then proceeded to say:

"* * * The compensation law was never designed to operate as accident insurance with blanket coverage as to any and all accidental injuries wherever and whenever received by an employee; to the contrary, it applies only to accidental injuries arising out of and in the course of the employment. The relationship of master and servant must exist in any case to make it compensable, and when that relationship ceases to exist, either temporarily or permanently, the liability of the employer for accidental injury to the employee ceases to exist. *Stout v. Sterling Aluminum Products Co.*, Mo. App., 213 S. W. 2d 244, 246.

We are of the opinion the employer in this case was not required to furnish claimant with the classroom work referred to. That was a requirement or condition imposed on every apprentice by the Association and the Union, before he could become a Journeyman Cabinet Maker-Millman. Such outside instruction was for the benefit of the apprentice and not for any particular employer.

The parties themselves recognize the distinction to be made between working for and training under the direction of an employer and that of classroom instruction. These were treated as separate items or duties in all the written instruments defining the relationship. The time spent on each project was recorded under separate headings. We do not agree with claimant's contention that, at the time of his injury, he was at a place he was required to be by his employer. The contract of employment obligated the employer to provide employment and training opportunities. We think these obligations refer to the time spent and the work done in the employer's plant and while the apprentice is under the control and guidance of the designated foreman 'in the shop', and not to the time and place of classroom instruction.

It would be an intolerable situation to hold an employer liable for accidental injuries when he had no right to supervise and control the conditions and circumstances under which the employee was working at the time of his injury. It is true our courts have gone far in holding an employer liable for accidental injuries to an employee when not on the premises of the employer. But the underlying theory of those cases is that the employee is about his employer's business, or is on his way to or returning from a place where his employment required him to be. We have considered the cases relied on by claimant but are of the opinion that the facts make them inapplicable.

Having concluded that the claimant was not an employee of the employer at the time of his injury, and that the employer did not have the right to control the means and manner of the service or work he was doing at that time, the injury did not 'arise out of and in the course of his employment.'"
(Italics underscored)

The cases we found in our research, which allowed compensation to an apprentice, or a person engaged in learning or practicing his trade, can be clearly distinguished from the McQUERREY case.

In CORREL v. TUTRONE PRINTING CO., INC., 97 N.Y.S. 2d 106, decided in 1950 by the Appellate Division of the Supreme Court of New York, the claimant was working on a printing press at a school located at a place other than that of his employment. However, he attended the school one afternoon each week during working hours, he was paid wages therefor by the employer, and the employer contributed to the purchase of supplies for the school.

In E. R. BURGET CO. v. ZUPIN, 82 N.E. 2d 897, an Indiana case decided in 1948, the Apprenticeship Agreement provided that the employee was permitted to take training, if necessary, on the employer's time. The injury occurred during working hours, during a trip made under the direction of the employer, in a car for the use of which the employer paid, while in company with another employee to whom the claimant was ap-
prenticed.

In DAMRON v. YELLOWSTONE TRAIL GARAGE, INC., ET AL., 34 P. 2d 417, an Idaho case decided in 1934, the injury was sustained by the employee in an accident on an automobile trip made after working hours, without compensation. However, the employer, a garage owner, requested the employee to make the trip to attend a brake school for the purpose of learning to sell a product handled by the garage, and furnished an automobile and driver and paid expenses for the trip.

In MESSER v. MANUFACTURER'S LIGHT AND HEAT CO., ET AL., 106 Atl. 85, a Pennsylvania case decided in 1919, the employee was injured during his vacation, in an automobile accident on a trip to inspect a pumping station, in order to increase his efficiency as an employee. However, he was then in the pay of and subject to the employer's call, and went to inspect the pumping station at the request of his employer's superintendent.

In CHICAGO, WILMINGTON & FRANKLIN COAL CO. v. INDUSTRIAL COMMISSION, 135 N.E. 784, an Illinois case decided in 1922, a trapper in a coal mine was injured while receiving training as a driver during the noon hour. However, it was the custom for the employer to recruit its mine drivers from its trappers, and it had knowledge that the trappers gained the experience necessary to become drivers by occasionally driving for other drivers, and driving on extra trips. And the trapper, who stood near the head in line of promotion to be a driver, was acting at the request of a driver employed by the company.

In view of the foregoing, it is our opinion that apprentices

Mr. J. T. Weir, Secretary
Arizona State Apprenticeship Council

March 5, 1954
Page Ten

are not covered by Industrial Compensation or its equivalent,
under the Arizona statutes, during related and supplemental
instruction provided under the requirements of the Apprenticeship
Agreement for glaziers.

ROSS F. JONES
The Attorney General

ALFRED B. CARR
Assistant to the
Attorney General

Mr. J. T. Weir, Secretary
Arizona State Apprenticeship Council

March 5, 1954
Page Ten

are not covered by Industrial Compensation or its equivalent, under the Arizona statutes, during related and supplemental instruction provided under the requirements of the Apprenticeship Agreement for glaziers.

ROSS F. JONES
The Attorney General

ALFRED B. CARR
Assistant to the
Attorney General