1977

Del Monte Corporation v. The Industrial Commission of Utah : Brief of Plaintiff

Utah Supreme Court

Richard L. Stine; Attorneys for Plaintiff;
Robert B. Hansen; Attorney General;

IN THE SUPREME COURT

OF THE

STATE OF UTAH

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DEL MONTE CORPORATION,	)	
	:	
Plaintiff,	)	
	:	
vs.	)	Case No. 1[illegible]
	:	
THE INDUSTRIAL COMMISSION OF UTAH,	)	
	:	
	)	
Defendant.	:	

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BRIEF OF PLAINTIFF DEL MONTE CORPORATION

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Review of an award of the
Utah Industrial Commission

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IN THE SUPREME COURT

OF THE

STATE OF UTAH

* * * * * * * * * * * *

DEL MONTE CORPORATION, Plaintiff,	)	
vs.	)	Case No. 15218
THE INDUSTRIAL COMMISSION OF UTAH, Defendant.	)	

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BRIEF OF PLAINTIFF DEL MONTE CORPORATION

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Utah Industrial Commission

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DEL MONTE CORPORATION,

Plaintiff,

vs.

THE INDUSTRIAL COMMISSION OF UTAH,

Defendant.

Case No. 15218

* * * * * * *

BRIEF OF THE PLAINTIFF

* * *

NATURE OF THE CASE

This is a review of the decision of the Industrial Commission awarding increased permanent partial disability benefits in a Workmen's Compensation case.

DISPOSITION BY THE COMMISSION

The Commission made an award on March 29, 1977, to one Wilford J. Moore of Ogden, Utah, of 62.4 weeks of compensation at Sixty Two Dollars ($62.00) per week, based on a finding by the Disability Rating Board on March 19, 1977, that Moore's disability had increased from ten percent (10%) to twenty percent (20%) after

an on-the-job injury on March 28, 1968 and an initial award b the Commission.

RELIEF SOUGHT ON REVIEW

Del Monte Corporation, the self insured employer seek reversal of the Commission's determination to make the subseq award and the amount thereof.

STATEMENT OF FACTS

Wilford J. Moore injured his back on March 20, 1968, w employed by Plaintiff when he fell from a railroad car to the ground.

Plaintiff, a self insured carrier, after Moore had und gone disc surgery in January of 1971, and after a medical pane was convened to determine the extent of his injury, paid the s of One Thousand Two Hundred Forty Dollars (1,240.00) for perma partial disability. This award was computed on the basis of S Two Dollars ($62.00) per week for twenty (20) weeks and was ba upon a finding by the Board of ten percent (10%) permanent par disability. The order of the Commission was entered September 1971. Plaintiff also paid temporary total disability payments and the medical and hospital charges attributable to this inci

Moore returned to work six (6) weeks after surgery and limited to light work; however, he subsequently left the emplo of Del Monte.

In 1974, he twisted his back again, apparently while hunting. Dr. James Hauser, his surgeon, performed further disc surgery in May of 1975 after myelogram studies in March of 1975 indicated the need for further surgery. Plaintiff paid for this additional procedure. Moore was released for work on June 18, 1975, subject to a limitation as to heavy lifting.

On November 20, 1975, Moore filed his application with the Commission for additional permanent partial compensation. Plaintiff rejected payment of any additional permanent partial benefits because of the lapse of time involved but agreed to let a medical disability rating panel examine Moore to determine the then extent of his disability, if any. The matter at that time was before the Administrative Law Judge for a determination as to the statute of limitations question, and it remained dormant for some period of time.

The panel finally on March 19, 1977, found Moore to have a present disability of twenty percent (20%). The Commission then, summarily, and without having the legal question decided, made the award complained of with credit for amounts previously paid.

A Motion for review was made but summarily denied by the Commission.

ARGUMENT

POINT I

THE ADDITIONAL AWARD IS BARRED BY THE STATUTE OF LIMITATIONS.

At the time of Mr. Moore's initial injury, the Statute 35-1-66 UCA 1953, dealing with permanent partial disability benefits provided as follows, in part: (Laws 1967, Ch. 65)

> "Where the injury causes partial disability for work, the employee shall receive during such disability and for a period of not to exceed six (6) years from the date of the injury, a weekly compensation equal to sixty percent (60%) of the difference between his average weekly wages before the accident and the weekly wages he is able to earn thereafter, but not more than Forty-Four Dollars ($44.00) per week, and in addition thereto Three and 60/100 Dollars ($3.60) for a dependent wife and Three and 60/100 Dollars ($3.60) for each dependent minor child under the age of eighteen (18) years, up to and including four (4), or a maximum of Sixty-Two Dollars ($62.00) per week in the case of a dependent wife and four (4) or more such dependent minor children. . . . . ."

The foregoing is the statute to be applied in this case since it was in force at the time of the initial injury. This Court has so held in Utah Road Commission v. Industrial Commiss 109 U 553, 168 P. 2d 319, and Smith v. The Industrial Commissio 549 P. 2d 448.

The law as it now reads would allow benefits for not to exceed Three Hundred Twelve (312) weeks, over a period not to e ceed Eight (8) years, if the application is filed prior to Eig

years (Laws 1973, Ch. 67). The Commission in behalf of Mr. Moore obviously sought to avail itself of the eight (8) year period since the six (6) year period had expired. This 1973 enactment does not operate retroactively by any of its terms. The limitation period and the extent of the benefits are changed therein as they have been about every two years in the last decade. Thus, our statute on prospective operation, Section 68-3-3, U.C.A. 1953, would apply, together with the rule against retroactive operation as noted in the following cases of this Court: McCarry v. Utah State Teacher's Retirement Board, 111 U. 251, 177 P. 2d 725; Oklund Construction Company v. Industrial Commission, 520 P. 2d 208. See also Greenhalgh v. Payson City, 530 P. 2d 799 and Day and Night Heating Company v. Ruff, 19 U. 2d 412, 432 P. 2d 43, both of which are limitation cases. These latter two cases were concerned with shortening statutes of limitation. This was sanctioned because the new enactments provided for a reasonable time within which to commence suit, but we note more specifically that this Court there adhered to the pronouncement that amendments to statutes of limitation usually are not retroactive and should not be used to extend or expand the rights of claimants.

Plaintiff contends that Wilford J. Moore had six (6) years from the date of his initial injury on March 20, 1968, within which to apply for and obtain permanent partial disability payments.

This he did in 1971. His attempt to do so again pursuant to hi November 1975 application comes too late since the six (6) year statute had run.

Two cases decided by this Court appear to sustain Plaintiffs position. U.S. Smelting and Refining Company v. Nielsen, 19 U. 2d 239, 430 P. 2d 162, involved a claimant who sustained knee injury in 1952 and, thereafter, requested a lump sum settlement after receiving payments for a period of time for partial disability. His injury reasserted itself afterwards and he incurred surgery in 1965. This Court held that the six year stat of limitations barred any further permanent partial payments, noting that he had accepted settlement in exchange for any or a of the six year compensation to which he would have been entitl Significantly, this Court said that the six year statute was on repose and that the Legislature intended the statute should be signed to terminate, not encourage, protraction of claims; othe wise, an employer would be an insurer for life.

The other case is Kennecott Copper Corporation v. Ande 30 U. 2d 102, 514 P. 2d 217. The claimant, employed in 1959, tained major burns in an accident. He filed for compensation in January 1961 received a lump sum award for twenty percent disability. In September 1962, he filed for further disabilit and medicals and was awarded nin (9) weeks of additional temp

total. On October 23, 1968, nine years later, he again applied for additional compensation and medicals. This Court, on review, held that the six year limitation was applicable to compensation and disability awards but did not apply to medical and hospital expenses. The holding further noted that the six year statute in 35-1-66 would override the continuing jurisdiction statute, 35-1-78, being more specific than the latter.

Wilford Moore's weekly wage was $125.00. His initial award for permanent partial was $62.00 per week for 20 weeks, based on a finding of 10% disability. It is not apparent how this was arrived at. We surmise, however, that it was based on the maximum of $62.00 per week allowed by the statute at that time (Laws 1967, Ch. 65). This totaled $1240.00. The award here in question was at the rate of $62.00 per week (presumably following the same scale because the statute now follows a different formula, Laws 1973 Ch. 67) for 62.4 weeks for a total of $3868.80 less amounts paid. Moore's disability is now 20% so it is easy to see that 62.4 is 20% of the maximum of 312 weeks (or six years, depending on which amendment you are looking at). However, the original award was only for 20 weeks so the Commission has now added 42.4 weeks for the additional 10% disability and we are dealing with the same injury. What prompted the Commission to do this is not clear since there was no assertion that the first award was inadequate. We assumed

that it was proceeding under the continuing jurisdiction statute, 35-1-78, and felt that the original 20 weeks was not enough. Plaintiff here asserts that such action appears to it to be arbitrary. However, without arguing arbitrariness, the subsequent award would still be barred by the statute of limitations. This Court observed in U.S. Smelting v. Nielsen, supra, that the statute awarding compensation for disability, 35-1-66, governs the filing of supplemental claims for the recurrence of an injury. The continuing jurisdiction statute, 35-1-78, does not create an exception to the former, but merely provides that the Commission has continuing jurisdiction during the period that limitation is running. The Commission was, therefore, without jurisdiction to proceed in any event since the statute had run.

CONCLUSION

The award of the Commission made on March 29, 1977, should be vacated and the application dismissed.

Respectfully submitted,

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