J. W. V. W

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New Jersey Court of Errors and Appeals

Edgar L. Troth,

vs.

Millville Bottle Works.

Number 113, November Term, 1914.

SUPPLEMENTAL BRIEF OF EDGAR L. TROTH.

This brief is put in in pursuance of the modification contained in a letter from the Chancellor, a copy of which letter is as follows:

"January 22, 1916.

Wescott & Wescott, Esqrs.
Louis H. Miller, Esq.

My dear Sirs:

When the case Troth v. Millville Bottle Works, No. 113, Nov. Term 1914, was considered in conference by the court of errors and appeals it was ordered for re-argument upon the question,—whether in the absence of proof of a written notice from the respondent to the parent or parents of the minor employe under para. II

of the Workmen's Compensation Act P. L. 1911, Sec. 95, a valid notice could be brought home to the parent or parents in any other manner.

By inadvertance and mistake, it seems, counsel were not notified of this determination, which is very much regretted.

If you will put in your briefs (first exchanging them) on the question reserved before we finish our conferences of this term, which may end on Friday January 28th or Thursday or Friday February 3rd or 4th, we will probably decide the case on the next opinion day, if you do not, then you may put the case in on the list for the next term and then argue the question orally or on briefs, as you choose.

Very truly yours,

E. R. Walker."

The important part of the act in question reads, "In the employment of minors, section 2 shall be presumed to apply unless the notice be given by or to the parent or guardian of the minor."

The sole question is whether or not the printing of a notice on the pay envelope of a minor employee raises the presumption that the parent of said minor employee knows of said notice.

Our own opinion is that the notice contemplated by the Legislature is written notice, signed by the person giving the same. How else is an employee to know that any notice which is received comes from the proper authority? The notice must be at least actual, not constructive.

The Act, by its nature, must be construed in favor of employees and the construction should be a liberal one. Matters of defense are subject to strict proof; therefore, presumptions should not operate in favor of an employer.

There is not the slightest intimation, in the proof, that a single pay envelope ever found its way into the hands of the parent of the employee.

The employer is resting on the presumption that the minor employee turned his wages over to his parent. This Honorable Court is asked to assume from this presumption that the wages reached the parent *in the pay envelope* and to further assume that the parent *saw and understood* the notice alleged to have been printed on the envelope. Notice means notice. To assume, from the rule that a father is entitled to the wages of his minor son, in the absence of any proof, that the father got the wages of his son is drawing an inference from a presumption. To further presume that the father received the wages in an envelope endorsed with a notice and read and understood the notice is drawing a presumption from a presumption, or pyramiding presumptions. Such a practice is too grotesque to receive consideration as a legal proposition. Pyramiding presumptions is a process not recognized by the law.

There are adequate and proper means which an employer can adopt to bring to a parent's mind the fact that the employer will not be bound by Section II of the Act. The employee has irrevocably lost one of his eyes. The amount recoverable is $500. For this Court to assume, and assume from a presumption, that the parent was notified of a certain intention on the part of the employer of his son is going too far.

We respectfully submit that the judgment below be affirmed.

WESCOTT & WEAVER,
Counsel for Appellee.