1975

Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 222 and Local Union 976 v. Motor Cargo, a Corporation : Brief of Respondent

Utah Supreme Court

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A Park Smoot; Attorney for Plaintiffs-Respondents .

OF THE STATE OF UTAH 1975

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 222 and LOCAL UNION 976,

Plaintiffs-Respondents,

vs.

MOTOR CARGO, a corporation,

Defendant-Appellant.

Case No. 13679

BRIEF OF RESPONDENTS

Appeal from the Judgment of the Third Judicial District Court for Salt Lake County The Honorable Stewart M. Hanson, Judge

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NATURE OF THE CASE

This is an action by Respondents to obtain an Order of the Court requiring the parties to the action to arbitrate a grievance arising out of a collective bargaining labor agreement which provides that such grievance be arbitrated.

DISPOSITION OF CASE IN TRIAL COURT

The Trial Court found that a grievance had arisen between the parties to the Collective Bargaining Agreement, that the Agreement provided that such grievances be arbitrated when timely requested, that a timely request was made of the employer defendant by the unions. The Court then ordered the grievance to be arbitrated by Joseph C. Fratto, and retained jurisdiction of the matter in the event any problems arose as to the selection of the Arbitrator or as to the issues to be arbitrated.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the judgment and a direction from this Court that an arbitrable dispute does not exist between the parties.

Respondents seek to have this court affirm the decision of the Trial Court in all respects.

STATEMENT OF FACTS

We agree with the facts as stated by Appellant and add the following:

1. The Union steward, Robinson, did not know what the new Blue Cross-Blue Shield Plan provided, was not given a written copy of it by the Company,

and did not obtain a copy thereof until after he called the Union's business agent, Neldin Stephenson, on the phone on September 17, 1973. At that time he told Mr. Stephenson that he did not have a copy of the Blue Cross-Blue Shield Plan, and Mr. Stephenson asked Robinson if he could get him a copy. He thereafter located a copy and gave it to Mr. Stephenson within a day or two (R 51).

Mr. Stephenson then studied the Plan and compared it with the old company plan (R 51-52), and as a result thereof the union met with the company officials on September 24, 1973 (R 53) pursuant to the Unions' claim that the new Plan constituted a grievance that should be arbitrated (R 53-54), which the Company refused (R 54). The Union thereafter sent a letter to the defendant on October 9, 1973 (R 54) which appears in the Record as Exhibit "B" attached to plaintiffs' Complaint. This letter shows the Unions' analysis of the additional benefits of the new Barton (Motor Cargo) Plan over its old plan, and the Union therein requested that the matter be submitted to arbitration on the issue as to whether the new Plan of the Company was betten than, or only the equivalent of, the old Plan.

2. At the trial it was agreed by the Court and the parties that the only issue which the Court needed to decide was whether the union had given timely notice of its grievance to the employer as a prerequisite of arbitration (R 48-49).

3. The only difference between plaintiffs' Complaint and the Amended Complaint is the added allegations contained in paragraphs 3 and 4 of the Amended Complaint having to do with application of federal law to the issues of the case. Otherwise, the Amended Complaint is no different from the Complaint.

ARGUMENT

POINT I

THE RECORD ESTABLISHES APPELLANT'S CONTRACTUAL OBLIGATION TO ARBITRATE.

Appellant argues that because Respondents failed to attach another copy of the Labor Agreement to the Amended Complaint — the same as had been attached to the Complaint — there was, therefore, no Agreement before the Court to consider; that it wasn't in evidence, and, therefore, there was no agreement to support an Order to arbitrate.

Our answer to this is:

1. In its Answer Appellant admits it entered into a Collective Bargaining Agreement and affirmatively alleged that the Agreement speaks for itself. This language necessarily refers to and adopts as part of its Answer the only Agreement on file, namely, the Agreement attached to the Complaint.

2. At no time during the Order to Show Cause Hearing or during the trial did Appellant object to the use of the Agreement filed with the Complaint as the appropriate document under consideration; and if there were ever any merit to appellant's argument, it surely waived any right to protest the use of that document at the trial.

3. The appellant freely acknowledged at the trial that the only issue to be determined was the 30-day notice clause in the Agreement which was attached to the Complaint and which it freely used in its presentation before the Court. (R 48).

4. There is no difference between the allegations of the Complaint and the Amended Complaint, except for additional allegations in paragraphs 3 and 4 of the Amended Complaint concerning facts inducing the application of federal law; and the failure of plaintiffs to attach the same Agreement to the Amended Complaint which it had attached to the Complaint does not appear to be the type of thing included in the principles discussed by AmJur 2d as quoted by Appellant at pp.6 and 7 of its Brief.

POINT II

THE RECORD REVEALS THAT THE PARTIES DROPPED ANY AND ALL ISSUES FOR THE COURT TO DECIDE EXCEPT THE ISSUE AS TO WHETHER

TIMELY NOTICE AS REQUIRED BY THE AGREEMENT WAS GIVEN BY PLAINTIFFS TO DEFENDANT.

Respondents readily concede that there was no evidence presented at the trial except as to the matter of notice by the Union to the Company that there was a grievance based on alleged changed benefits in the health and welfare plan, and that the notice was given within the 30-day period required by the Agreement.

On pp. 48 and 49 of the Record the Court said that the timely notice issue was the only issue it was concerned with, and that if there were other issues, the hearing would have to be postponed to another day. The parties agreed to proceed and have the matter determined on this issue alone. At the conclusion of the trial of this issue, the Court said it would take the matter under advisement and let the parties know in due time of its decision. No objection by either party was made to these proceedings (R 72).

We, therefore, submit that except for the issue of timely notice. all issues were waived, and that the effect of such was that if the Court held that timely notice had been given, then the matter would be arbitrated and that if timely notice had not been given, there would be no arbitration.

We further submit that the contract does provide for an airing of all appropriate issues before an arbitrator rather than before the courts. The law as to this matter begins with a statement of policy in the Labor

Management Relations Act of 1947 at Section 203, which reads:

> "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing Collective Bargaining Agreement".

In 1960 the U. S. Supreme Court decided three cases usually referred to as the Trilogy which dealt with problems of arbitration of grievances as provided for in collective bargaining agreements. These cases are *United Steel Workers of America vs. American Manufacturing Company,* 80 S.Ct 1343; *United Steel Workers of America vs. Warrior and Gulf Navigation Company,* 80 S.Ct 1347; and *United Steel Workers of America vs. Enterprise Wheel and Car Corp.,* 80 S.Ct 1358. In summary these cases held that where arbitration is provided for in a collective bargaining agreement, the courts may determine whether an issue is arbitrable unless the parties expressly provide that the arbitrator is to determine arbitrability. These cases emphasize that the courts must compel arbitration where a claim by one of the parties appears to be governed by the contract, even though the court might feel that the grievance is baseless, and that doubts of arbitrability should be resolved in favor of arbitration unless it could be said with " positive assurance" that the arbitration clause is not susceptible to an interpretation that covers the dispute. These cases also hold that the question of interpretation of the agreement is for the arbitrator, and

that courts "have no business overruling him because their interpretation of the contract is different from his"; that courts should not delve into the merits of grievances.

Quoting directly from *Steel Workers vs. Warrior and Gulf Navigation Company,* 80 S.Ct 1347, the Court says:

> "The Collective Bargaining Agreement states the rights and duties of the parties. It is more than a contract. It is a generalized code to govern a myriad of cases which the draftsman cannot wholly anticipate. The Collective Bargaining Agreement covers the whole employment relationship. It calls into being a new common law — the common law of a particular industry or of a particular plant. * * * *
>
> "Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties. The processing of disputes through the grievance machinery is actually a vehicle by which meaning and content is given to the Collective Bargaining Agreement. * * * *
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> "An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage".

POINT III

RESPONDENTS TIMELY REQUESTED ARBITRATION PURSUANT TO THE REQUIREMENTS OF THE AGREEMENT.

This is the issue which the Trial Court considered and upon which it ruled. The facts are not in dispute. The only issue here is when does the 30-day period begin. Does it begin when the union steward, Mr. Robinson, learned that the Company was "enrolling the people for the new contract which was approximately July 25" (R 16)? At that time Mr. Robinson was informed by Mr. Peterson, the Company's claim manager, "that our old insurance carrier, Home Life, had raised our premiums without any change in benefits back in June to be effective August 1, and so I explained to them that we had gone out and done some shopping to try to find a better program for, you know, less, which we did. We were going to have to pay it anyway" (R 17-18).

If it can be said that the steward was a representative of the union for notification purposes (and we, in fact, deny it) of what really was he notified? The above quote is all that the Company produced as evidence that the union was advised of the kind of an increase in benefiits above an "equivalent" change. Mr. Robinson was really given only an oral statement that the company was shopping around for increased benefits for the same amount of maney to which Home Life had increased their premiums for the same old plan.

He was not told they had found a better plan. He was not given a written plan that the union could study to see if a change had been made that qualified as an increase over "equivalent" benefits. Several changes could have been made, which, when analyzed, could well prove to be a change without any real increased benefits. It was a matter for study by the proper union officials after a reasonable notice of all appropriate facts had been given them. We do not believe a casual conversation with the union steward by the claims manager about shopping around for a better plan meets the requirements of notice to the Union that the Company had increased benefits above an equivalent amount over the old plan. Nor did the Court believe it.

What the Court did reasonably find was, that when the steward on September 17 called a business agent of Local 222 and told him "that it was his understanding that the new health and welfare plan that the company had set up with Blue Cross-Blue Shield was a better plan than the old health and welfare plan that they had with Home Life" a constructive notice of a grievance may have begun to develop. At that time there was nothing in the Record to show that the steward knew anything about the plan prior to the call, or that it hadn't just occurred to him that there may be an increase in benefits which should be investigated, and that he therefore forthwith proceeded to call the union. The Union's business agent, Mr. Stephenson, whom the steward called, asked the steward if he had a copy of the new plan. He didn't. Stephenson then asked

the steward to get him a copy, and within a day or two he did (R 8). We submit that there was no constructive notice to the Union until it got a copy of the plan and studied it. Not until the Union officials could study it and see if the new Company plan benefits were an increase over equivalent benefits of the Company's old plan was the Union put on notice constructively that it had a grievance on its hands. In effect this is the way the Court ruled, holding that within 30 days of that time, namely a day or two after September 17, 1973, the union notified the employer in writing (on October 9, 1973, see letter attached to Complaint) of a grievance which it wanted arbitrated according to the Agreement inasmuch as the matter had not been resolved in the meeting between the parties which the union had called and held with Respondent prior thereto.

If the company can change the plan on August 1, 1973, and the 30-day period begins to run on August 1, without the Company giving the Union any formal, informal, written or oral notice of the essential facts, and without the union being made aware of it from any source, then the judgment of the trial court should be reversed.

But if the time does not begin to run until the union becomes aware of the grievance (which did not occur until after September 17, 1973) then the Trial Court's ruling should be affirmed. The Trial Court held that until the union is aware of a grievance there is, in effect, no grievance upon which it can give notice

to the company to arbitrate. Justice, equity, and a reasonable interpretation of the contract require, we believe, affirmance of the Trial Court's judgment, and the grievance should be arbitrated as ordered by the Court.

CONCLUSION

Respondents respectfully submit that the judgment of the lower Court should be affirmed.

Respectfully submitted,

A. PARK SMOOT