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## Workmen's Compensation - Recovery for Federal Prisoners under Federal Torts Claims Act - 87 S. Ct. 382 (1966)

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of Civil Procedure requiring a class action to be brought by a member of the class by saying that because the ATA was found to be a real party in interest under 17(a) of the Federal Rules, it was also a proper party under 23(a).<sup>14</sup>

Consequently, the court, in the case at bar, has sparked a controversy because, by its own admission, the case "does not fit precisely certain of the categories in this area where standing has been recognized."

The need to protect fundamental rights seems to be the key concept behind the court's rationale in the instant case. This decision appears to be a restatement of the court's power to determine what the representation criterion shall be. In so doing it affirms the equitable right to shirk off blind adherence to technical rules when the needs of the public are at stake and, thereby, helps to preserve and maintain flexibility in the law.

*Robert Wick*

**Workmen's Compensation—RECOVERY FOR FEDERAL PRISONERS UNDER FEDERAL TORTS CLAIMS ACT.** Demko, a prisoner in the Federal Penitentiary at Lewisburg, Pennsylvania, was injured on March 12, 1962 while performing assigned maintenance work. He was awarded compensation<sup>1</sup> under the statutory provision for compensation of inmates so injured.<sup>2</sup> Subsequently, the respondent brought this action against the United States under the Federal Tort Claims Act<sup>3</sup> in the Federal District Court which entered judgment in favor of the respondent. The Court of Appeals for the Third Circuit affirmed,<sup>4</sup> finding that here compensation was not an exclusive remedy, thus holding contra to the view adopted by the Court of Appeals for the Second

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14. 3 J. MOORE, FEDERAL PRACTICE, § 23.04, at 3419 (2d ed. 1964).

1. On his release from prison, Demko was to be awarded \$180 per month to continue so long as his disability continued which was later increased to \$245.31 per month.

2. "The Corporation . . . is authorized to employ the fund and any earnings that may accrue to the corporation as operating capital in performing the duties imposed by this chapter; in the repair, alteration, erection and maintenance of industrial or other assignments; in paying under rules and regulation promulgated by the Attorney General, compensation to inmates employed in any industry, or performing outstanding services in institutional operations, and compensation to inmates or their dependents for injuries suffered in any industry or in any work activity in connection with maintenance or operation of the institution where confined. In no event shall compensation be paid in a greater amount than that provided in the Federal Employees' Compensation Act." 18 U.S.C. § 4126 (1948), as amended, 18 U.S.C. § 4126 (1961).

3. 28 U.S.C. § 1346 (b) (1946).

4. Demko v. United States, 350 F.2d 698 (3rd Cir. 1965).

Circuit in a recent decision.<sup>5</sup> The Supreme Court of the United States granted certiorari to resolve the conflict.

In *United States v. Demko*,<sup>6</sup> the Supreme Court, following the view adopted by the Second Circuit in *Granade v. United States*,<sup>7</sup> reversed the lower court's decision. The Court held that the right of recovery under the statutory provisions to compensate federal prisoners injured in prison work<sup>8</sup> is sufficiently comprehensive to be exclusive and to preclude recovery under the Federal Tort Claims Act.<sup>9</sup>

The opposite view rejected by the Supreme Court was first reached in *United States v. Muniz*<sup>10</sup> which viewed 18 U.S.C. § 4126, the compensation statute, as neither a certain nor a uniform scheme for compensating prisoners injured while in the course of prison employment.<sup>11</sup> Given such an indefinite system, the Court presumed that it was not an exclusive remedy<sup>12</sup> and, therefore, a prisoner's recovery under the statutory provision for compensation does not preclude recovery under the Federal Tort Claims Act.<sup>13</sup>

In the case at bar, the Supreme Court found that compensation available to federal prisoners for industrial injuries<sup>14</sup> has been specially designed to meet the needs of prisoners and has done so adequately for more than thirty years.<sup>15</sup> Federal prisoners should not, therefore, constitute an exception to the general rule that where Congress makes

5. *Granade v. United States* 356 F.2d 837 (2d Cir. 1966). The case held that a prison inmate eligible for compensation under 18 U.S.C. § 4126 was precluded from suing under the Federal Tort Claims Act.

6. 87 S.Ct. 382 (1966).

7. *Supra*, note 5.

8. *Supra*, note 2.

9. *Accord*, *Nobles v. Federal Prison Industries, Inc.*, 213 F. Supp. 731 (N.D. Ga. 1963); *Sigmon v. United States*, 110 F. Supp. 906 (W.D. Va. 1953).

10. 374 U.S. 150 (1963).

11. Arguments used include: 1) the amount of reward is at the discretion of the Attorney General; 2) compensation is not paid until after the inmate's release from prison; 3) if the inmate fully recovers before his release, he gets nothing; 4) there is no provision for a personal physician to be present at the physical examination; 5) compensation may be suspended if the claimant is convicted of another crime or is incarcerated in a penal institution. *Demko v. United States*, *supra*, note 4, at pp. 700-701.

12. A distinction is made from the exclusive remedy rule reached in *Johansen v. United States*, 434 U.S. 427 (1952); and *Patterson v. United States*, 359 U.S. 495 (1959) in which a comprehensive system of compensation was available to the government employees.

13. *Accord*, *Gomez v. United States*, 243 F.Supp. 145 (D. Colo. 1965).

14. *Supra*, note 2.

15. More explicit arguments are set forth in *Granade v. United States*, *supra*, note 7, at p. 843. 1) Although the statute does not spell out the full details of the system,

compensation available to an employee, it is his exclusive remedy and precludes recovery under the Federal Tort Claims Act.<sup>16</sup> The Court distinguished the case at bar from *United States v. Muniz*<sup>17</sup> where a federal prisoner, who had no claim under 18 U.S.C. § 4126 was allowed to bring suit under the Federal Tort Claims Act.

By its decision in *Demko v. United States*,<sup>18</sup> the Supreme Court brings the law surrounding workmen's compensation for federal prisoners into the general rule of law regarding exclusive recovery under workmen's compensation statutes. In so doing the Court takes notice of the special status occupied by prisoners<sup>19</sup> and clarifies their remedy for injuries incurred while working at assigned jobs.

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regulations do, and they make the award mandatory; 2) prisoners injured while performing paid prison jobs do receive full pay while disabled; 3) prisoners injured while performing jobs for which there is no pay are not awarded compensation benefits until their release and then only if they have not fully recovered because they have experienced no loss of earnings, and receive food, clothing, shelter and medical attention.

16. *Accord*, *Richardson v. United States*, 336 F.2d 265 (9th Cir. 1964); *Rizzutto v. United States*, 298 F.2d 748 (10th Cir. 1961); *Balancio v. United States*, 267 F.2d 135 (2d Cir. 1959), cert. denied, 361 U.S. 875 (1959); *Aubrey v. United States*, 103 U.S. App. D.C. 65, 254 F.2d 768 (1964).

17. *Supra*, note 10.

18. *Supra*, note 6.

19. It is inconceivable that a similar administrative remedy for any other class of citizens could be considered comprehensive.