

ORIGINAL



2016 OK 20

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

MAR -1 2016

MICHAEL S. RICHIE
CLERK

Yaumary Concepcion Torres,)
)
 Petitioner,)
)
 v.)
)
 Seaboard Foods, LLC,)
 American Zurich Ins. Co., and)
 The Workers' Compensation Commission,)
)
 Respondents.)

No. 113,649

For Official Publication

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COLBERT, J., concurring specially with whom WATT, J., joins.

¶ 1 I concur in the majority's result that the arbitrary 180-day limitation on cumulative trauma injuries is unconstitutional, but write separately to explain how the provision also violates Article 2, Section 6 of the Oklahoma Constitution.

¶ 2 The Oklahoma Constitution guarantees that all courts "shall be open to every person, and a speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice." Okla. Const. art. 2, § 6. The constitutional provision embodies three distinct constitutional guarantees: (1) access to the courts; (2) right-to-a-remedy for every wrong and every injury to person, property, or reputation; and (3) prohibition on the sale or denial of justice.

¶ 3 The majority and the Attorney General emphasize the Legislature's police power and the Legislature's right in crafting a workers' compensation scheme. In

intimating that the Legislature enjoys unfettered discretion in abolishing a claimant's right or benefit, the majority postulates that such authority is only curtailed (1) when the Legislature creates an unconstitutional condition related to that right or benefit, (2) by the expressed Will of the People in Oklahoma Constitution provisions prohibiting unreasonable and arbitrary legislation, and (3) other Oklahoma constitutional provisions addressing private rights and due process. See Op. at ¶ 26 & fns. 42-44. However, the majority's analysis is incomplete. The Legislature's police power is not absolute. In crafting a substitute remedy, the Legislature's police power is also limited by Article 2, Section 6 of the Oklahoma Constitution. When the Legislature taketh away all of an employee's work-related common law actions in tort and places such actions in the exclusive purview of the Administrative Act, that police power must also be curtailed by the industrial bargain's delicate balance.

¶ 4 I must again emphasize that the foundation of the Oklahoma workers' compensation scheme is the "Industrial Bargain" also known as the "Grand Bargain." Yet, I am constrained to repeat ad nauseam the underlying policies and purposes behind it. That system, as explained in Parret v. Unicco Serv. Co., provides an expeditious, inexpensive means to compensate workers for injuries, disabilities, and deaths sustained in the course of their employment, without a determination of fault. See 2005 OK 54, 127 P.3d 572. The employee is afforded swift and certain payment of benefits sufficient to cure or relieve the

effects of the injury, while giving up a myriad of potential damages available to him in tort. The employer, on the other hand, assumes liability for an employee's injury or death, but benefits from the limited liability fixed to loss wages, medical, and vocational rehabilitation occasioned by the work-related injury or death. Clearly, the linchpin of this legislatively created bargain is that the employer assumes liability for work-related injuries and death; while the employee gives up any common law action sounding in tort. In essence, the system strikes a balance between the rights and duties of Oklahoma employers and employees. But with the enactment of the Administrative Workers' Compensation Act (AWCA), the balance is now off kilter and has become one-sided to the benefit of the employer.

¶ 5 Following the enactment of the AWCA, this Court has begun to see an influx of constitutional challenges to the Act. Although each case presents a unique set of issues, a common theme exists—the systematic erosion of the Industrial or Grand Bargain. This Court, fully aware of the rapid demise of the Grand Bargain, assured Oklahoma workers that we would address the Act's constitutionality, provision by provision, “as a case or controversy or a justiciable issue is presented to this Court.” Coates v. Fallin, 2013 OK 108, ¶ 3, 316 P.3d 924. We are forced by our jurisprudence to insure that claimants and employers in the workers' compensation system have their day in court and receive a fair shake.

¶ 6 Simply put, the Administrative Act abrogates an injured employee's bargained remedies, and at times, leaves the employee bereft of any legally cognizable recourse.