

1979

# Michael Prows v. Industrial Commission of Utah, Bergin Brunswig Company, And Associated Indemnity Company : Breif of Defendants

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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MICHAEL PROWS,

Plaintiff,

vs.

INDUSTRIAL COMMISSION OF  
UTAH, BERGIN BRUNSWIG COM-  
PANY, and ASSOCIATED INDEM-  
NITY COMPANY,

Defendants.

---

Case No. 16456

BRIEF OF DEFENDANTS

Appeal from the Order  
of the Utah Industrial Commission

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Clerk, Supreme Court, Utah

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Defendants.

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BRIEF OF DEFENDANTS

NATURE OF THE CASE

This action was commenced by Plaintiff pursuant to the Utah Workmen's Compensation Act seeking recovery for an alleged job-related accident.

DISPOSITION BY THE INDUSTRIAL COMMISSION

A hearing was held on January 4, 1979 before an Administrative Law Judge. The Judge denied compensation to Plaintiff. Subsequently on April 11, 1979 the Industrial Commission concurred with the Judge and denied Plaintiff's Motion for Review.

RELIEF SOUGHT ON APPEAL

Defendants seek affirmance of the Industrial Commission's Order denying benefits to Plaintiff.

## STATEMENT OF FACTS

This Court will not interfere with Orders of the Industrial Commission unless they appear contrary to law or contrary to evidence. Savage v. Industrial Commission, 565 P.2d 782 (Utah 1977); Section 35-1-84, U.C.A. If there is any substantial evidence in the record to support the findings of the Commission and ultimate facts found by the Commission support the award, this Court cannot do otherwise than enter judgment affirming the award of the Commission. Amalgamated Sugar Co. v. Industrial Commission, 189 P.69 (Utah 1918). See also McKay Dee Hospital v. Industrial Commission (filed July 16, 1979). This Court must therefore view the evidence concerning this claim from a standpoint supportive of the Commission's findings. Peka Spring Co., Inc. v. Jones, 371 N.E.2d 389 (Ct. App. Ind. 1978).

Because of the preceding standards of review, Defendants take exception to parts of Plaintiff's "Statement of Facts" as tending to omit evidence in support of the Commission's findings while tending to exaggerate or incorrectly state evidence favorable to Plaintiff's position. For this reason, Defendants would offer the following Statement of Facts as supportive of the Commission's findings.

The plaintiff had been employed at Defendant Bergin Brunswig for approximately 2 months. (R., p. 23). He was employed as a truck driver which included loading and unloading medical



supplies and delivering them to various doctors and hospitals. (R., p. 20).

On March 3, 1978 the plaintiff was so employed as a truck driver. At that time he was some 40 days short of being 22 years old. (R., p. 4). In the mid afternoon of that day Plaintiff was loading boxes from a handcart in his truck. (R., p. 28). As he was loading he was hit by an elastic band which had been flipped by a co-employee. (R., p. 29). The rubber band was used to wrap medical boxes delivered by the plaintiff and was some 12 inches long and 3/8 inches wide. (R., p. 47).

Plaintiff testified that upon being hit he picked up the elastic band and flipped it back. He then was hit with two more elastic bands again flipped by two fellow employees. At this point one of the employees approached him with an 18-inch piece of wood which had been ripped off of a wooden pallet and came towards him playing as though it were a sword. (R., p. 21). Plaintiff grabbed the wood from his co-employee, placed an elastic between the handles of his hand truck and used the elastic as a "flipper" to propel the wood piece into the air. In doing so, he flipped the wood piece into his own right eye. (R., p. 30).

Plaintiff stated that his flipping of the piece of wood was not a reaction back to the person who had flipped him with the elastic but was rather a playful gesture of Plaintiff attempting to flip the wood into the air with no target intended. (R., pp. 29-30). He stated that while he got into the playful mood

because of the activity of the other employees in flipping  
elastics, he quite openly admitted that his injury resulted  
from his own act and that he was the aggressor as far as flip-  
ping the wood. (R., p. 33).

David Chipman, one of the other employees involved in the  
incident, testified on behalf of Plaintiff that on the day in  
question he and another employee began to playfully flip rub-  
ber bands. He stated that they were being flipped at a dis-  
tance where nobody could get hurt with them. He recalled that  
after flipping several elastics he began to resume work when  
he saw the plaintiff flip a board in the air which hit Plain-  
tiff in the eye. (R., pp. 36-37).

Plaintiff characterized playful skirmishes with rubber  
bands as a frequent occurrence. (R., p. 21). Plaintiff was  
not sure exactly when or how often such play occurred but  
thought that there were rubber band skirmishes once a day al-  
though there were some days where there was no play. (R., p.  
22).

Mr. Gary Leavitt, Operation Manager of Bergin Brunswig,  
testified that he was the supervisor of the plaintiff. (R., pp.  
41-42). He related that he had, at times, seen elastics flipped  
by the employees but that the bands being flipped were at a dis-  
tance where no harm could be done (R., p. 47) and that he would  
always verbally warn the employees not to engage in such activi-  
(R., p. 43). He stated that his job was to cover the whole

warehouse, that he was not aware of rubber band fighting as a daily occurrence, and that at the most he only observed such activity two or three times a month. (R., pp. 46-48).

Mr. Leavitt had never seen any of the employees using rubber bands as a bow and arrow for flipping pieces of wood or any other objects. (R., p. 48). He had never given permission to use the elastics for such a bow and arrow purpose. (R., p. 48). Neither had he given permission to use elastics for any purpose nor was it any employee's function to flip elastics in the business. (R., p. 44). The plaintiff acknowledged that flipping elastics was not the assigned duty of any employee including himself. (R., p. 29).

A claim for compensation was filed against the defendants and accordingly a hearing was held on January 4, 1979 before an Administrative Law Judge. The Judge subsequently entered his "Findings of Fact, Conclusions of Law, and Order" finding that the plaintiff was engaging in "horseplay" at the time of his accident so his accident did not arise out of nor was it within the scope of his employment. (R., pp. 85-87).

A Motion for Review was filed by Plaintiff and denied by the Industrial Commission on April 11, 1979 with the Commission adopting the Judge's findings except for a minor error referring to a non-existent medical panel report. (R., p. 97).

Plaintiff filed a Petition for Writ of Review on May 9, 1979 challenging the Commission's denial of compensation.

## ARGUMENT

### POINT I

THE COMMISSION CORRECTLY DENIED COMPENSATION TO PLAINTIFF SINCE THE INJURY DID NOT "ARISE OUT OF OR IN THE COURSE OF" PLAINTIFF'S EMPLOYMENT.

The Administrative Law Judge in his Findings of Fact states the following:

4. The horseplay was not related in any way to the performance of the applicant's job duties but rather represents a complete abandonment of the employee's duties. At the time of the accident neither the applicant nor any of the other employees involved in the horseplay were carrying out their assigned tasks.

5. The applicant has failed to prove that his accident arose out of or was in the scope of his employment. (R., p. 87).

It is a well established rule in Utah that the Findings and Conclusions of the Industrial Commission are binding upon this Court if there is credible, competent evidence to support them. Whitmore v. Calavo Growers of California, 499 P.2d 848 (Utah 1972); Utah Packers Inc. v. The Industrial Commission of Utah, 469 P.2d 500 (Utah 1970).

Thus, the findings of the Commission must be adhered to by this Court unless Plaintiff can show there is no evidence to support them. In addition, Plaintiff must further show that the Commission failed to follow the law in Utah concerning "horseplay" injuries. A review of the record and of the appli-

cable law reveals that Plaintiff is unable to meet either of these requirements.

A. The Industrial Commission's Findings and Conclusions are Based Upon Substantial Evidence.

Plaintiff claims in his brief that the Industrial Commission substantially deviated from the evidence by making inaccurate and incomplete findings. (Plaintiff's brief, pp. 11-14). Plaintiff has failed, however, to support such claim in his brief with specific instances where such findings are inaccurate and has therefore waived any such challenge. In re Lavelle's Estate, 248 P.2d 372 (Utah 1953).

Plaintiff argues that the failure to refer this matter to a medical panel constitutes reversible error in light of this Court's decision in Lipman v. Industrial Commission, 592 P.2d 616 (Utah 1979). Obviously, the facts in that case and the facts in this case are entirely distinguishable.

In Lipman the sole issue was whether job-caused stress induced injury or death in such a manner as to be compensable. As this Court stated:

The findings of a medical panel may assist in determining whether the death was caused by accident. Id. at 618.

In the instant case, however, there is no doubt as to the cause of the injury which is simply Plaintiff's own action in projecting the wooden spear into the air. The convening of a medical panel in such a case would serve no purpose since, as a

matter of law, the Commission accepted the cause of the injury but ruled that it did not come within the statutory requirement for compensation.

In cases such as this involving denial of claims based upon matters of law and not upon factual disputes (as to either the cause of an injury or the extent of an injury) it would seem that Section 35-1-77, U.C.A. would not apply since there would be no "medical aspects" of the case.

For these reasons, Plaintiff's assault upon the Commission's findings is without merit.

B. The Injury Did Not "Arise Out of Plaintiff's Employment."

Plaintiff admitted that at the time of the accident he was not performing an assigned duty. (R., p. 29). Mr. Leavitt, Plaintiff's supervisor, also substantiated this fact. (R., p. 34).

This Court has stated that the words "arising out of" are construed to refer to the origin or cause of the injury. For an accident to "arise out of employment" a definite and close causal relationship is necessary between the injury and the employee's job activities. M. & K. Corporation v. Industrial Commission, 189 P.2d 132 (Utah 1948).

Plaintiff's injury did not result from his job activity and therefore did not "arise" from his employment. As stated by one authority:

It is generally held that no compensation is recoverable under the Workmen's Compensation Act, for injuries sustained through practical joking, horseplay, or sportive acts done independently of and disconnected from the performance of any duty of the employment, since such injuries cannot ordinarily be regarded as having risen out of the employment within the meaning of the Act. 82 Am.Jur.2d, Sect. 314, p. 105. (Emphasis added).

On the other hand, a non-participating victim who is performing his job and is injured by a prank of a co-employee is deemed to have suffered the injury arising out of his employment since he was injured while performing his job. Pacific Employers Insurance Company v. Industrial Accident Commission, 158 P.2d 9 (Cal. App. 1936); Swift and Co. v. Forbus, 207 P.2d 251 (Okla. 1950).

The evidence is clear that Plaintiff was not performing an assigned job function at the time of the accident. It is equally clear that whether Plaintiff be termed an "aggressor" or not he was definitely a participant in the horseplay and was not an innocent "non-participant" who was injured by the acts of others.

For these reasons, Plaintiff's injury is not compensable as "arising out" of his employment.

C. The Injury Did Not "Arise in the Course of Plaintiff's Employment."

The words "in the course of" employment have been defined by this Court to refer to the time, place, and circumstances under which the injury occurred. This Court has stated:

In other words the requirement that the accident arise in the course of the employment is satisfied if it occurs while the employee is rendering service to his employer which he was hired to do or doing something incidental thereto, at the time when and the place where he was authorized to render such service. M. & K. Corporation v. Industrial Commission, 189 P.2d 132, 134 (Utah 1948).

This Court has stated that when an employee interrupts or breaks the continuity of his employment for purposes of his own whether for recreation or pleasure, and the accident happens before he brings himself back into the line of his employment, the injury resulting is not compensable because it does not occur in the course of his employment. Sullivan v. Industrial Commission of Utah, 10 P.2d 924 (Utah 1932).

Many states have adopted the so-called "Aggressor Defense" which states that when an employee affirmatively instigates horseplay or other frivolous activity that the employee steps aside from his employment and any injuries occurring are non-compensable. See 1-A Larson, Workmen's Compensation Law, Section 23.30, pp. 5-126 to 5-128. Defendants submit that the adoption of this test in Utah allows an objective and reliable method of determining when "horseplay" prevents recovery. Such an adoption would eliminate the need to subjectively evaluate a number of factors and would thus create a workable and constant standard.

Another approach to the "horseplay" defense is offered by the noted authority, Professor Arthur Larson in his treatise.



Larson states that where an active participant or instigator is involved, the question is solely whether the horseplay constitutes a departure from course of employment and he proposes that the following four elements should be considered in answering that question:

1. The extent and seriousness of the deviation,
2. The completeness of the deviation (i.e., whether it was comingled with the performance or involved an abandonment of duty),
3. The extent to which the practice of horseplay had become an accepted part of the employment,
4. The extent to which the nature of the employment may be expected to include some such horseplay. 1-A Larson, Workmen's Compensation Law, Section 23, pp. 5-122.

It still remains for the fact finder to evaluate and weigh each element individually and collectively to determine the extent of the deviation. No set formula exists as to how many of these elements are necessary for compensation to be denied.

Even applying this more liberal test, however, to the facts of this case still supports the determination of the Commission that no compensable injury occurred.

1. The Extent and Seriousness of the Deviation.

There is no question here that Plaintiff was an active participant in the elastic flipping that led to the accident. He testified that just prior to the accident he had flipped one elastic at a co-employee and that he used another elastic to

span the handles of his hand truck. (R., p. 29). He then grabbed the wooden stick, used the elastic as a bow, and flipped the piece of wood into the air for no reason except to be "playful." (R., pp. 30, 33). Of course, there is no way of knowing how long this activity would have continued but for the injury.

The California Appellate Court in the recent case of Hodges v. Worker's Compensation Appeals Board, 147 Cal.2d 546 (Cal. App. 1978) held that a car salesman who walked out of a door and began to box with another salesman was not entitled to compensation for injuries suffered in the horseplay. The applicant in that case argued that the conduct was so insubstantial of a deviation that the injury occurred within the course of employment as a matter of law. The California Court rejected this contention and noted that even though the horseplay lasted only for a brief period of time and did not occur off of the employer's premises there was ample evidence to show that the deviation from employment was complete and substantial.

The Oklahoma Supreme Court in Horn v. Broadway Garage, 99 P.2d 150 (Okla. 1940) held that an employee who placed a broken paper clip on a rubber band and shot it into his eye could not recover under the compensation law since his act was disconnected from his employment activities.

Although the extent and seriousness of the deviation would have been greater had Plaintiff chased the other employees off

of the premises or continued the attack for a 30-minute period, the substance of the abandonment from his assigned task would still be no different.

## 2. Completeness of Deviation.

When an employee horseplays in the form of a whimsical method of performing his assigned duties an insubstantial deviation has occurred. In other words, when an employee is required to go to a time clock but does so by racing a co-employee, the deviation is minor since the activity involves a job-related assignment. Larson, Section 23.62(A), p. 5-143.

This rule has been basically recognized by this Court in M. & K. Corporation v. Industrial Commission where it was held that only in cases where an act or service which an employee is performing at the time of accident is itself prohibited (as distinguished from the manner in which an act is done or a service is performed) does the violation of the statutory provision or rule take the employee from the "course of employment" within the meaning of the compensation Act. 189 P.2d 132 (Utah 1948).

In this case, clearly, the act of flipping elastics or wooden pieces was not a mere deviation of an assigned task but was an abandonment of the work itself.

Larson also observed the following additional test:

If the primary test in horseplay cases is deviation from employment, the question whether the horseplay involved the dropping of active duties calling for claimant's attention as distinguished from a mere killing of time while

claimant had nothing to do assumes considerable importance. There are two reasons for this: first, if there were no duties to be performed, there were none to be abandoned; and second, it is common knowledge, embodied in more than one old saw, that idleness breeds mischief, so that if idleness is a fixture of the employment, its handmaiden mischief is also. Larson, Section 23, 65, p. 5-157. (Emphasis added).

Again, the testimony is clear that Plaintiff was working at the time the incident began and had to abandon his work in order to engage in the elastic band battle. (R., p. 28). Likewise, David Chipman had to interrupt his work in order to participate. (R., p. 36).

Clearly, the second criteria under the Larson formula would dictate denial of coverage.

3. The Extent to Which the Practice of Horseplay Had Become an Accepted Part of Employment.

In the absence of actual knowledge and condonation by the employer, the prime requisite is that the particular horseplay involved was engaged in so frequently or habitually that it had become customary and might fairly be said to be a regular incident of the employment. Hodges v. Worker's Compensation Appeal Board, 147 Ca. Rptr.2d 546 (Cal. App. 1978).

In considering whether or not the horseplay giving rise to the injury had become an accepted part of the employment, one must look to the testimony given at the hearing. Although the plaintiff and one of his co-employees testified that elastic band flipping was a frequent occurrence, Mr. Leavitt testified

that he only had observed this activity two or three times a month. (R., pp. 22, 36, 43). The Commission had the right to believe or disbelieve the witnesses and the acceptance by the Commission of conflicting evidence cannot be reviewed on appeal. Commercial Casualty Insurance Co. v. Industrial Commission, 266 P.721 (Utah 1928).

David Chipman stated that the flipping of the bands was always at a distance where "nobody gets hurt with them." (R., p. 36). Mr. Leavitt likewise stated that the flipping he observed was at a distance where it would not be harmful. (R., p. 47).

Most importantly, Mr. Leavitt stated that he had never seen any employee using rubber bands as a bow and arrow to propel other objects. (R., p. 48). Neither was there a showing by the plaintiff that such a practice was customary.

In addition, Mr. Leavitt stated that each time he observed the elastic flipping he had asked the employees to stop. The company did not condone such activity. In any event, however, the activity which Mr. Leavitt saw was not the dangerous activity which caused the injury in this case.

The Hodges case is again analogous to this situation. In that case there was evidence that employees had frequently engaged in throwing a football or tennis ball. There was some evidence that the employer was aware of this practice. However,

the employees had never engaged in a sparring boxing match and the claimant himself testified he did not think that that kind of activity would be allowed. 147 Ca. Rptr. 546.

Thus, even assuming arguendo that the company somehow condoned the elastic band flipping practice, it cannot be said that it was aware or could have foreseen that the elastic band flipping would result in 18-inch projectiles being propelled by the flipper mechanism created by Plaintiff. Obviously, the flipping of a large piece of wood at a close distance is a considerably different risk than shooting an elastic band from a long distance.

For these reasons the third criteria also mandates denial of compensation.

4. The Extent to Which the Nature of the Employment May be Expected to Include Some Such Horseplay.

The fourth factor in Larson's test involves a foreseeability or predictability in the type of activity which is being performed. In other words, some types of employment will lend themselves to occurrences which may be considered a part of the employment generally even when it happens the first time at a particular job. As stated by Larson:

For example, if an employer hires a gang of young boys to pick ripe tomatoes, it needs no long continued personal tradition to reveal that sooner or later a tomato will be thrown and if a new restaurant is set up with a door through which waiters must pass at close quarters hundreds of times a day, perhaps the

employer should be held to know on his very first day in business that waiters will nudge and jostle each other in that doorway, since that is the experience of the restaurant business generally, even if he himself has not yet had time to acquire that experience. Larson, Section 23.42, pp. 5-134 to 5-135.

Larson also notes that Longshoremen, "truck loaders", ditch diggers, and other workers whose duties are largely a matter of using their muscles will inevitably prove their boxing and wrestling skills whenever they are not kept busy. Id. at p. 5-135.

Certainly, it could be expected that the truck loaders in this job activity would occasionally perform horseplay in some physical manner. However, it is not foreseeable that 22-year-old men would flip elastics or other projectiles at each other. It is especially unlikely that any employer in this situation would believe that a person of the age of Plaintiff would do something so dangerous and foolish as to flip an 18-inch piece of wood haphazardly into the air.

For these reasons, the fourth criteria of the Larson formula also requires denial of compensation.

In summary, this case can be again likened to the Hodges decision where the California court there said:

It is true the horseplay lasted but a brief period cut short by applicant's injury and that it did not take him off the employer's premises. However, as the judge correctly observed in his report and recommendation on the Petition for Reconsideration, which was adopted by the Board: "There was no comingling of performance of duty with the horse-

play, the deviation was complete, there is no evidence or even any real inference that the practice of horseplay had become an accepted part of the employment and there was certainly no evidence that the nature of the employment would include any horseplay." 147 Cal. Rptr. at 552-553.

D. The Cases Cited by Plaintiff are Distinguishable.

Plaintiff cites several cases in support of his position that compensation should be allowed. Plaintiff's reliance upon the Twin Peak's Canning Company case is misplaced. In that case a fifteen-year-old boy was working on the first floor of a cannery with another boy. Their job was to stop cans which were being dropped down a chute from a second floor. It was a common occurrence for the boys to ride the elevator to the second floor numerous times during the day when a lull occurred during the work.

On the day of the accident such a lull did occur and the decedent turned off the elevator while it was halfway between floors as a practical joke on his friend who was inside. Later in an attempt to reactivate the elevator the decedent was crushed by its upward ascent.

The Commission in that case made specific findings that the boy was in the course of employment at the time of the accident.

This Court noted that just because an employee is not working at his usual duties or directly engaged in anything connected with those duties does not necessarily prevent him from re-



covering compensation. The Court then made the following important distinction:

If during his working hours there are intervals of leisure he may, during such intervals, within reasonable limits, move from place to place on the premises of the employer. 196 P. at 858 (Emphasis added).

The Court then noted that employees will have the desire to visit other employees and that this does not remove them from the course of employment. The Court then noted:

Every employer understands that, in case boys of immature years are employed, he is charged with notice of their natural propensities to congregate, to communicate, and to play with one another. If, therefore, the employer employs any boys and girls and gives them work which is not continuous, so that there are intervals of leisure, he must assume that during such intervals they may seek communion with their fellow workmen, and he therefore must govern himself accordingly. Id. at 858. (Emphasis added).

Finally, the Court noted that the age of the victim was an important factor and that "We are here not dealing with an adult, with a man of mature years and experience, but with a mere boy without experience and with an abundance of life and vigor." And the Court concluded by saying, "It is true that in some of its aspects this may be a borderline case, and if the deceased had been a man of mature years and experience we might have reached a different conclusion." Id. at 859.

Thus, the Twin Peaks case can be distinguished on three grounds: first, the findings in that case by the trier of fact

(the Industrial Commission) found in favor of the employee while in this case it found against Plaintiff; second, the precedent in Twin Peaks was a boy of 15 years whereas the plaintiff in this case is a man of 22 years; and third, the boy in Twin Peaks was killed during a lull in the work where he had no work to perform at the time of the death whereas in this case Plaintiff was actively engaged in work when he abandoned this work for the elastic band battle.

In any event, the Twin Peaks decision was rendered in 1922 and certainly this Court can now re-evaluate the factors to be used in deciding whether a "horseplay" accident should be compensable under Utah's existing standards and laws.

Likewise the Cassell, the Kansas City Fiber Box Company, and Socha cases cited by Plaintiff (Brief, pp. 8-9) were all decided between 1921 and 1926 and do not necessarily reflect current developments in working conditions and modern-day requirements. In addition, the Socha case deals with an injured employee who was a non-participating victim of the horseplay and the adequacy of warning was questioned where they were provided by the employer in English to Polish speaking employees.

Finally, Plaintiff asks that the Workmen's Compensation statute be interpreted liberally in his favor. In answering a similar appeal for liberal construction the Indiana Appellate Court noted, "The limits of liberality have already been reached in the 'horseplay analysis.'" Block v. Fruehauf Trailer Division

### CONCLUSION

This Court is compelled by statute and stare decisis to affirm the Commission's decision if it is support by substantial evidence. The findings of the Administrative Law Judge, as corrected, are supported by the evidence. Plaintiff has failed to raise these alleged errors and has therefore waived any complaint he may now have. The medical panel requirement is not applicable to this case.

Plaintiff himself testified that his activity at the time of the accident did not "arise from" his employment duties. It is obvious, therefore, that the first alternative requirement of the statute has not been met.

Likewise, Plaintiff cannot be said to have been performing "in the course of" his employment since his activities removed him from such status.

The plaintiff is neither an "innocent victim" nor a "boy of youthful age." (Plaintiff's brief, p. 10). Plaintiff at the time of the injury was the sole participant in the activity and admitted that, as to the wood flipping, he was the aggressor. The age of 22 makes the plaintiff a young man who should have some judgment and wisdom as to dangers inherent in horse-play activities.

By being the aggressor, many states would automatically conclude that Plaintiff was outside his scope of employment.

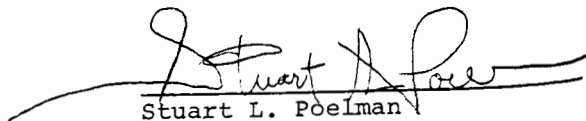
Even the more liberal views which analyze the extent of deviation would have to also conclude that Plaintiff withdrew himself from the scope of his employment.

The extent of his deviation was substantial in that he abandoned his active work and completely concentrated on the horseplay activities. There was no evidence that his employer approved or was aware of Plaintiff's bow and arrow horseplay even assuming that the employer was aware of the practice of flipping elastics from a safe distance. The employer warned the employees not to flip elastics. Finally, there is nothing inherent in Plaintiff's occupation to suggest that this type of horseplay would occur.

The cases cited by the plaintiff are readily distinguishable both upon their facts and upon their antiquity since the law of workmen's compensation is dependent upon the factual context of each case and upon the ever changing concept of employee relations.

For these reasons, the Order of the Commission denying compensation should be affirmed.

Respectfully submitted,

  
Stuart L. Poelman