When Pranks Go Wrong: Compensability of Injuries Arising from Employee Horseplay

The New Jersey Appellate Division recently issued an unpublished opinion in the matter of Johns v. Wengerter involving the "horseplay or skylarking" defense under Section 7.1 of the Workers' Compensation Act (WCA).

The facts of the case are somewhat unusual. Johns is a City of Linden firefighter who was injured as the result of a prank by Wengerter, a fellow firefighter. Johns sat on a toilet seat and felt a small explosion beneath him. He discovered a "bang snap," a small firework that explodes when compressed, under the toilet seat. Johns sustained an injury to his scrotum. Wengerter later admitted to placing bang snaps throughout the firehouse as a prank. Wengerter immediately apologized to Johns after the incident.

Johns did not file a workers' compensation claim. Rather, he filed suit in the Superior Court against Wengerter. Wengerter denied the suit and alleged that the claims were barred under the WCA because Johns was his co-worker. Wengerter also filed a third-party claim against the City of Linden, alleging they were responsible for any damages because the City allowed a high degree of pranking among on-duty firefighters. Wengerter filed a Motion for Summary Judgment seeking a dismissal of Johns' claim. Johns opposed the Motion, arguing that Wengerter was not in the scope of his employment when the incident occurred, and also that Wengerter's actions were intentional or grossly negligent. The trial court ruled in Wengerter's favor and dismissed the claim. The trial court found that Johns' injury resulting from a co-worker's prank fell within the meaning of Section 7.1 of the WCA. That Section states that injuries that occur as the result of co-worker's horseplay or skylarking, wh ich were not instigated or taken part in by the injured employee, are compensable. The trial court found that Johns played no part in the prank, and therefore was a victim of a co-worker's horseplay. It was further found that Wengerter did not have a subjective desire to injure anyone or a substantial certainty that an injury would occur. Therefore, the court ruled that claim was barred in Superior Court. The Appellate Court affirmed.

The Appellate Court cited the three-part test used to determine if an employee's claims against a coworker are barred by the WCA:

1) Plaintiff must have suffered a compensable injury;
2) Plaintiff and defendants must have been co-employees; and
3) Defendant must have been acting in the course of his employment.

In this case, the only relevant factor of the three-part test was whether Wengerter was acting in the course of his employment. The Appellate Court ruled that there was no evidence that Wengerter's actions were anything but a workplace prank. In fact, it was noted that pranks were common in the firehouse. The court found that the placement of the bang snap was meant to startle, but not injure, Johns. Furthermore, both parties were on duty at the workplace when the incident happened. Based on these facts, the Appellate Division agreed with the trial court that Wengerter was still in the course of employment when he placed the bang snap. Therefore, Johns' claim was barred.

The bar on recovery against a co-worker does not apply, however, if the employee is injured by a co-worker's "intentional wrong." With respect to whether Wengerter's actions were intentional, the Appellate Court also disagreed with Johns. The court relied on a two-part test to assess whether a co-worker's actions rise to the level of an "intentional wrong":

1) The employee must know that his actions are substantially certain to result in injury or death to the co-

worker; and
2) The resulting injury and the circumstances of its infliction must be (a) more than a fact of industrial employment and (b) plainly beyond anything the Legislature intended the [WCA] to immunize.

Under this test, the Court quickly dismissed Johns' argument by finding that there was no evidence Wengerter meant to injure Johns. The bang snaps had been used often before in the firehouse without injury. It was also noted that Wengerter immediately apologized after the incident.

Comment: In determining the compensability of injuries which result from horseplay, the Court highlighted two specific factors. The first is whether the injured employee provoked, or took part in, the activity. If the injured employee did not, the claim is likely to be found compensable. The second factor is whether the employee who injures a co-worker meets the two-part test set forth above defining an "intentional wrong." It is necessary in any situation involving an injury arising from horseplay to conduct a thorough investigation to adequately answer these questions.

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