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1996 Survey of Rhode Island Law: Cases: Employment Law

John A. Leidecker Jr.

Roger Williams University School of Law

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Employment Law. *Cole v. Davol*, 679 A.2d 875 (R.I. 1996). For work related injuries occurring before May 18, 1992, employers may not reduce workers' compensation payments by the amount of vacation pay benefits made to partially incapacitated employees paid during a scheduled plant shutdown.

FACTS AND TRAVEL

After being injured on the job, claimants, Susan Cole, Fred Cabral and Beneranda Maria Carvalho, all employees of Davol, Inc. (Davol), began receiving workers' compensation benefits and performing light duty work.¹ Pursuant to a collective bargaining agreement, these employees had earned credit for vacation pay benefits calculated upon time in service to the company.² During Davol's two week scheduled plant shutdown, each employee was entitled to receive vacation pay.³

The company, however, in calculating the employees' post injury earning capacities, included the vacation benefits paid to the employees during the scheduled two week shutdown.⁴ Construing the vacation pay as earnings, and including it in the earning capacity calculation, allowed the employer an offset from the amount of workers' compensation payments due the employees during the shutdown.⁵

The Appellate Division of the Workers' Compensation Court held the "vacation benefits paid to employees during the shutdown were earnings under the applicable law."⁶ The employees, taking exception, sought redress from the Rhode Island Supreme Court.⁷

BACKGROUND

At common law, employees who sustained economic losses because of work related injuries are required to seek redress through tort actions.⁸ By the late 1800s, however, state legislators began recognizing the difficulties encountered by injured workers at-

1. *Cole v. Davol*, 679 A.2d 875 (R.I. 1996).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. Mark A. Rothstein et al., *Employment Law* § 7.2, at 2 (1994).

tempting to recover lost earnings.⁹ In response, various legislatures enacted a variety of worker compensation schemes to furnish compensation for the loss of earning capacity.¹⁰

"Most workers' compensation laws legislatively establish liability without fault and cover all private and most public employers."¹¹ Generally, the workers' compensation laws are enforced by administrative agencies with allowance for judicial review. In Rhode Island, appeal of a final workers' compensation decree may be made to the supreme court.¹²

Generally, the provisions of the Workers' Compensation Act are "liberally construed to effectuate the benevolent purpose that led to [its] enactment."¹³ In determining when compensation should be provided, the Rhode Island Supreme Court has ruled that an employee, although disabled, has not sustained a loss of earning capacity if weekly payments received by the employee during the injury period exceed his weekly, pre-injury earnings.¹⁴ In a later refinement of this broad rule, the court, in *Trzoniec v. General Controls Co.*,¹⁵ held certain monies should be excluded when determining an individual's actual earning capacity.¹⁶ Wages, if paid "as a voluntary gesture of gratitude for past services rendered" and not intended to be in lieu of compensation, should not be included.¹⁷ The court reasoned that such wages would not reflect the individual's actual earning capacity.¹⁸

The same reasoning was later applied in *Robidoux v. Uniroyal, Inc.*,¹⁹ to accumulated sick and vacation leave payments.²⁰ In *Robidoux*, the Rhode Island Supreme Court overturned a Workers' Compensation Commission decree that denied benefit payments to an employee whose weekly wages, consisting in part of vacation pay and accumulated sick leave pay, exceeded his pre-injury

9. *Id.*

10. *Id.* § 7.3, at 5.

11. *Id.* § 7.4, at 7.

12. R.I. Gen. Laws §§ 28-35-29 to -30 (1995).

13. *Fontaine v. Caldarone*, 412 A.2d 243, 245 (R.I. 1980).

14. *Weber v. American Silk Spinning Co.*, 95 A. 603, 605 (R.I. 1915).

15. 216 A.2d 886 (R.I. 1966).

16. *Id.* at 888.

17. *Id.*

18. *Id.*

19. *Robidoux v. Uniroyal, Inc.*, 359 A.2d 45 (R.I. 1976).

20. *Id.*

wages.²¹ The supreme court reasoned that including the accumulated sick and vacation pay in the computation would cause the employee to lose payments which "would otherwise be available to him," a result seemingly running against the intent of the legislature.²²

The Workers' Compensation laws in effect at the time of the instant case provided that an employer must pay a partially incapacitated employee an amount equal to sixty-six and two-thirds percent of the difference between his average weekly wage prior to the injuries and the weekly wage he earned thereafter, but not more than the maximum rate for total incapacitation.²³

HOLDING AND ANALYSIS

The court relied heavily on its earlier holdings in *Trzoniec* and *Robidoux* in recognizing that vacation pay is an accumulated benefit of employment.²⁴ The court pointed out that Davol's counsel acknowledged "if [the] employees had terminated their employment at Davol before the shutdown, they still would have received their accrued vacation pay."²⁵ In fact, maintenance employees who continued to work during the shutdown period received both their regular compensation and vacation pay.²⁶ The dispositive aspect of an accumulated benefit was further explained in the distinction made by the court between accrued entitlements for which an employer is not entitled to credit, and voluntary payments made by an employer when an employee is injured.²⁷

CONCLUSION

In 1992, the General Assembly amended Rhode Island General Laws section 28-33-20 to include "any paid vacation time"

21. *Id.* at 48.

22. *Id.*

23. *Cole v. Davol*, 679 A.2d 875, 876 n.2 (1996) (noting that Rhode Island General Laws section 28-33-18 now sets the differential rate at 75%).

24. *Id.* at 876.

25. *Id.* at 878.

26. *Id.*

27. *Id.*; see *Murhon v. Workmens' Compensation Appeal Board*, 618 A.2d 1178, 1181 (Pa. Commw. Ct. 1992) (holding that voluntary payments made in relief of an employee's injuries may be credited towards offsetting compensation payments).

when computing earnings.²⁸ Consequently, had the injuries that befell Cole and the other Davol workers occurred after May 18, 1992, Davol's inclusion of vacation time in its method of calculating workers' compensation benefits would have been permitted. The statutory change, however, does not mention accumulated sick leave pay, and presumably, the earlier holding of *Robidoux* remains good law in that respect. However, it remains unclear whether the holding that accumulated sick leave benefits should be excluded when computing earning capacity will survive the 1992 legislative amendment.

John A. Leidecker, Jr.

28. 1992 R.I. Pub. Laws ch. 31, § 5.