1986

G. Carmen Herrera v. Sperry Corporation, Travelers Insurance Company, Second Injury Fund, and Industrial Commission of Utah: Reply Brief of Appellant G. Carmen Herrera

Utah Supreme Court

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SUPREME COURT OF THE

STATE OF UTAH

G. CARMEN HERRERA, Plaintiff-Appellant, v. SPERRY CORPORATION, TRAVELERS INSURANCE COMPANY, SECOND INJURY FUND, AND INDUSTRIAL COMMISSION OF UTAH, Defendants-Respondents.	Supreme Court No.: 860062

REPLY BRIEF OF APPELLANT G. CARMEN HERRERA

APPEAL FROM THE JUDGMENT OF THE

UTAH INDUSTRIAL COMMISSION

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REPLY BRIEF OF APPELLANT G. CARMENT HERRERA

INTRODUCTION

In its response to plaintiff Carmen Herrera's appeal, the defendant does not challenge many of the central contentions of the plaintiff's appeal. The defendant never disputes the plaintiff's contention that the definition given the word "accident" in the majority of jurisdictions would have covered the plaintiff's injury in this case. Nor does the defendant dispute that the overly restrictive and artificial definition of accident applied by the industrial commission is contra to the main goal of the workmen's compensation law, which is to provide workers who are injured on the job quick and easy access to benefits. Finally,

the defendant does not dispute that this injury was unexpected and occurred on the job.

Instead, the defendant argues that this case is controlled by Sabo's Electric Service v. Sabo, 642 P.2d 722 (Utah 1982) and that in order for this court to reverse the Industrial Commission's decision, it must find that decision to be "wholly without cause." The plaintiff responds to these arguments as follows.

ARGUMENT

POINT I THIS COURT'S REVIEW OF THE INDUSTRIAL COMMISSION DECISION IS PLENARY IN THIS CASE.

In its response to the plaintiff's appeal, the defendant states that, in order to reverse the Industrial Commission's decision in this case, this court must find that decision to be "wholly without cause." This misstates the standard of review applicable to this appeal.

The industrial commission found that the plaintiff's injury occurred during the normal course of her on-the-job duties. The plaintiff does not take issue with this finding of fact. Rather, the plaintiff challenges the interpretation of the workman's compensation law specifically Section 35-1-45, Utah Code Annotated. The Industrial Commission ruled that an injury occurring in the normal course of one's work task cannot be an accident for the purposes of the workmen's compensation law. The

plaintiff urges this court to reject this view of the law and substitute in its stead a rule which holds that an injury may qualify as an accident if it occurrs during the normal course of one's work duties, so long as the injury itself is unexpected and unintentional and so long as a causal connection exists between the injury and the work task. Because this appeal involves solely a question of law, this court must exercise de novo review of the Industrial Commission's decision. Antillon v. Department of Employment Security, 688 P.2d 455 (Utah 1984).

POINT II THE HOLDING IN SABO REQUIRES CLARIFICATION

The defendant also argues that this case is directly controlled by Sabo's Electric Service v. Sabo, 642 P.2d 722 (Utah 1982). The defendant states that Sabo stands for the proposition that an injury occurring during the normal course of one's work is not an accident for the purposes of the workman's compensation law. However, the plaintiff believes that Sabo does not stand for this rule at all and that the court should at this time clarify the Sabo holding.

In order to understand and resolve the issue involved here, it is necessary to look first to Section 35-1-45 of the workmen's compensation statute. That section states, in pertinent part:

> Every employee . . . who is injured . . . by accident arising out of or in the course of his employment . . . shall be paid compensation.

U.C.A. § 35-1-45 (Supp. 1985).

From its terms, this section states a two part test for determining whether a compensable accident has occurred. The first part of the test calls for a finding of an "accident." The second part requires that the "accident", arise out of or in the course of employment. Note that under the statute, an "accident" is not the same thing as a "compensable accident." Rather, "accident" is one element of a "compensable accident."

The confusion in this case then, stems from the following passage contained in Sabo.

> Accident has been broadly defined as "an unanticipated, unintended occurrence different from what would normally be expected to occur in the usual course of events." The accident must result in an injury which is causally related to the work being done.

Id. at 725. (Quoting Carling v. Industrial Commission, 16 Utah 2d 260, 399 P.2d 202 (1965)). The defendant, and apparently the Industrial Commission, interpret this passage to mean that interjected into the definition of the word "accident" is a causal element which requires that injuries occurring during "usual and normal [work] activities" must be denied coverage on the ground that such injuries as a matter of law were fortuitous, or in other words, could not have been caused by work.

However, the plaintiff believes that the quoted passage really states the two part test for compensable accident set forth in Section 35-1-45 of the workmen's compensation statute. The first sentence of the passage from Sabo states the test for deter-

mining whether an "accident" has occurred. As that sentence states, the test for "accident has been broadly defined" [Emphasis added] and covers any "unintended occurrence different from what would normally be expected to occur . . ." Id. This test weeds out intentional, self-inflicted injuries. The second sentence of the passage states the second part of the test. That is, for an accident to qualify as a "compensable accident", it must be causally related to the work done. In other words, accident plus causation equals "compensible accident."

The plaintiff believes its interpretation of Sabo is the proper one. The defendant's reading of the case results in a two part test in which both parts require a finding of causation. This interpretation results in a test for compensable accident contrary to the plain meaning of the workmen's compensation statute. The proper interpretation is that there first be a determination of accident, independent of the issue of causation and that then, a factual determination be made on the issue of causation. As a consequence, while it may be relevant in deciding whether the causation test is met and a "compensable accident" has occurred, the fact that an injury occurs in the normal course of "usual and normal activities" should never be an issue in deciding (as the industrial commission did in this case) the threshold question of whether the injury qualifies as an "accident."

CONCLUSION

The plaintiff therefore respectfully requests that this court reverse the Industrial Commissions decision on the grounds that any unintentional, unexpected injury that occurs in the course of one's employment qualifies as an "accident", and that the plaintiff's case be remanded to the Industrial Commission for further determination concerning causation for the purpose of determining whether the plaintiff's injury qualifies as a compensable accident.

DATED this 20th day of June, 1986.

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CERTIFICATE OF SERVICE

This is to certify that on the 20th day of June, 1986, 4 true and correct copies of the foregoing Reply Brief of Appellant G. Carmen Herrera was mailed to:

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