MEMORANDUM

SEPTEMBER 9, 2015

T: Marilyn Doto, Board Member

F: Joseph Andrews, Esquire

Presented:

This recommends filing a motion for rehearing by a three-member panel in the event the Industrial Accident Board informs that it cannot reach a decision because of judicial deadlock between the Board Members. It provides the legal and historical underpinnings for such recommendation while recommending against amending the statute to allow hearing officers to have a vote.

BACKGROUND

In *Grabowski v. J.J. White Inc.*, No. 1176709 (Del. I.A.B. June 30, 2011) the Employer petitioned the I.A.B. to terminate total disability benefits that had been ongoing since 2000. Two Board Members presided. Two days later they issued an order that they were "at an impasse and unable to reach an agreement as to a decision," that the workers' compensation act "provides no methodology to break such deadlock" and that "the only recourse is for this matter to be submitted to a new panel of the Board for decision." This was not an isolated event: Just one year earlier, the same two firms received the same order in *Irizarry v. CCHS*, No. 1294065 (Del. I.A.B. Oct. 5, 2010). Thus, it was feared that a second hearing could result in another deadlock or pressure the I.A.B. to issue a "quick" decision that might not be the "right" decision, possibly from undue influence by the hearing officer. This author performed the following legal research to determine if the Act really provides no methodology for breaking a deadlock and why it would be against public policy to allow hearing officers to vote.

INDUSTRIAL ACCIDENT BOARD

A brief history is needed to explain why a three-member panel should be requested instead of allowing the hearing officer to vote. DEL. CONST. ART. IV § 17 authorizes the General Assembly to remove or add jurisdiction of Delaware's courts. Once the General Assembly removes jurisdiction from one court under ART. IV § 17, it can place that jurisdiction into a new judicial forum it is authorized to create via ART. IV § 1. It did that in 1917 when it removed jurisdiction from Superior Court to create the Industrial Accident Board.[1] Since then, Delaware's courts have expressly held that "the Industrial Accident Board is a court" itself;[2] however, its jurisdiction is limited to 19 *Del. C.* §§ 2301 through 2396. At the same time, the I.A.B. is also treated as an agency to the extent it is bound by the Administrative Procedures Act ("APA").

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1 *Holt v. Bartley & Devary Elec. Co.*, 1998 Del. Super. LEXIS 223 at *6 (Del. Super.); *Holt v. Bartley & Devary*, No. 1056789 (Del. I.A.B. Apr. 8, 1997).

2 E.g. *Lind v. I.A.B.*, C.A. No. 78M-DE-5 (Del. Super. Feb. 8, 1979).

Today, ten Board Members comprise the "Industrial Accident Board." Like Superior Court judges, they are political appointees of the Governor and confirmed by the Senate. Two must be citizens of New Castle County outside of Wilmington, one more must be from Wilmington; two must be citizens of Kent County; two must be citizens of Sussex County and the remaining three are citizens of the State at large with only six of the ten allowed be of the same political party.[3] Like justices of the peace, Board Members are not required to be lawyers. All of this is designed to ensure that the Board Members, with their diverse backgrounds and experiences, are more in touch with Delaware's general public (employers and employees) to provide a common sense approach to the law and facts than State employees whose backgrounds would be much less diverse and who may not be as responsive to the political process.[4]

I.A.B. RELATION TO THE DEPARTMENT OF LABOR

Often overlooked is that the I.A.B. is not part of the Department of Labor ("DOL"). They are separate and distinct governmental entities sharing office space. Indeed, the Supreme Court has held that the Board Members are unique within State government in that they are not employed *by* a State agency; rather, the Board Members *are* an agency in and of itself.[5]

In 1970 the General Assembly transferred the ministerial, clerical and fiscal functions of the I.A.B. to the DOL.[6] Yet, while the DOL assumed the I.A.B.'s ministerial, clerical and fiscal functions, the General Assembly expressly made clear that it did not incorporate the I.A.B. <u>into</u> the DOL; it simply unloaded the I.A.B.'s non-judicial bureaucracy <u>onto</u> the DOL. Thus, to this day, only the I.A.B., not the DOL, retains all judicial and rulemaking power as "heretofore" over industrial accidents.[7] For example, the DOL "may" propose recommendations on new rules to the I.A.B.;[8] but they only remain recommendations unless the DOL "shall" have received the I.A.B.'s advice and consent.[9] Likewise, the I.A.B. alone continues to retain its exclusive judicial power, <u>unless</u> both parties stipulate that a single employee of the DOL may stand in place of the I.A.B. at a hearing.[10]

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3 19 *Del. C.* § 2301A(a).

4 Speaking from experience, an entire dissertation could be written about the pitfalls employees and employers face in States that have gone the unfortunate route of replacing their Industrial Accident Boards with Workmen's Compensation Commissions run by administrative law judges. While all systems have flaws, attorneys who only practice this area of law in Delaware may fail to realize how any problems of our State's system pale in comparison.

5 *Wharton v. Everett*, 238 A.2d 839, 842 (Del. 1968).

6 29 *Del. C.* §§ 8510(b) and 8518.

7 29 *Del. C.* § 8511(a); 29 *Del. C.* § 8511(b). Delaware has long used the word "heretofore" to reincorporate all prior jurisdiction through a single word; see, *In re: Request of the Governor*, 905 A.2d 106, 107-08 (Del. 2006).

8 29 *Del. C.* § 105(a)(5).

9 29 *Del. C.* § 106(f).

10 19 *Del. C.* § 2301B(a)(4).

DEPARTMENT OF LABOR HEARING OFFICERS

From 1918 until 1996 attorneys from the Department of Justice provided legal advice to the Board Members. Since 1997 this role has been performed by attorneys from the Department of Labor, when the position of hearing officer was created. Yet, in creating the hearing officers, the General Assembly made clear that they were employees of the DOL and not part of the I.A.B.[11] This, again, differentiates the DOL from the I.A.B. The General Assembly also made clear that unless both parties stipulate to a single Department of Labor hearing officer conducting a hearing, the hearing officers have no authority to run proceedings, participate in deliberations, conduct hearings or vote on the final decision in a case. Rather, by law, they are to be subservient to the Board and may only render advice if asked by the Board.[12]

There are stark differences between hearings run by the I.A.B. and hearings run by a DOL hearing officer. The diversity of perspectives and experiences the I.A.B. uses to critically evaluate any given case is markedly restricted when the parties stipulate to a single hearing officer: All hearing officers are unanimously lawyers. They unanimously went to law school. They are never required to reach consensus with anyone when they preside over a matter. Conversely, Board Members have been selected from engineers, teachers, employees, doctors, lawyers, employers, union officials, nurses and many other diverse backgrounds. There is always more than one Board Member on any merits hearing, which both forces consensus and also ensures that each case is analyzed from a greater number of angles.

INDUSTRIAL ACCIDENT BOARD DEADLOCK

19 *Del. C.* § 2301A(c) states the following with regard to any official actions, rules or decisions taken by the I.A.B.:

> *A majority of the members of the Board shall constitute a quorum for the exercise of any of the powers or authority conferred on the Board, except for hearings conducted pursuant to this title, in which case, two members of the Board shall constitute a quorum and a sufficient panel to decide such hearings. Any disagreement involving a procedural issue arising before or after a hearing may be decided by one member of the Board.*

According to Black's Law Dictionary, "quorum" is defined as "the minimum number of members who must be present for a deliberative assembly to transact business legally."[13] The key here is that a quorum is the minimum not maximum. From this the following can be gleaned: Hearings and orders on a procedural matter only require *one* Board Member; hearings

[11] 19 *Del. C.* § 2301B(a).
[12] 19 *Del. C.* § 2301B(a)(5).
[13] Black's Law Dictionary; 8TH Edition.

and decisions on the merits require a minimum of *two* Board Members; and anything else, such as creating new rules of procedure, require a minimum of *six* Board Members.

Requiring more than one Board Member to decide an issue is a further guaranty that any decision issued by the I.A.B. will be more representative of the diversity of backgrounds and experiences held by Delaware's citizens at large. The requirement for a two-member panel has the potential for deadlock; however, it could be argued that all juries in Delaware are even-numbered and Delaware's Supreme Court holds that because the I.A.B. sits as the trier of fact in litigation "it discharg[es] the function of the jury."[14] In jury trials, a split jury will result in a retrial of the case, which I.A.B. has done over the past few decades; but, this was not always so. Indeed, Supreme Court also holds that "it is in the public interest that there be a proper method to break deadlocks and avoid impasse."[15] This applies to all courts and agencies in Delaware.[16]

The workmen's compensation act tacitly acknowledges that deadlocks caused by an even-numbered panel would thwart its purpose by stating that ante and post trial disagreements "may be decided by one member of the Board."[17] This is why 19 *Del. C.* § 2301A(c) only states that two members of the Board shall constitute a sufficient "quorum" to conduct hearings, which is the bare minimum number of Board Members required; not the maximum. Nothing prohibits the I.A.B. from having a three (or more) member panel to prevent any threat of judicial deadlock; nor does anything prohibit a party from requesting one. 19 *Del. C.* § 2301A(d) further supports this by requiring that all ten Members, any one Board Member or "any Board panel" empowered to decide matters comply with the APA without limiting said panels to two.

THREE-MEMBER PANELS AND BENEFITS THEREOF

Ideally, the I.A.B. would schedule a three-member panel in every hearing. This was the norm until only recently in its history; but, with only ten Members presently, scheduling three for every hearing may be difficult. Yet, if a case ends with a split panel and an order for re-hearing, then what may have been a scheduling inconvenience for the I.A.B. has now been passed onto the employer and employee as an even greater difficulty in contravention of the workmen's compensation act's intent to decrease litigation and expenses. Each party is also prejudiced by having presented his entire cases only to be told that his adversary is now given a second chance to prepare against and address arguments that should only be addressed at one hearing.[18]

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[14] *Sears, Roebuck & Co. v. Farley*, 290 A.2d 639, 641 (Del. 1972).
[15] *Opinion of the Justices*, 225 A.2d 481, 485 (Del. 1966).
[16] *Opinion of the Attorney General*, 1968 Op. Atty Gen. Del 271 at *5.
[17] 19 *Del. C.* § 2301A(c).
[18] *Irizarry v. Christiana Care*, No. 1294065 at *1 (Del. I.A.B. Oct. 5, 2010).

Accordingly, once a split panel arises, a motion for a three-member panel is not only justified; it would be incumbent upon the I.A.B. to accommodate the request to serve as a guaranty against further deadlock. It would also ensure that the new Board Members to hear the case would not feel pressured simply to issue a "quick" decision just to avoid a second deadlock; as a "quick" decision is not necessarily the "right" decision.[19]

Initially, all Board decisions were issued by three-member panels to avoid deadlock. An example of this is the case of *Arnold v. Nat'l Vulcanized Fiber Co.*, No. 312458 (Del. I.A.B. Nov. 19, 1958), which is attached to this Memorandum. This also allowed for dissenting opinions of Board Members, which attorneys found helpful. One of the most famous dissenting opinions issued by Delaware's Industrial Accident Board was in the case of *Subielski v. Lobdell Car Wheel Co.*, (Del. I.A.B. Sept. 13, 1923). There, two members of the Board voted to award compensation while a third member, one "Commissioner Stack," voted against compensation and wrote a dissenting opinion as to why he believed compensation should be denied. The case was eventually appealed to Superior Court, which reversed the Board's decision and adopted, in part, the dissent's rationale.

At other times, the I.A.B. followed the lead of Supreme Court: DEL. CONST. ART. IV § 12 authorizes the Court to appoint retired justices or chancellors to sit on a hearing in order to prevent judicial deadlock. The I.A.B. appears to have done this itself in the past when the State reduced its membership from seven Board Members to three in 1959 and there were threats of a two-member panel facing deadlock.[20] An example is *Joseph Parag v. General Motors Corp.*, No. 338656 (Del. I.A.B. Jan. 11, 1961) where the I.A.B.'s Chairman appointed a former member of the Board to cast a third vote. The decision ends with two members of the Board signing the decision and the following statement:

> *Harry B. Roberts, Jr. who is no longer a member of the Board, but who heard the testimony in this case, concurs in the award.*

WHY HEARING OFFICERS SHOULD NOT VOTE

The final issue becomes: Why not simply allow the hearing officers to cast a vote in the event of a potential deadlock? Having consulted with many attorneys on both sides of the aisle it is clear that while all attorneys appreciate the work that the hearing officers provide for the Board, the vast majority prefers the members of the Industrial Accident Board (as its own court /

[19] Indeed, under the right circumstances, an employer or employee could succeed on appeal to Superior Court by showing the I.A.B. felt pressured to issue a "quick" decision that was not the "right" decision.

[20] 52 *Del. Laws*, c. 56. Interestingly, this was passed when the General Assembly overrode the Governor's veto.

agency) over the hearing officers (which are employees of the Department of Labor) to make decisions independent from any pressure from the Department of Labor. This does not question the integrity of the hearing officers. The Board has always relied upon these attorneys, although they were not always referred to as "hearing officers." Initially, these attorneys were employed by the Department of Justice. Now they are employed by the Department of Labor. They perform a vital role in providing the Board with expert legal advice when requested; yet, regardless of which Department they are employed by, the General Assembly and litigants have made it clear that they are only to *advise*, not *preside*, unless both parties stipulate.

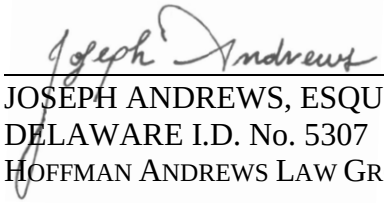
Likewise, the General Assembly contemplates that the default is an independent Industrial Accident Board that is politically appointed by the Governor upon the consent of the Senate to represent a wide gamut of Delaware's citizens and experiences, and to be responsive to the political process. Conversely, hearing officers are employees of the Department of Labor who are removed from the very diversity of views and political process that is a fundamental component of the I.A.B.'s design.

CONCLUSION

Practically speaking, it may be difficult to have a three-member panel for every hearing until the General Assembly increases the number of Board Members from ten. Yet, once the I.A.B. is deadlocked, its scheduling inconvenience pales in comparison to the unreasonable delay and expense to the employer and employee. It thus becomes incumbent on the I.A.B. to entertain a motion for a three-member panel upon rehearing to ensure against future deadlock, ensure that the new panel does not feel pressured to get a "quick" decision out instead of the "right" decision and guarantee that the parties would have finality to their litigation.

Parties can, of course, stipulate to a single hearing officer; however, they should not be *required* to do so as there are stark differences between hearings conducted by a single hearing officer compared to hearings conducted by the I.A.B. Finally, while all agree that the hearing officers provide a vital and much needed role for the Board, they should not be allowed to vote with or coerce the Board because they are not part of the Board and the philosophy behind hearing officers differs greatly from the philosophy behind the members of the I.A.B.

RESPECTFULLY SUBMITTED



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BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE

STEPHEN J. GRABOWSKI, JR.,	)	
	)	
Employee,	)	
	)	
v.	)	Hearing No. 1176709
	)	
J. J. WHITE, INC.,	)	
	)	
Employer.	)	

ORDER

This matter came before the Board on June 28, 2011, on a Petition to Terminate Benefits filed by J. J. White, Inc., (Employer), alleging that Stephen J. Grabowski, Jr., ("Claimant"), who was injured in a compensable work accident on October 16, 2000, was capable of returning to part-time, sedentary duty work in relationship to his work injury.

After hearing the presentation of evidence, the Board deliberated. The Board members now find that they are at an impasse and are unable to reach agreement as to a decision on the petition. The Workers' Compensation Act provides no methodology for breaking such a deadlock. The only recourse is for this matter to be submitted to a new panel of the Board for decision.

Therefore, it is ordered that this matter is to be rescheduled for a new hearing with new presentation of evidence in front of a new panel.

IT IS SO ORDERED this 30th day of June, 2011.

INDUSTRIAL ACCIDENT BOARD

TERRENCE M. SHANNON

MARILYN J. DOTO

Mailed Date: 7-1-11 DJ

OWC Staff

Deborah J. Massaro, Hearing Officer for the Board
Michael B. Galbraith, Esquire, for Claimant
William D. Rimmer, Esquire, for Employer

EDGAR C. ARNOLD,	)	INDUSTRIAL ACCIDENT BOARD
	)	
Claimant,	)	STATE OF DELAWARE
	)	
vs.	)	IN AND FOR NEW CASTLE COUNTY
	)	
NATIONAL VULCANIZED FIBRE COMPANY,	)	HEARING NO. 312458
	)	
Employer.	)	

NATURE OF ACTION

FAILURE TO REACH AGREEMENT

Pursuant to due notice of time and place of hearing served on all parties in interest, the above stated cause came before the Industrial Accident Board for hearing on July 9, 1958, at 2:30 o'clock p.m., Eastern Daylight Time, in the Hearing Room, 315 Odd Fellows Building, Wilmington, New Castle County, Delaware.

PRESENT:

Ford M. Warrington

Harry B. Roberts, Jr.

Robert H. Yerkes, Sr.

Francis A. Lawson, Secretary of the Board.
Robert C. O'Hora, Attorney for the Board.

On May 1, 1958, a Petition to Determine Compensation Due to Injured Employee was filed by Edgar C. Arnold against National Vulcanized Fibre Company as a result of an alleged injury on April 8, 1958. In accordance with this petition, a hearing was held on July 9, 1958, in the Hearing Room of the Board, Odd Fellows Building, Wilmington, Delaware, to which all parties in interest were notified of time and place.

CONCLUSION OF FACTS

1. In accordance with the provisions of The Delaware Workmen's Compensation Law, National Vulcanized Fibre Company, Employer, and Edgar C. Arnold, Employee, were respectively bound to pay and receive compensation.

2. Edgar C. Arnold, Yorklyn, Delaware, alleges that on April 8, 1958, while in the employ of National Vulcanized Fibre Company, Yorklyn, Delaware, he injured his back while engaged in re-winding fibre rolls and he picked up one end of shaft weighing about 150 pounds.

3. That Edgar C. Arnold, by a preponderance of evidence, established that on April 8, 1958, he suffered an aggravation of a pre-existing disability of his back.

4. That as a result of the aggravation to his back, Edgar C. Arnold was unable to work from and including April 9, 1958, through May 5, 1958.

5. That as a result of the aggravation, Edgar Arnold is required to wear a back brace and is restricted as to

type work he can do

6. That because of this restriction, Edgar C. Arnold has a loss of earning power since he was able to earn only $35.00 per week upon his return to employment.

RULING OF LAW

The following provisions of the Delaware Workmen's Compensation Law are applicable to this case:

Delaware Code, Title 19, Par. 2345, 2322, 2324, 2321, 2325, 2329

IT IS THEREFORE AWARDED AND ADJUDGED by The Industrial Accident Board of the State of Delaware this Nineteenth Day of November 1958 that Liberty Mutual Insurance Company, insurance carrier of National Vulcanized Fibre Company, Employer, and Edgar C. Arnold, Employee, shall enter into an agreement as to compensation that the said Edgar C. Arnold shall receive compensation at the rate of $35.00 per week based upon an average weekly wage of $67.20 and that said compensation shall be payable from and including April 9, 1958, through May 5, 1958, in accordance with the provisions of the Workmen's Compensation Law of the State of Delaware.

IT IS FURTHER AWARDED AND ADJUDGED by The Industrial Accident Board of the State of Delaware this Nineteenth Day of November 1958 that Liberty Mutual Insurance Company, insurance carrier of National Vulcanized Fibre Company, Employer, and Edgar C. Arnold, Employee, shall enter into a supplemental agreement as to compensation that the said Edgar C. Arnold shall

receive compensation at the rate of $22.16 per week based upon 66-2/3% of the difference between $67.20 (his average weekly wage on April 8, 1958) and $35.00 (his present average weekly wage) and that said compensation shall be payable from and including May 6, 1958 until terminated in accordance with the provisions of the Workmen's Compensation Law of the State of Delaware.

IT IS FURTHER AWARDED AND ADJUDGED by The Industrial Accident Board of the State of Delaware this Nineteenth Day of November 1958 that Liberty Mutual Insurance Company shall pay all surgical, medical and hospital services, medicine and supplies incurred by Edgar C. Arnold as a result of the aggravation on April 8, 1958, while in the employ of National Vulcanized Fibre Company.

INDUSTRIAL ACCIDENT BOARD

Ford M. Warrington, President

Harry B. Roberts, Jr., Member

Robert H. Yerkes, Sr., Member

ATTEST:

F. G. Lawson, Secretary

Industrial Accident Board.
September 13, 1923.

Anthony Subielski vs. Lobdell Car Wheel Company

Safety rules—violation of

When an employer provides reasonable safety appliances to be used for the protection of employees, an employee is required to use them and deliberate failure to do so should be considered wilful.

DISSENTING OPINION OF COMMISSIONER STACK

Finding myself unable to concur in the award made by my colleagues in the above case, I desire to make clear my position in the matter. I admit the preponderance of decisions rendered by the Courts of this country and England are favorable to the claimant in the case, if the Board can accept as a matter of fact and law that the several cases cited contain the same elements with which the Board has to deal.

> "The cardinal rule in the construction of a statute is to ascertain the intention of the Legislature as it is expressed in the words of the statute, and for this purpose the whole of the Act must be considered together."
>
> Mitchell v. State 80 Atl. 1020—115 Md. 360.
>
> Healy v. State 80 Atl. 1074—115 Md. 377.
>
> "The real intent when ascertained will always prevail over literal sense of the language."
>
> Purnel v. State Board of Education 93 Atl. 518—125 Md. 266.
>
> Cutty v. Carson 33 Atl. 302 and 305—125 Md. 25.
>
> Brenner v. Brenner 96 Atl. 287—127 Md. 189.
>
> "A uniformity of construction of provisions of Acts of other States similar to the Workmen's Compensation Act of this State, while not conclusive, is a persuasive reason for similar construing the Act."
>
> Appeal of Bond Company 93 Atl. 245—89 Conn. 143.

Reasoning along the basic principles laid down in the no uncertain language of these judicial citations there arises in my mind grave doubts as to how far the Industrial Accident Board of Delaware can go into

reaching a sound and safe interpretation of 3193jj, Section 129 of the Delaware Workmen's Compensation Law of 1917, as amended, until said Section has been adjudicated by the Courts of this State. Personally

I do not believe the framers of the Act contemplated giving either the employer or employee license to evade or violate a rule based upon a State statute.

The above Section reads as follows:

3193jj, Section 129.

> "If any employee be injured as a result of his intoxication, or because of his deliberate and reckless indifference to danger, or because of his wilful intention to bring about the injury or death of himself, or of another, or because of his wilful failure or refusal to use a reasonable safety appliance provided for him, or to perform a duty required by statute, he shall not be entitled to recover damages in an action at law, or compensation, or medical or hospital services under the compensatory provisions of this Article. The burden of proof under the provisions of this Section shall be on the defendant employer."

Certainly this is not ambiguous language and an employer can reach only one inference or conclusion, and that is he is expected to use about his plant reasonable safety appliances for the protection of the life and limb of his employees. When he has met such requirements, and at considerable expense, it becomes incumbent upon the employee to contribute his share towards the safety in which not only the employer and employee are commonly concerned but in which the general public has also an interest.

The fundamental principles upon which all compensation legislation is based is that in the modern industrial state the risk of injury to workmen while engaged in the employer's service is a social risk chargeable against the business itself, the losses arising from which are to be added to the productive cost and to be borne ultimately by the community at large. For this reason, the general public has an interest in the proper administration of the Compensation Law of this State as well as the employers and employees.

Viewing this case from this viewpoint, I cannot believe those responsible for the making of the Delaware Workmen's Compensation Law intended to create a statute that was not equally binding on both the employer and employee: one, to furnish every safety appliance required for the protection of his workmen from industrial injury and expected to enforce the use of such appliances; the other, to enter fully into the proper spirit of cooperation in the use of them that accidents arising out of industrial employment may be minimized, and all parties in interest spared as little distress and expense as possible. As I see it, any other construction placed upon this liberal and humane law would

be manifestly unfair, illogical and destructive, rendering ineffective a statute founded, many believe, upon a broader vision of the brotherhood of man than existed under the common law system.

As there is a difference of opinion as to whether violation of a rule is prima facie serious and wilful, I would without digressing on the several legal citations in the award briefly refer to the following citations from Honnold on Workmen's Compensation, Volume 1, page 564.

> "Lord Loreborn has said: 'In my opinion it is not the province of the Court to lay down that breach of a rule is prima facie evidence of serious and wilful conduct. That is a question purely of fact to be determined by the arbitrator as such.'
> George v. Glasgow Coal Co., Ltd., (1910) 2 BWCC—1291."
> "But Lord Trayner expressed the opinion that prima facie any breach of a rule is wilful and serious.
> United Colleries, Ltd., v. McGhie (1904) 6 F—808."

I am convinced by the weight of the testimony that Anthony Subielski, the claimant, was not using the safety appliance (goggles) provided for him by his employer at the time he met with an accident resulting unfortunately in the loss of his left eye, notwithstanding he had worked for the Lobdell Car Wheel Company for a period of over two years and fully understood the importance of using such goggles while engaged in his line of employment (as he has admitted in his testimony). But I am unable to classify his violation of the rule promulgated by his employer and to which, I am confident from the testimony, Mr. Bush, his foreman, had carefully called his attention, until our State Courts have ruled upon the intent of the Section hereinbefore quoted due to the fact that there are many conflicting decisions found that have both a direct and indirect bearing on the case at issue.

The question at issue is an important one both for the workmen and the manufacturers of this State and could hardly be presented in better shape for decision by the Superior Court of this State than is in the case at present before the Industrial Accident Board.

Lobdell Car Wheel Company vs. Anthony Subielski

Safety rules—wilful failure to observe

When the failure of an employee to observe a reasonable safety rule is an act done intentionally, knowingly and purposely without justifiable excuse, it will be considered "wilful" and a claim for compensation will be disallowed.

SUPERIOR COURT FOR NEW CASTLE COUNTY