

## **Murebu, Stanley**

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### **COURSE OF EMPLOYMENT (RCW 51.08.013; RCW 51.08.180(1))**

#### **Aggressor doctrine**

A worker's single act of swinging his fist at a co-employee who had placed his hand on the worker's shoulder, when considered against the background of longstanding animosity between the two, including an exchange of sharp words earlier that day, was insufficient to remove the worker from the course of employment. ...*In re Stanley Murebu*, BIIA Dec., 37,335 (1972) [Editor's Note: The Board has abandoned the aggressor in favor of a broader course of employment analysis as used in *In re Stanley Murebu*, BIIA Dec., 37,335 (1972).]

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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON**

1     **IN RE: STANLEY MUREBU**                     )     **DOCKET NO. 35,335**  
2                                                             )  
3     **CLAIM NO. F969332**                     )     **DECISION AND ORDER**  
4

5 **APPEARANCES:**

6             Claimant, Stanley Murebu, by  
7             Griffin & Enslow, per  
8             Fred G. Enslow and by  
9             Davis, Ainsworth and Pinnock, per  
10            Sidney E. Ainsworth  
11

12            Employer, Nalley's Division, W. R. Grace & Co.,  
13            None  
14            (In attendance: Gerald Patten of Industrial Safety Association)  
15

16            Department of Labor and Industries, by  
17            The Attorney General, per  
18            James K. Treadwell, Assistant  
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20            This is an appeal filed by the claimant on November 5, 1970, from an order of the  
21     Department of Labor and Industries dated September 29, 1970 which rejected the claim for the  
22     reason that at the time of the injury the claimant was not in the course of his employment.  
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24 **REVERSED AND REMANDED.**

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**DECISION**

28            Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
29     and decision on a timely Statement of Exceptions filed by the claimant to a Proposed Decision and  
30     Order issued by a hearing examiner for this Board on October 20, 1971 in which the order of the  
31     Department dated September 29, 1970 was sustained.  
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33            The claimant is a native African attending a college in Oregon as an exchange student. At  
34     the time he was injured, on August 18, 1969, he was working in the slicing room of Nalley's pickle  
35     plant at Tacoma, Washington. This was the second summer he had been employed for this  
36     employer. The claimant became involved in an altercation with a fellow employee and was injured.  
37     There is no question, from the evidence presented on this record, that he was, at the time he was  
38     injured, or at least immediately prior thereto, engaged in the work that he was required to do. It is  
39     the contention of the Department that the claimant was the aggressor in the altercation and had  
40     removed himself from the course of his employment, by his actions.  
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1 The record establishes definitely that the claimant was of another culture, and that there had  
2 been, for some time prior to the injury, some horseplay involving a certain amount of banter  
3 between the claimant and the other party to the altercation, Dan Oliver, a fellow employee. The  
4 participants were youths and it seems that a certain amount of ill will had developed between the  
5 claimant and Oliver some time before the actual altercation on August 18, 1969.  
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8 Just before the fight, which erupted over the use by the claimant of a forklift, there was much  
9 talk between the two, including some shouting. The claimant denies that he was the aggressor. A  
10 complete examination of the record shows that the claimant probably did throw the first punch. The  
11 question, therefore, is whether this act is such as to remove him from the course of employment.  
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14 There is no statute in this state covering the rights of an "aggressor" who is injured while  
15 engaging in an altercation on the employer's premises. There is, however, a statute that denies  
16 coverage to a workman who is injured while "engaged in the attempt to commit, or in the  
17 commission of, a crime ...." (RCW Sec. 51.32.020) We do not find that the was engaged in the  
18 commission of a "crime" as contemplated by the statute.  
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22 In Larson text on workmen's compensation law Vol. 1, at Sec. 11.15A the following statement  
23 is made:  
24

25 "A majority of jurisdictions--and, if comparatively recent cases are  
26 stressed, a substantial majority of jurisdictions-- now reject the view that  
27 the initiation of the fight by the claimant is alone enough to deprive his  
28 ensuing injuries of the quality of 'arising out of the employment.'"  
29

30 Larson then lists three grounds for holding that the claimants in cases where they are aggressors,  
31 should be denied coverage. The first ground is that it is contrary to justice and law to reward a  
32 "wrongdoer." The second ground is that a fight started by a claimant arises out of his own act of  
33 aggression and therefore not out of the employment. The Board is not impressed with these two  
34 arguments and apparently the courts in the majority of jurisdictions of this country are not either.  
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37 The current third ground advanced for the aggression defense, according to Larson, is that  
38 the employee, by initiating hostilities, takes himself out of the course of employment. To this  
39 ground, Larson, supra, makes the following statement:  
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42 "If the fight is spontaneous and closely entangled with the work itself--as  
43 most are-- the assertion that claimant left his employment involves an  
44 outright fiction; and fictions should not be invented to block the benefits  
45 conferred by a remedial statute."  
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1 In the instant case, the claimant was on the forklift at the time that he was approached by Mr.  
2 Oliver, who laid his hand on the claimant's shoulder either to calm him down or perhaps to help  
3 move him off the forklift, at which time the claimant swung at him with his fist.  
4

5 We do not believe that this single act by this claimant when considered with the fact of long-  
6 standing animosity between the claimant and Mr. Oliver, including some sharp words occurring  
7 between the two earlier that day, before the final confrontation removed him from the course of  
8 employment.  
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10 We determine, therefore, that this claimant at the time he was injured on the day in question  
11 was in the course of his employment and entitled to coverage under the Workmen's Compensation  
12 Act, as an injured workman.  
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### 15 **FINDINGS OF FACT**

16 After a complete review of the record, the Board finds:  
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- 18 1. On July 24, 1970, the Department of Labor and Industries received an  
19 accident report from the claimant, Stanley Murebu, alleging that on  
20 August 18, 1969, he was injured while in the course of his employment  
21 for Nalley's Company, Tacoma. On September 29, 1970, the  
22 Department issued an order rejecting this claim on the ground that  
23 claimant was not in the course of his employment at the time of his  
24 alleged injury. On November 5, 1970, notice of appeal was received.  
25 On December 4, 1970, the Board of Industrial Insurance Appeals issued  
26 an order granting an extension of time for the appeal and on December  
27 11, 1970, issued an order directing that the notice of appeal be  
28 amended. On January 7, 1971, a notice of appeal was received, and on  
29 January 8, 1971, the Board issued an order granting claimant's  
30 amended notice of appeal and hearings were held thereafter.  
31
- 32 2. Appellate proceedings were conducted before the Board of Industrial  
33 Insurance Appeals, and on October 20, 1971, a hearing examiner for  
34 the Board entered a Proposed Decision and Order in connection with  
35 this appeal. Thereafter, within the period of time provided by law, a  
36 Petition for Review was filed and the case referred to the Board for  
37 review as provided by RCW 51.52.106.  
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- 39 3. The claimant was employed, on August 18, 1969, for the Nalley's  
40 Division, W. R. Grace & Co., Tacoma, Washington, as a cleanup man in  
41 the slicing room of its pickle plant. It was not part of his duties to  
42 operate a forklift although he had done so on occasions with the  
43 knowledge of his immediate supervisor, with no action taken against him  
44 other than a request that he let other employees, who were hired as  
45 forklift operators, use them.  
46
- 47 4. Before August 18, 1969 and on that date prior to the time of the  
mentioned altercation (subject of this appeal), the claimant and a fellow

1 employee by the name of Dan Oliver had, on occasions, argued and a  
2 certain amount of animosity had developed between the two. All of the  
3 arguments between the claimant and Dan Oliver were over matters  
4 connected with the work activities of the two at the plant.

- 5  
6 5. On August 18, 1969, the claimant was engaged in his usual task of  
7 removing trash from the work area in the plant and in doing so, he  
8 operated a forklift to help him in moving the trash cans. Oliver, whose  
9 job was that of a forklift operator, and who had been granted certain  
10 nebulous supervisory rights over the claimant by the claimant's regular  
11 immediate supervisor, noticed the claimant was operating the forklift and  
12 approached him with the intention of asking him to get off the fork-lift.  
13 Due to the noise in the factory and the noise of the forklift, he was  
14 required to shout in order to make himself heard. In the course of the  
15 conversation, the claimant did not immediately get off the forklift  
16 (although he was requested to do so by Oliver), and both parties  
17 became angry. After remonstrating with the claimant, Oliver raised his  
18 hand and placed it on the claimant's shoulder, while the latter was on  
19 the forklift, for the purpose of persuading the claimant to get down off  
20 the forklift. As soon as Oliver laid his hand on the claimant's shoulder,  
21 the claimant swung at him with his fist. It was a glancing blow that did  
22 Oliver no harm, although it did touch him. Immediately following this  
23 blow, Oliver struck the claimant once or twice on the head and caused  
24 injuries requiring medical treatment.
- 25 6. The claimant was in the course of his employment when injured on  
26 August 18, 1969.

27 **CONCLUSIONS OF LAW**

28 Based on the foregoing findings of fact, the Board concludes:

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30 1. This Board has jurisdiction of the parties and subject matter of this  
31 appeal.
- 32 2. The claimant, Stanley Murebu, sustained an injury within the meaning of  
33 the Workmen's Compensation Act on August 18, 1969, while in the  
34 course of his employment with Nalley's Division, W. R. Grace & Co.
- 35 3. The order of the Department of Labor and Industries dated September  
36 29, 1970, rejecting this claim, is incorrect and this matter should be  
37 remanded to the Department with direction to allow the claim.

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39 It is so ORDERED.

40 Dated this 15th day of February, 1972.

41 BOARD OF INDUSTRIAL INSURANCE APPEALS

42 /s/

43 ROBERT C. WETHERHOLT

Chairman

44 /s/

45 R.H. POWELL

Member

46 /s/

47 R.M. GILMORE

Member