1961

*Oct. 11, 12
Dec. 15

MARY FARRELL ET AL. (*Applicant*) ...APPELLANT;

AND

WORKMEN'S COMPENSATION BOARD ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Labour—Workmen's compensation—Whether accident arose out of and was in the course of employment—Issue within exclusive jurisdiction of Workmen's Compensation Board and not open to judicial review.

Constitutional law—Constitutionality of Board's powers—Workmen's Compensation Act, R.S.B.C. 1948, c. 370, s. 76(1)—British North America Act, 1867, s. 96.

The appellant, whose husband, a hospital workman, was found dead after having engaged in some physical exertion which his work required, applied to the respondent Board for compensation on behalf of herself and four children. The Board decided that the workman died from natural causes and that his death was not the result of an accident arising out of and in the course of his employment. Following this decision, the appellant moved in the Supreme Court of British Columbia for *mandamus* with *certiorari* in aid. The judge who heard the motion held that the death was the result of an accident arising out of and in the course of employment, and directed the assessment and payment of compensation to the widow and dependents. This decision was set aside by a majority of the Court of Appeal. The widow then appealed to this Court.

Held: The appeal should be dismissed.

*PRESENT: Kerwin C.J. and Taschereau, Cartwright, Abbott, Martland, Judson and Ritchie JJ.

The Board's return on the motion, consisting of simply the application for compensation and the decision, was a proper one and there was no error on the face of the record. There was error in compelling the Board to supplement its return in the absence of any question going to jurisdiction.

The issue—whether there was an accident arising out of and in the course of employment—was unquestionably within the jurisdiction of the Board under Part I of the *Workmen's Compensation Act*, R.S.B.C. 1948, c. 370, s. 76(1), and even if there was error, whether in law or fact, it was made within the exercise of the jurisdiction and was not open to any judicial review, including *certiorari*. *Dominion Canners Ltd. v. Costanza*, [1923] S.C.R. 46; *O'Krane v. Alcyon Shipping Co. Ltd.*, [1961] S.C.R. 299, followed; *Acme Home Improvement Ltd. v. Workmen's Compensation Board* (1957), 23 W.W.R. 545, approved.

The submission that s. 76(1) of the Act was *ultra vires* of the Provincial Legislature on the ground that it infringed s. 96 of the *British North America Act* was abandoned in this Court. If an argument based on that ground was untenable (*Workmen's Compensation Bd. v. C.P.R.*, [1920] A.C. 184; *Kowanko v. J. H. Tremblay Co.* [1920] 1 W.W.R. 787; *Attorney-General of Quebec v. Stenec and Grimstead* (1933), 54 Que. K.B. 230; *Reference re The Adoption Act*, [1938] S.C.R. 398; *Labour Relations Bd. of Saskatchewan v. John East Iron Works Ltd.* [1949] A.C. 134, referred to), the appellant's other argument based upon right of access to the courts fell with it. Its rejection as far as this Board was concerned was implicit in the judgments in the *Dominion Canners* case and in the *Alcyon* case. The restrictions on the legislative powers of the province to confer jurisdiction on boards must be derived by implication from the provisions of s. 96 of the *B.N.A. Act*. Short of an infringement of this section, if the legislation is otherwise within the provincial power, there is no constitutional rule against the enactment of s. 76(1).

APPEAL from a judgment of the Court of Appeal for British Columbia[1], allowing an appeal from a judgment of Manson J. which had set aside a decision of the Workmen's Compensation Board and ordered the Board to assess compensation to the applicant. Appeal dismissed.

T. R. Berger, for the applicant, appellant.

C. C. Locke, Q.C., for the respondent.

M. M. McFarlane, Q.C., for the Attorney-General of British Columbia.

F. Mercier, Q.C., for the Attorney-General of Quebec.

E. Pepper, for the Attorney-General of Ontario.

J. Holgate, for the Attorney-General of Saskatchewan.

R. W. Cleary, for the Attorney-General of Alberta.

[1] (1960-61), 33 W.W.R. 433, 26 D.L.R. (2d) 185

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The judgment of the Court was delivered by

JUDSON J.:—This is an appeal from the judgment of the Court of Appeal for British Columbia[1] allowing an appeal from a judgment of Manson J. which had set aside a decision of the Workmen's Compensation Board and issued an order of *mandamus* directing the Board to assess and pay the compensation payable to the appellant. The appellant is the widow of the late John Farrell, who died in February 1959 while working at the North Vancouver General Hospital. She applied for compensation on behalf of herself and four children.

The Board decided that the workman died from natural causes and that his death was not the result of an accident arising out of and in the course of his employment. Following this decision, the appellant moved in the Supreme Court of British Columbia for *mandamus* with *certiorari* in aid. The material filed by the Board on the return of the motion was simply the application for compensation and the decision. As a result of further proceedings, the Court ordered the Board to file all the material that it had before it at the time it considered the appellant's claim, including a transcript of the evidence given at the inquest on the deceased workman. The material showed that the workman, unknown to himself or to anyone else, suffered from a serious heart disease and that he was found dead after having engaged in some physical exertion which his work at the hospital required.

The learned judge who heard the motion examined the material before him and came to a conclusion contrary to that of the Board. He held that the death was the result of an accident arising out of and in the course of employment, and directed the assessment and payment of compensation to the widow and dependents. It is, I think, plain that the learned judge really conducted a rehearing of the whole application by way of appeal, which is a procedure not provided by the Act and beyond the competence of a judge sitting on a motion for *certiorari*. His decision was properly set aside by the Court of Appeal.

I agree with the majority reasons of the Court of Appeal that the Board's return, consisting of the application and its decision, was a proper one, that there was no error in law

[1] (1960-61), 33 W.W.R. 433, 26 D.L.R. (2d) 185.

on the face of the record, and that there was error in compelling the Board to supplement its return in the absence of any question going to jurisdiction.

The issue here is a very simple one—whether there was an accident arising out of and in the course of employment. This issue is unquestionably within the jurisdiction of the Board under Part I of the Act and even if there was error, whether in law or fact, it was made within the exercise of the jurisdiction and is not open to any judicial review, including *certiorari*. Section 76(1) of the Act, R.S.B.C. 1948, c. 370, provides:

> 76. (1) The Board shall have exclusive jurisdiction to inquire into, hear, and determine all matters and questions of fact and law arising under this Part, and the action or decision of the Board thereon shall be final and conclusive and shall not be open to question or review in any Court, and no proceedings by or before the Board shall be restrained by injunction, prohibition, or other process or proceeding in any Court or be removable by certiorari or otherwise into any Court; and without restricting the generality of the foregoing the Board shall have exclusive jurisdiction to inquire into, hear, and determine:
>
> (*a*) The question whether an injury has arisen out of or in the course of an employment within the scope of this Part.

Two decisions of this Court have held that no Court has the power to decide in an action whether the case is one for compensation under the Act and whether the right of action is taken away under Part I. These decisions are: *Dominion Canners Limited v. Costanza*[1], and *Alcyon Shipping Co. Ltd. v. O'Krane*[2]. They are not confined in their application to the precise point under Part I of the Act which fell to be decided in them. They are of general application to all questions which arise for decision under Part I of the Act and which, by the very terms of s. 76(1), are within the exclusive jurisdiction of the Board and on which the decision of the Board is final and conclusive and not open to judicial review. This is the essential basis of the judgment under appeal and of the judgment of the same Court in *Acme Home Improvement Limited v. Workmen's Compensation Board*[3], and I am in complete agreement.

[1] [1923] S.C.R. 46, 1 D.L.R. 551.
[2] [1961] S.C.R. 299, 27 D.L.R. (2d) 775.
[3] (1957), 23 W.W.R. 545, 11 D.L.R. (2d) 461.

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Judson J.

A constitutional issue was raised on the hearing. The learned judge who heard the motion held that s. 76(1) was *ultra vires* of the Provincial Legislature on two grounds:

(1) That the Legislature has no jurisdiction to prevent a review by the Courts of a decision of the Board upon questions of law since that deprives the subject of his right of access to the Courts.

(2) That by such legislation the Board is constituted a superior District or County Court or a tribunal analogous thereto and the members thereof, not having been appointed by the Governor-General in Council pursuant to s. 96 of the B.N.A. Act, have no power or authority to exercise judicial functions.

The Court of Appeal ruled against both these grounds and on appeal to this Court, counsel for the applicant abandoned any attack on the Board on the ground of infringement of s. 96 of the *British North America Act*. It is very questionable whether there could be any profitable argument on this point after the judgments in *Workmen's Compensation Board v. C.P.R.*[1], *Kowanko v. J. H. Tremblay Co.*[2], *Attorney-General of Quebec v. Slanec and Grimstead*[3], *Reference re The Adoption Act*[4], and *Labour Relations Board of Saskatchewan v. John East Iron Works Ltd.*[5]

If an argument based upon s. 96 of the *British North America Act* is untenable, the other argument based upon right of access to the courts falls with it. Its rejection as far as this Board is concerned is implicit in the judgments in the *Dominion Canners* case and in the *Alcyon* case. The restrictions on the legislative power of the province to confer jurisdiction on boards must be derived by implication from the provisions of s. 96 of the *British North America Act*. Short of an infringement of this section, if the legislation is otherwise within the provincial power, there is no constitutional rule against the enactment of s. 76(1).

I would dismiss the appeal without costs.

Appeal dismissed without costs.

Solicitors for the applicant, appellant: Shulman, Tupper, Worrall & Berger, Vancouver.

Solicitors for the respondent: Ladner, Downs, Ladner, Locke, Clark and Lenox, Vancouver.

[1] [1920] A.C. 184, 88 L.J.P.C. 169.
[2] [1920] 1 W.W.R. 787, 51 D.L.R. 174, 30 Man. R. 198.
[3] (1933), 54 Que. K.B. 230, 2 D.L.R. 289.
[4] [1938] S.C.R. 398, 71 C.C.C. 110, 3 D.L.R. 497.
[5] [1949] A.C. 134, [1949] L.J.R. 66.