



Summary of
Victorian
Workers' Compensation
Act

Published by
Melbourne Trades Hall Council
M. C. C. Jordan, Secretary

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FOREWORD

This booklet amends the one published by the Melbourne Trades Hall Council in 1953. It incorporates the new rates of compensation payable for injuries sustained on and after 1/7/65, and adds some new sections of the Act not included before.

The booklet is designed to give general information on the principal provisions of the Act in a language readily understood by laymen. The Act will need to be referred to for a more precise meaning. Union officials, shop stewards and workers should find the booklet invaluable in establishing the rights of workers under the Act.

We are indebted to Mr J. Wilkinson, one of the Melbourne Trades Hall Council's representatives on the Workers' Compensation Board, for his expert assistance in the preparation of the booklet.

*M. C. C. JORDAN, Secretary,
Melbourne Trades Hall Council.*

July, 1965.

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Summary of Victorian Workers' Compensation Act

DEFINITIONS

"Worker" means any person (other than outworkers or those whose remuneration, excluding overtime earnings, exceeds three thousand pounds a year) who has entered into or works under a contract of service or apprenticeship or otherwise with an employer. Section 3(1).

There is no limit as to the age of a worker.

Certain contractors or sub-contractors are deemed to be workers, whether or not they employ labour, where the contract has been entered into for the purposes of the trade or business of the principal. S. 3(4), (5) and (6).

"Average weekly earnings" means the average earnings of the worker for twelve months prior to the injury if he has been so long employed by the employer, or for any lesser period of employment otherwise. Clause 4 of clauses appended to S. 9.

Overtime earnings are to be included when computing average weekly earnings. Cl. 4(a) app. to S. 9.

Employment means employment in the same grade and uninterrupted by absence due to illness or other unavoidable cause. Cl. 4(d) app. to S. 9.

If a worker has an alteration in wages or an absence due to illness during the 12 months prior to the injury, the computation of average weekly earnings is made for the period between the date of the increase in wages or resumption after illness and the date of injury.

Where at the time of the injury a worker has more than one employer, his total earnings in all employments are accumulated for the purpose of calculating average weekly

earnings, and compensation is assessed as though there was only one employment. Cl. 4(c) app. to S. 9.

"Injury and Disease." For the purpose of giving meaning to the word "injury" where used in the Act, the definition should be read as follows:

"Injury" means any physical or mental injury, and without limiting the generality of the foregoing, includes—

- (a) Any physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development, and includes the aggravation, acceleration or recurrence of any pre-existing disease, contracted by a worker in the course of his employment whether at or away from his place of employment and to which his employment was a contributing factor; and
- (b) the recurrence, aggravation or acceleration of any pre-existing injury or any physical or mental ailment, disorder, defect or morbid condition whether of sudden or gradual development where the employment was a contributing factor to such recurrence, aggravation or acceleration—

and for the purpose of this interpretation the employment of the worker shall be taken to include any travelling referred to in sub-section (2) of section 8 of the Act. S. 3(1).

IMPORTANT: There are substantial reasons for warning against the use of New South Wales decisions as a basis for interpreting the Victorian definition, e.g., where a worker, when travelling from his place of residence to his place of employment, suffers a heart disorder contributed to by some incident of the journey, he can be said to have suffered an injury for which compensation is payable under the Victorian Act, whereas he could not recover compensation under the provisions of the New South Wales Act.

COMPENSATION FOR INJURY

The employer is liable to pay compensation for injury arising out of or in the course of the employment of his workers. S. 5(1).

The only exceptions are in cases where it is proved that the injury was deliberately self-inflicted or where the injury

is attributable to serious and wilful misconduct (including being under the influence of intoxicating liquor) unless, in the latter exception, the injury results in death or serious and permanent disablement. S. 6(1).

EMPLOYMENT

An injury shall be deemed to arise out of or in the course of the employment if the injury occurs:

(a) While the worker on any working day on which he has attended pursuant to his contract of employment—

- (i) is present at his place of employment; or
- (ii) having been so present is temporarily absent therefrom during an ordinary recess and does not during such absence voluntarily subject himself to any abnormal risk of injury, S. 8(2)(a); or

(b) while the worker—

- (i) is travelling between his place of residence and place of employment; or
- (ii) is travelling between his place of residence or place of employment and any school which he is required or expected by his employer to attend, or while he is in attendance at any such school; or
- (iii) is travelling between his place of residence or place of employment and any other place for the purpose of receiving a medical certificate or advice, attention or treatment in connection with any injury for which he is entitled to receive compensation, or for the purpose of submitting himself for examination by a duly qualified medical practitioner pursuant to any provision of the Act or any requirement made thereunder, or is in attendance at any place for any such purpose; or
- (iv) is travelling between his place of residence and a place of pick up. S. 8(2)(b).

PLACE OF EMPLOYMENT

Where there is no fixed place of employment the term shall be deemed to include the whole area, scope and ambit of employment. S. 8(3).

ORDINARY RECESS

An ordinary recess is an ordinary and regular break between periods of work on a working day.

It does not mean a period of special leave of absence.

The fact that a worker suffers traumatic injury whilst engaged in his own private business, or in sport during such recess, does not in itself deprive him of the right to compensation.

INJURY DURING INTERRUPTIONS, ETC, OF JOURNEY

Where a substantial interruption of or substantial deviation from the journey is made by the worker, for a purpose unconnected with his employment, he shall not be entitled to compensation if the Workers' Compensation Board considers the interruption or deviation would ordinarily have materially contributed to the risk of injury. S. 8(2) proviso.

COMPENSATION RATES

(Applicable only to injuries sustained after 1/7/65)

Section 9: Where death results from or is materially contributed to by the injury—

- (i) If a worker leaves any dependants wholly or mainly dependent upon his earnings, the amount of compensation shall be the sum of £4500 or \$9000 plus £100 or \$200 in respect of each child under the age of 16 years who was wholly or mainly dependent on the earnings of the worker at the time of death or would, but for the incapacity, have been so dependent and who is a claimant in the proceedings for an award of compensation in respect of the death. Cl. 1(a)(i) app. to S. 9.

- (ii) If a worker leaves only partial dependants the Board may award an amount up to a limit of £4500 or \$9000. Cl. 1(a)(ii) app. to S. 9.

- (iii) Where a worker under 21 years was contributing to maintenance of the home of the members of his family, such members are deemed to be partial dependants and the Board may assess compensation. Cl. 1(a)(iii) app. to S. 9.

These amounts are payable in addition to weekly payments during incapacity up to time of death of worker. Cl. 1(a)(iv) app. to S. 9.

In assessing compensation payable to partial dependants the Board estimates the financial loss suffered as a result of the death. Any financial gain from the estate of the worker is set off against the amount of compensation assessed.

Where incapacity for work results from or is materially contributed to by the injury—

The following maximum weekly amounts are payable:

FOR TOTAL INCAPACITY

£10 or \$20 in respect of an adult worker.

£9 or \$18 in respect of a worker under the age of 21 years.

£3 or \$6 additional in respect of wife or husband wholly or mainly dependent at date of injury. Such payments to be paid during incapacity even though wife or husband subsequently becomes employed.

£1/5/- or \$2.50 additional in respect of each child under the age of 16 years wholly or mainly dependent. Cl. 1(b)(i) app. to S. 9.

LIMIT OF AMOUNT OF WEEKLY PAYMENTS

£15/10/- or \$31 for adult worker.

£13 or \$26 where worker is under age of 21 years at date of injury; this amount is not raised to adult rate even though the worker attains 21 years while on compensation.

Provided that a worker is not entitled in any case to an amount in excess of his average weekly earnings before the injury. Cl. 1(b)(i) app. to S. 9.

DEPENDANTS AFTER DATE OF INJURY

The additional amount of £1/5/- or \$2.50 shall also be payable weekly as from date of birth where a child already conceived at the date of injury is born during incapacity of worker.

The additional amount of £3 or \$6 is payable weekly as from the time a wife or husband becomes wholly or mainly dependent during incapacity. Cl. 1(b)(i) app. to S. 9.

DEPENDANTS—WHETHER WHOLLY, MAINLY OR IN PART DEPENDENT

Notwithstanding anything to the contrary in the Act:—

- (a) **Any child of the worker** (including a child born out of wedlock) who is under the age of 16 years shall be deemed to be wholly dependent on the earnings of the worker at the relevant time unless the contrary is proved; and
- (b) **The wife of a worker** who makes a statutory declaration, delivered to the employers to the effect that she was wholly, mainly or in part dependent on the earnings of the worker at the relevant time, shall be deemed to be dependent on his earnings to the extent stated in the declaration unless the contrary is proved; and
- (c) In determining whether a **wife** was dependent on the worker at the relevant time, **no regard shall be had to any money she had earned or was earning by her own personal exertion** or to any savings arising from such earnings. Cl. 2(4) app. to S. 9.

FOR PARTIAL INCAPACITY

A weekly payment equal to the same proportion of compensation for total incapacity as his loss of weekly earnings bears to his average weekly earnings before the accident. For example, a married man with dependants who would be entitled to the full weekly compensation rate of £15/10/- (\$31) is now on an average weekly wage of £20 (\$40) due to partial incapacity. His previous average weekly earnings were £25 (\$50). The amount of partial

compensation he is entitled to may be found by use of the following formula:—

$$\frac{\text{Difference between previous and present AWE's}}{\text{Previous AWE}} \times \frac{\text{Rate of weekly compensation for total incapacity}}{1}$$

In the case above, this equals:

$$\begin{aligned} & \text{£ } \frac{5}{25} \times \frac{15.5}{1} \quad \text{or} \quad \$ \frac{10}{50} \times \frac{31}{1} \\ & = \text{£}3/2/- \text{ p.w.} \quad \text{or} \quad \$6.20 \end{aligned}$$

His full average weekly income will then be £23/2/- (\$46.20) while partially incapacitated. Cl. 1(b)(ii) app. to S9.

SUPERANNUATION OR INSURANCE RECEIVED BY WORKER

In assessing any form of compensation, no regard shall be had to any sum paid or payable to the worker under any other scheme of insurance, superannuation or other fund of a like nature.

Compensation under this Act is payable in full, in addition to amounts received from such other schemes. Cl. 3 app. to S. 9.

LIMIT OF COMPENSATION FOR INCAPACITY

The limit of total weekly payments is £5000 or \$10,000, except in cases of permanent total disablement or partial disablement of a major degree, in either of which case the Board may either increase the limit or order that payments continue indefinitely. Cl. 1(b)(iii) app. to S. 9.

LUMP SUM IN REDEMPTION OF A WORKER'S RIGHT TO FUTURE WEEKLY PAYMENTS

The Board may award a lump sum in redemption of a worker's right to future weekly payments on the application of either the worker or the employer, but in fixing an

amount the Board cannot award a sum which would give a total of more than £5000 or \$10,000 including payments already made. Cl. 1(b) (iii) app. to S. 9.

CAPACITY OF WORKER TO EARN

If, because of the injury (including physical disfigurement), the worker is unable to obtain employment or to remain in reasonably regular employment, the Board may decide that he is incapacitated either totally or partially and compensation shall be paid accordingly. Cl. 1(b) (iv) app. to S. 9.

REVIEW OF WEEKLY PAYMENT

Any weekly payment may be reviewed on application of worker or employer and on review may be ended, diminished or increased by the Board. Cl. 6(1) app. to S. 9.

When a review takes place more than three months after the accident, the amount of weekly payment may be increased to an amount which would have been awarded if the earnings of the worker before the accident had been the same amount as he would have probably been earning at the date of review if he had remained uninjured. Cl. 6(2) app. to S. 9.

ENDING WEEKLY PAYMENT

Subject to conditions stated hereunder, weekly payment shall not be ended or diminished by the employer, otherwise than by an order of the Board, except where:—

- (a) a worker has actually returned to work; or
- (b) the weekly earnings of a worker in receipt of compensation for partial incapacity have been increased; or
- (c) a medical practitioner who has examined the worker on behalf of the employer has certified that the worker has wholly or partially recovered from the injury, and a copy of the certificate (which sets out the grounds for the opinion of the doctor) has been served by the employer on the worker, together with notice of the intention of the employer, at the expiration of 21 clear days, to end the weekly payment or to diminish it by such an amount as is stated in the notice. Cl. 7(1) app. to S. 9.

CONDITIONS WHICH APPLY

1. Each notice of intention given by the employer under (c) above shall inform the worker, in the manner and form prescribed by the Board, of the steps which he may take under condition 2.

2. If a worker, before the expiration of the 21 clear days of notice by the employer, sends to the employer the report of a qualified medical practitioner (which sets forth the grounds of his opinion) disagreeing with the certificate served by the employer, the weekly payment shall not be ended or diminished except in accordance with such report. Cl. 7(1) (c) (i) app. to S. 9.

3. An employer is not authorised to end or diminish a weekly payment to an extent which would give less compensation than would be otherwise payable in the clauses referred to in Section 9 relating to partial incapacity. The failure of the employer to pay the appropriate amount for partial incapacity shall mean that the ending or diminishing of weekly payments shall not be regarded as having been made in accordance with the clauses referred to. Cl. 7(1) (c) (ii) app. to S. 9.

4. If any dispute arises between a worker and an employer in relation to the ending of weekly payments, the dispute shall, upon application of the employer, or of the worker, be heard and determined by the Board in the summary list. Cl. 7(1) (c) (i) app. to S. 9.

5. By agreement between a worker and his employer where a dispute exists as to the capacity for work of the worker, the dispute may be referred to a medical referee. S27.

6. If any weekly payment is ended or diminished otherwise than in accordance with the clauses referred to, the employer shall be guilty of an offence against the Act. Cl. 7(2) app. to S. 9.

PAYMENTS OF COMPENSATION

All weekly payments due and payable shall be paid at intervals of not more than two weeks. Cl. 7(3) app. to S. 9.

PENALTIES FOR UNREASONABLE DELAY IN SETTLEMENT

If in any proceedings the Board is satisfied that the employer is responsible for or has caused unreasonable delay

in settlement of compensation, it may award a penalty of not more than ten per cent of the total amount of compensation in case of a lump sum or ten per cent of the total of weekly payments due at the time of assessment. S. 58.

COMPENSATION FOR SPECIFIED INJURIES

Section 11: Applicable only to injuries sustained after 1/7/65.

A lump sum of compensation of the amount set forth opposite the injury in the following Table shall be paid to a worker who has suffered such injury:—

TABLE OF INJURIES

	Amount of Compensation Payable	
	£	\$
Total loss of the sight of both eyes	4500	9000
Total loss of the sight of an only eye	4500	9000
Loss of both hands	4500	9000
Loss of both feet	4500	9000
Loss of a hand and a foot	4500	9000
Total and incurable loss of mental powers involving inability to work	4500	9000
Total and incurable paralysis of the limbs or of mental powers	4500	9000
Total loss of the right arm or of the greater part of the right arm	2500	5000
Total loss of the left arm or of the greater part of the left arm	2350	4700
Total loss of the right hand or of five fingers of the right hand, or of the lower part of the right arm	2250	4500
Total loss of the same for the left hand and arm	2000	4000
Total loss of a leg	2350	4700

	Amount of Compensation Payable	
	£	\$
Total loss of a foot	2000	4000
Total loss of the lower part of the leg	2250	4500
Total loss of the sight of one eye, together with the serious diminution of the sight of the other eye	2350	4700
Total loss of hearing	2000	4000
Total loss of the hearing of one ear	600	1200
Total loss of the sight of one eye	1250	2500
Loss of binocular vision	1250	2500
Total loss of the thumb of the right hand ...	1000	2000
Total loss of the thumb of the left hand ...	850	1700
Total loss of the forefinger of the right hand	650	1300
Total loss of the forefinger of the left hand ...	550	1100
Total loss of two joints of the forefinger of the right hand	500	1000
Total loss of two joints of the forefinger of the left hand	400	800
Total loss of a joint of the thumb	500	1000
Total loss of the first joint of the forefinger of the right hand	300	600
Total loss of the first joint of the forefinger of the left hand	250	500
Total loss of the first joint of the middle or little or ring finger of either hand	200	400
Total loss of the middle finger of either hand	400	800
Total loss of the little or ring finger of either hand	350	700
Total loss of two joints of the middle finger of either hand	300	600
Total loss of two joints of the little or ring finger of either hand	250	500

Total loss of the great toe of either foot	650	1300
Total loss of a joint of the great toe of either foot	300	600
Total loss of any other toe	200	400
Total loss of a joint of any other toe	60	120

Partial loss of the sight of both eyes or of an only eye.—Such percentage of £4500 or \$9000 as is equal to the percentage of the diminution of sight measured without the aid of a correcting lens.

Partial loss of the sight of one eye.—Such percentage of £1250 or \$2500 as is equal to the percentage of the diminution of sight measured without the aid of a correcting lens.

Partial loss of the hearing of both ears.—Such percentage of £2000 or \$4000 as is equal to the percentage of the diminution of hearing measured without any hearing aid.

Partial loss of the hearing of one ear.—Such percentage of £600 or \$1200 as is equal to the percentage of the diminution of hearing measured without any hearing aid.

For the purposes of this table:

The expression “total loss of” shall be deemed to include “total loss of use of.”

“Loss of use” is interpreted to mean “loss of industrial use.”

A left-handed worker shall be entitled to compensation for a left-sided injury of the amount set forth for a similar right-sided injury, but his compensation for a right-sided injury shall be the amount set forth for a similar left-sided injury.

LIMIT

Where a worker suffers on the same occasion more than one of the injuries mentioned he shall not be entitled to receive more than £4500 or \$9000.

PARTIAL INJURIES UNDER THE TABLE

Where the injury is a lesser but substantial degree of an injury under the Table of Injuries, the Board may award such amount as appears to be just and proportionate to the injury suffered. S. 11(2).

The following is a table of amounts for finger injuries:

RIGHT HAND

	Thumb	Index Finger	Middle Finger	Ring or Little Finger
Half Joint	£ 250	\$ 150	£ 100	\$ 200
One Joint	500	300	200	200
1½ Joints	750	400	250	225
Two Joints	—	500	300	250
2½ Joints	—	575	350	300
Whole Finger	1000	650	400	350
				700

LEFT HAND

	Thumb	Index Finger	Middle Finger	Ring or Little Finger
Half Joint	£ 250	\$ 125	£ 100	\$ 200
One Joint	500	250	200	200
1½ Joints	675	325	250	225
Two Joints	—	400	300	250
2½ Joints	—	475	350	300
Whole Finger	850	550	400	350
				700

WHERE LUMP SUM UNDER TABLE OF INJURIES IS INADEQUATE

Where it appears to the Board that the amount of compensation by way of lump sum under the Table of Injuries would be substantially less than the amount which would be payable under Section 9 for total or partial incapacity, and that, because of the nature of the injury in relation to the nature of the former usual employment of the worker the amount of compensation under the Table would be inadequate, the Board may award compensation by way of weekly payments. S. 11(4).

Under Section 9, a lump sum may be awarded in redemption of the liability of the employer to pay weekly payments up to a limit of £5000 or \$10,000. S. 9(2).

INDUSTRIAL DISEASES

The sections relating to industrial diseases provide a very important alternative means of establishing rights to compensation.

Certain diseases are of very slow development and great difficulty would otherwise arise in proving that the death or disablement resulted from an injury in any one particular employment.

BASIS OF ENTITLEMENT

(a) **For Disablement.**—A medical practitioner must certify that the worker is suffering from a disease (any disease) and is thereby disabled from earning full wages at the work at which he was employed; or

(b) **Where Death Results.**—The death must be caused, or materially contributed to, by a disease.

Compensation is then payable if disablement or death is due to the nature of any employment in which the worker was employed at any time prior to the date of disablement. S. 12.

FROM WHOM RECOVERABLE

Compensation is recoverable from the last employer who employed the worker, prior to the date of disablement, in the employment to the nature of which the disease was

due, even though the employment may have been only of one week's duration. S. 14.

If the employer alleges that the disease was contracted whilst the worker was in the employment of another employer, or that the disease is of such a nature as to be contracted by a gradual process, he has the right to join the other employer or employers to the proceedings and, if he can prove the allegation, the other employers may be ordered to pay the whole or part of the amount of compensation payable. S. 14.

PROCLAIMED DISEASES

Certain industrial diseases have been proclaimed by the Governor-in-Council. S. 21. If any worker, within five years prior to the date of disablement was employed in any process or occupation specified in the proclamation, and the disease is a disease specified in relation to the process or occupation, then the disease is deemed to be due to the nature of the employment unless the employer proves to the contrary. S. 22.

INTERIM AWARDS—ALL TYPES OF CLAIMS

Where in respect of any claim the Board determines that compensation is payable, but is unable at the time to ascertain the total amount payable, it may make an interim award for the whole or part of any sum which it is satisfied will be at least payable.

The making of an interim award will not prevent the Board from later making a further interim award or a final award, or prejudice the rights of either party to the proceedings.

MEDICAL TREATMENT OR EXAMINATION

A worker is entitled to receive medical treatment from any qualified practitioner of his own choice and to act on the advice of his own medical adviser. S. 27(4).

The employer is entitled to have the worker medically examined from time to time. If the worker refuses to submit himself for examination his right to compensation shall be suspended until the examination has taken place. S. 27(1) and (2).

If claim for damages should fail, the worker still has the right to recover compensation.

Where a worker has obtained a judgment in proceedings to recover damages, he has no rights to compensation unless the judgment is unsatisfied in whole or in part, when he can recover as compensation the unsatisfied amount of the judgment. S. 5(2) and S. 62.

Where a judgment is for an amount less than that which would be otherwise payable as compensation, a worker has no right to claim compensation if the judgment is satisfied in full.

Where death of the worker results from the injury, all dependants have independent rights to sue either for damages or compensation. The fact that one or more dependants are taking proceedings for damages does not interfere with the right of any other dependant or dependants to recover compensation.

UNINSURED EMPLOYERS

A scheme is provided to protect workers whose employers have not obtained a policy of insurance. S83.

Workers are entitled to an award for the full amount of compensation, including medical expenses, etc, payable under the Act.

A worker, or dependant where the worker is dead, who cannot obtain payment of compensation or costs within one month, can apply to the Board for payment of all or any of the moneys payable under the award. S. 83(1).

If the Board is satisfied that the award is not likely to be otherwise satisfied, it may order that payment be made out of the Workers' Compensation Board Fund which is subscribed to by all insurance companies. S. 83(3).

The State Insurance Commissioner is then empowered to recover the amounts paid, as a civil debt from the employer, and pay the amount recovered into the Board Fund. S. 83(4).

PROCEDURE FOR CLAIMING COMPENSATION

Notice of Injury.—This must be given either orally or in writing to the employer, or the person under whose supervision the worker is employed, as soon as practicable after the injury. S. 41(a), S. 42.

Claim for Compensation should be made within six months of the injury or death. S. 41(b).

CLAIMS FOR WEEKLY PAYMENTS

If worker is under the age of 21 years, the employer is required to notify the Board of the claim within 14 days on a prescribed form, and to advise whether liability to pay compensation is admitted or otherwise. S. 44(1).

The employer is not required to advise the Board where worker is an adult claiming weekly payments. S. 44(1).

CLAIMS FOR A LUMP SUM IN CASES OF INCAPACITY OR DEATH OF THE WORKER

In all such cases the Board must be notified by the employer within 14 days of any claim, and the employer is required to supply particulars relating to the claim and the employment, on the prescribed form, with advice as to whether the liability is admitted or otherwise. S. 44(1).

CLAIMS FOR MEDICAL AND BURIAL EXPENSES

The employer is not required in any case to notify the Board of any such claim.

BOARD'S ACTION WHERE EMPLOYER ADMITS LIABILITY

Where the employer admits liability, the Board places the case in the summary list and the Registrar of the Board supplies a copy of notice of claim to the worker, together with advice that liability is admitted.

IF CLAIM BY WORKER UNDER 21 YEARS OF AGE FOR WEEKLY PAYMENTS

Where worker does not disagree with particulars on notice of claim, the Board proceeds to make an award. The worker is not required to attend.

IF CLAIMS FOR LUMP SUM FOR INJURY

In most cases the parties are called before the Board and the Board makes an award, after examination of the worker.

A worker is entitled to be examined, by a specialist of his own choice, for the purpose of obtaining a certificate describing the injury and estimating the percentage of disability. The reasonable cost is payable by the employer.

IF CLAIM IS BY DEPENDANTS WHERE DEATH RESULTS

The dependants are summoned to appear before the Board and award is made after examination of the dependants.

AWARD OF BOARD FINAL

The award of the Board in these cases is a final assessment of compensation. No appeal exists unless on a question of law. If a worker has any reason to believe that the injury is not stabilised he should postpone his application or ask the Board for adjournment, but may ask for an interim award.

AMOUNT OF CERTAIN AWARDS PAID INTO CUSTODY OF THE BOARD

When award is for a lump sum in case of worker under 21 years of age, or in case of death of worker, the amount must be paid by employer into custody of the Board. The Board is required to administer the amount of the award for the benefit of the worker under 21 years or the dependants of the deceased worker. Interest is credited to the separate accounts at a rate of approximately 5 per cent. The balance owing to the injured worker is paid on reaching the age of 21 years after proof of age is supplied to the Board. S. 34(1) and (2).

In all cases the Board deals with applications for amounts required from time to time. The main duty of the Board is to protect the interests of the workers or the dependants. S. 34(3).

BOARD'S ACTION WHERE EMPLOYER DOES NOT ADMIT LIABILITY

The Board requires the parties to appear and the case is put in the list of cases awaiting trial. The employer's representative is required to state the disputed issues, so that the applicant can prepare the case.

WHERE EMPLOYER IS NOT REQUIRED TO NOTIFY BOARD OF CLAIM

In such cases it is necessary for worker or dependants to make the application on a prescribed form. The application is then placed in the Board's list of contested matters.

WHERE BEFORE TIME OF INJURY A WORKER IS ALREADY PARTLY DISABLED BY A PREVIOUS INJURY

When at the time of injury a worker is already partly disabled by a previous injury the liability of the employer is not thereby reduced. In fact, in some cases the liability of the employer may be increased.

For example, where a worker had suffered the loss of part of his finger by a previous injury, whether or not he had received compensation for such injury, and he subsequently loses by a subsequent injury the remainder of his finger, the employer is liable to pay compensation for total loss of finger.

As a further example, where a worker had previously lost 50 per cent of sight of an eye and by a subsequent injury loses a further 25 per cent of normal sight, the employer is liable to pay compensation on basis that the worker had lost 50 per cent of the sight he had before the subsequent injury.

Where a worker, as a consequence of an incapacity caused by his employment, has, for example, 25 per cent loss of earnings and is thereby entitled to weekly compensation on the basis of 25 per cent of the amount for total incapacity, and he subsequently suffers a further injury which totally incapacitates him, he is entitled to claim compensation for total incapacity from the present employer, and his former employer is still liable to pay compensation at the same time for the previous partial incapacity. (Refer *Thompson v L.N.E. Railway Co.*, 1935, 2KB.)

LEGAL ASSISTANCE

When liability is admitted by the employer for the full amount of the claim, or in cases where Board has placed the case in summary list for assessment, legal assistance is not necessary.

The Board has a duty to see that the worker or dependants receive proper compensation in cases before it.

Where liability is denied, it is necessary in almost all cases for the applicant to have a legal representative.

Advice should always be sought at the Union office before engaging legal assistance. In some cases, the Union will itself engage a competent Solicitor; in other cases it will be able to recommend the services of a Solicitor who is experienced in Workers' Compensation matters and who knows how to keep the legal costs to a worker down to a minimum.

LEGAL COSTS

The Board has power at any time, on its own behalf or on application by or on behalf of a worker, to inquire into the amount of costs already paid or to be paid to a Barrister, Solicitor or agent. S. 52(1).

Upon such inquiry the Board may itself fix the costs to be paid, or direct the Board's Registrar to tax the costs. S. 52(3).

The Board may order that any amount of costs already paid which is in excess of the amount fixed by it shall be refunded. S. 52(3).

PROHIBITION OF CONTRACTING OUT

The Workers' Compensation Act gives a worker certain rights by law. These rights are not signed away, waived or "contracted out" merely by the signing of a document presented to him by the employer or an insurance company unless that document is strictly within the provisions of the Act.

A worker may believe that in signing such a document he is obliged to do so, or that he will obtain better compensation terms than by taking some other action. It is wise to get advice from the Union office or a Solicitor experienced in compensation matters before signing such documents; but it should be kept in mind that, even if such documents are signed, a worker does not thereby lose his legal rights under the Act should he wish to take other action later.

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(For Future Amendments)

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