

1941

# Royal Canning Corporation and Continental Casualty Company v. Industrial Commission of Utah and Dorothy Marie Hughes : Brief of Defendants

Utah Supreme Court

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A. H. Hougaard; E. LeRoy Shields; LeGrande L. Belnap; Grover A. Giles; Attorney General for the State of Utah; Attorneys for Defendants.

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# In the Supreme Court of the State of Utah

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ROYAL CANNING CORPORATION, a  
corporation, and CONTINENTAL  
CASUALTY COMPANY, a corpora-  
tion,

*Plaintiffs,*

vs.

INDUSTRIAL COMMISSION OF UTAH  
and DOROTHY MARIE HUGHES,

*Defendants.*

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## DEFENDANTS' BRIEF

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**FILED**

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Case No. 6383

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## DEFENDANTS' BRIEF

---

This is an action to review the findings and decision of the Industrial Commission of the State of Utah from an award of compensation to Dorothy Marie Hughes against the plaintiffs herein.

The action arose out of an injury sustained by the said Dorothy Marie Hughes while employed by the Royal Canning Corporation in Ogden, Utah, on the 8th day of July, 1940. The applicant was engaged in sorting cherries for the canning company, which were fed from a chute on to a belt which was operated from a steel shaft

run by electric motors. The evidence shows that at times the cherries would stick in the chutes and in order to continue the operation, it was necessary for the applicant to loosen the cherries in the chute so that the same would come down on to the belt. While reaching up to the chute to loosen the cherries, which had become stuck, the applicant's dress came in contact with the steel shaft, which operated the belt, and in some manner adhered to the same and commenced to wind her dress around the shaft. The applicant grabbed her dress in an attempt to pull the same loose from the shaft and in so doing, her hands were caught by said shaft, and as a result thereof she became injured, the injury consisting of the breaking of her left arm above the wrist, and a pulling of the right thumb from her hand, injuring the hand between the thumb and the wrist. The evidence further shows that at the time of the injury, the machinery was unguarded; that the guards had been removed therefrom for the purpose of repairs.

At the time of her employment which occurred on July 3, 1940, she was under the age of 18 years, i.e., of the age of 16 years; that the Royal Canning Corporation, her employer, had not obtained a permit for her to work as required by the statutes, although it knew that she was under 18 years of age. At the time of the injury the applicant was working seven days a week, ten hours per day at 30c per hour.

Several hearings were held before the Industrial Commission of Utah with respect to this matter after

which the Commission made its award, awarding to the applicant \$8.31 per week for the period of temporary, total disability and \$16.00 per week for a period of 112½ weeks for total, permanent disability. The Commission further awarded double indemnity on the amount so found due, as prescribed by the statute, by reason of the fact that it found that the applicant was by the plaintiff, Royal Canning Corporation, illegally employed.

Apparently then, the only questions to be determined in this case are (1) was the award so made by the Industrial Commission based upon substantial competent evidence, and (2) whether the application of the law with respect to illegal employment in awarding double compensation was proper and within the jurisdiction of the Commission.

## ARGUMENT

With respect to proposition number (1) we desire to call the court's attention to the ruling of this court with respect to findings of the Industrial Commission wherein it has been decided so often and so many times that any finding made by the Commission, which is supported by any substantial, competent evidence becomes conclusive and will not be reviewed by this court. A long list of cases have been decided which supports the proposition, a few of which are as follows:

*Murray City v. Industrial Commission,*  
55 Utah 44;

*Reteuna v. Industrial Commission,*  
55 Utah 258;

*Amalgamated Sugar Company v. Industrial  
Commission,* 56 Utah 80;

*George A. Lowe v. Industrial Commission,*  
56 Utah 519,

and innumerable other cases.

The question then arises as to whether or not there was substantial, competent evidence to support the finding and order of the Commission in the award.

The Commission awarded the sum of \$8.31 per week for the period of the temporary total disability ending August 25, 1940. With this award the plaintiff brings no complaint. We are unable to determine, however, and the finding and order does not reveal the method employed by the Commission in reaching this amount. The law provides that this award shall be made on the basis of 60% of the weekly wage, which was being paid to the employee at the time of the injury.

Shortly after the injury and on July 20th, 1940 the plaintiff, Royal Canning Corporation filed its report of the injury with the Industrial Commission indicating that the applicant was working seven days a week and was receiving 30¢ per hour, and the schedule filed by the plaintiffs, Royal Canning Corporation, Exhibit "4", indicates that on July 7th and 8th the applicant worked ten hours each day and the testimony on page 5 of the transcript of the first hearing No. 12, shows that the applicant was working ten hours per day. This is also

borne out by the testimony of Mr. Stringham, the manager of the canning corporation, on pages 7, 8, and 9, of the transcript marked No. 30.

It appears from this report and testimony that the basis of employment was ten hours per day, seven days per week, at 30¢ per hour and such was only modified by the fact that there were not sufficient cherries to continue the full ten hours, but the evidence certainly shows that if there was sufficient fruit on hand, the employment would be ten hours a day, seven days a week and this most certainly was and must be construed as the basis of employment. The amount paid for such services would then be \$21.00 per week; 60% of \$21.00 would amount to \$12.60. We think that the circumstances in this case justify such conclusion and in support of the same we desire to call the court's attention to the law as recited in 71 Corp. Juris at page 796, Section 520, as follows:

“Where there is no weekly rate of wages, but the payment is by the hour while employed, the weekly rate may be estimated on the basis of the number of hours in the regular working week.”

In support of this quotation there is cited the case of *Smolenski v. Eastern Coal Dock Company*, 93 Atl. page 85, which holds as follows:

“We think that in an employment and a community where the regulation work-week was six days at ten hours each and the workmen was paid 25¢ an hour, the natural conclusion of law, if they



tried to reduce the hourly rate to a weekly rate, would be that the weekly rate was \$15.00. The truth is there is no weekly rate, but we are forced by the statute to fix one in order to determine the compensation to which the workman or his dependents are entitled. Under this compulsion, we can think of no better method."

In the case of *Rakie v. Jefferson Coal and Iron Company*, a Pennsylvania case at 105 Atl. 638, the court holds that in cases of this character and in calculations of weekly earnings, the days in which the mines were closed and when deceased's idleness during such period was through no fault of his own, were properly deducted. In other words, the plaintiffs attempt to make such application as would justify a full week's earning of \$12.90 in this case cannot be upheld. The method of computation apparently being that the weekly wage is based upon the amount received for the actual time employed during the week. In other words, if a person works only one day in a week, his wages will be computed on a weekly basis as of seven times of his earnings during that day. Or if he worked  $3\frac{1}{2}$  days out of the week, his weekly earnings would be computed by twice the amount he earned during the  $3\frac{1}{2}$  days which he worked, and this is in accordance with our theory that the applicant was employed seven days a week, ten hours a day, at 30¢ per hour; or was on a weekly basis of \$21.00. Also the case of *Accord County Coal Company of Alabama v. Bush*, 109 Southern 151, advances the doctrine that the employee shall not lose because of enforced idleness, and then the court makes the following comment:

“In such a case as here presented, much must be left to the sound judgment and judicial discretion of the trial court, and we cannot here hold, as a matter of law, that the conclusion reached was wrong in this respect.”

This rule is also borne out in the case of *Jensen v. Atlantic Refining Company*, a Pennsylvania case, at 105 Atl. 545.

We therefore submit that we are justified in the conclusion that the applicant was employed upon the basis of ten hours per day, seven days per week, at 30¢ per hour.

We repeat, therefore, that we are not apprised of the method of computation used by the Commission in arriving at the \$8.31 per week.

The Commission after awarding temporary total disability made an award of permanent partial disability, fixing that award at the rate of \$16.00 per week. This the plaintiff complains of.

We agree that if the total amount of earnings at the time of injury is the basis of determining the amount of compensation payable, then the amount should have been fixed at 60% of \$21.00 per week, or \$12.60. However, as we understand the law with respect to this matter, as set out in Section 42-1-71, the Revised Statutes of Utah, 1933, the Commission may take into consideration the likelihood of an increase in weekly earnings in determining the average weekly wage of the employee for

compensation purposes. We quote from the statutes which is as follows:

“If it is established that the injured employee was of such age and experience when injured; that under natural conditions his wages would be expected to increase, that fact may be considered in arriving at his average weekly wage.”

The meaning of this Section of course is that the Commission may take into consideration the likelihood of the increase of wages in determining the average weekly wage of the employee. No doubt the Commission based its finding upon the evidence found in the transcript marked No. 30 as taken from the hearing at Ogden, Utah, on March 18, 1941, and referring to Mr. Stringham, the manager's testimony. In the perusal of his testimony as found on pages 9, 15, 16, 17, 18, and 20 it will at once indicate to the ordinary mind that the applicant was apt in her work and was taking care of it in good order, and that based upon the experience had with girls in that kind of employment she could have earned as high as \$32.00 per week. Of course this would be on the working with apricots as indicated by the testimony which showed that certain ones in the employ were making as high as \$32.00 per week. But the records further show that the girls were switched from one to the other in their employment and were not required to and did not work constantly on any particular kind of fruit. The Commission did not find from this evidence Dorothy Hughes wages would increase until she was earning \$32.00 per week but that it would in-

crease until she was earning \$26.66 per week which would entitle her to the maximum of compensation in the sum of \$16.00 per week.

We submit that this finding is based upon substantial and competent evidence and under the cases heretofore referred to, will not be reviewed by this court but are conclusive upon the parties. It seems to be futile to refer to law cases with respect to this matter, as the same must be determined on the question of whether there is substantial, competent evidence in the record to show that the earnings of the applicant would in the ordinary course of business be increased to a point where she would be earning sufficient to justify an award of \$16.00 per week. It is not a question of law, but a question of fact.

We submit therefore, that there is substantial, competent evidence to justify the Commission in making its finding.

However, if it is determined that such finding is not justified by substantial, competent evidence, we most earnestly submit that there is competent evidence to the effect that at the time of the injury, the applicant was earning an average weekly wage of \$21.00 upon which the permanent award should be based in any event.

The next question we desire to discuss is whether or not the finding of the Commission to the effect that the applicant suffered a total, permanent disability, to the extent of 75% of her right hand at the wrist is based

upon substantial, competent evidence. The plaintiffs in their brief, argue extensively and cite a number of cases to the effect that the Commission erred in such finding for the reason that, as they argue, there was no injury suffered by the applicant except the loss of her right thumb at the proximal joint, and that in as much as the statute prescribes a specific award for such injury, the Commission was without jurisdiction, to go beyond such amount in making the award.

The statute, however, provides, Section 42-1-62 of a 1933 Statute, as quoted on page 13 of plaintiffs' brief, as follows:

“For any other disfigurement or the loss of bodily function not otherwise provided for herein, such period of compensation as the commission shall deem equitable and in proportion to compensation in other cases, not exceeding two hundred weeks.”

The statute provides that for the loss of a hand at the wrist, there shall be paid compensation for a period of one hundred fifty weeks.

This above provision, Section 42-1-62 of the statute, certainly is not meaningless, and has application to such conditions as may arise through an injury which is not covered by the specific statute.

Let us take for illustration a situation wherein a man's hand is caught, we'll say in moving machinery, and is caught in such a manner that it is destroyed at the wrist; that at the time of the injury, his arm was twisted

in the shoulder, and injured or destroyed the nerves leading to the arm to the extent that the arm became helpless and was of no use in the performance of work thereafter. The arm is still there and has not been amputated at or near the shoulder, but is a useless member. Under the reasoning of the plaintiff, the injured employee would be limited to recovery for loss of the hand at the wrist only and could make no claim for compensation for the injury to the rest of the arm because the arm was still there. Most certainly such would not be the case and just such situation is intended to be covered by the portion of the statute, above quoted, and we submit is the identical situation which is prevalent in the case at bar, and that the same is fully supported by substantial, competent evidence.

We desire to call the court's attention to the evidence adduced at the hearing on January 29, 1940, recorded in transcript 25. Dr. N. Frederick Hicken, after an examination of the applicant and on page 4 of the said transcript, testified with respect to the injury, as follows:

“There is a large amount of scar tissue, thickening and induration of the skin of the tendons underlying the old incision from amputation that is apparently interfering with the function of the metacarpal bones. \* \* \* Due to the scar tissue involving the metacarpal bones, to which the first digit is attached it apparently interferes with the function of those bones, so that one cannot say that the disability is limited to the proximal phalangeal metacarpal joint, but rather extends above that joint involving the wrist. I therefore place the disability at between

70 and 75% of the right hand at the wrist as was done on our previous examination. This does not include the cosmetic appearance nor does it take into consideration that the right hand has been injured rather than the left. If these conditions were considered the disability rating should be much higher. Nor is this disability rating predicated on any interpretation of the rules or regulations of the Commission but is entirely based upon the limitation of functional ability.”

Then again when upon cross-examination, the doctor was asked if the injury was not limited to the loss of the thumb and to his answer “no”, the question was put:

“Q. What else is there?

A. There is scar tissue involving the metacarpal bone which interferes. She has no abduction of the metacarpal bone on the thumb of her hand, that she would have if she had the joint because it interferes with the attachment of the tendons which go out to the joints of the first digit of the hand. The loss is more up here.”

Another question was asked:

“Q. That also limits the function of the wrist?

A. It does not interfere with the pronation of supination or flexion of the wrist, but it interferes with the function of the wrist joint, in that you must have free abduction and the rotary type of function of the phalanges on the thumb to get a good grasp of the hand.

Q. You stated that you didn't consider the loss of the right hand, because this injury is to

the right hand. Do you still believe it is between 70 and 75%?

A. Of the right hand at the wrist." (Transcript number 25, pages 4, 5, 6, 7, and 8.)

Without quoting further, we solicit the court's attention to the entire testimony of Dr. Hicken.

Dr. E. J. Capener was then called as a witness and he also had made an examination of the applicant, and answered this question:

"Q. You reviewed the case and examined the applicant and saw the X-rays?

A. Yes, I believe my statement is very similar to what has already been said.

Q. You agree with the conclusions of Dr. Hicken that you have just heard made?

A. Yes.

Q. Would your testimony on cross examination be the same as his?

A. Practically, I believe."

It is true that Dr. Kirby and Dr. Lindem did not testify as to the loss and function of the hand at the wrist; rather their testimony indicates that there was no such disability. However, as we understand the rule, it is for the Commission to determine whose testimony they will accept as to the disability. The question so far as we can determine is not a question of disputed testimony, but whether or not there is substantial, competent testimony to support the finding of the Commis-



sion. We most earnestly submit that the testimony of Dr. Hicken and Dr. Capener, if believed by the Commission was sufficient substantial, competent testimony, upon which to base the finding that the applicant had a 75% disability of her hand at the wrist.

If that be true and there is for the entire loss of a hand an award of compensation for 150 weeks, by common computation a 75% loss would entitle the applicant to an award of  $112\frac{1}{2}$  weeks or 75% of the total award for such loss.

In the case of *Vukelich v. Industrial Commission of Utah*, 62 Utah 486, as quoted by counsel for plaintiff on page 24 of his brief, there was a dispute in that case of the testimony of the doctors with respect to disability. Two doctors testified that the disability was  $33\frac{1}{3}\%$ , while one doctor testified the disability was 20%. The Commission found the disability to be  $33\frac{1}{3}\%$  and this court upheld that finding and we think properly so. The court then in the above case on page 491, in construing the statute which was heretofore referred to, had this to say:

“In addition to injuries by the loss of particular physical members, the statute places in the same class ‘any other disfigurement, or the loss of bodily function not otherwise provided for.’ These words are not meaningless. We think they evince a purpose to include such other injuries as are similar to the loss of physical members, in the respect that they are fixed and permanent, and their consequences and degree of disability can be presently ascertained.

“Accordingly we conclude that the evidence was sufficient to support the findings of the Commission that the plaintiff’s injury was a loss of bodily function, within the meaning of the statute, and that the Commission acted within its legal power when it computed and awarded the compensation according to the rule in such case provided.”

Again in the case of *North Beck Mining Co. v. Industrial Commission of Utah*, 58 Utah 486, cited by counsel in his brief on page 21, this court again discusses the meaning of the statute heretofore quoted with reference to another disfigurement or loss of bodily function, as follows:

“It seems plain and clear to us that this amendment was adopted for the express purpose of providing fair and adequate compensation in cases like the one before us. The majority of the Commission in making the award based it on the idea that where several fingers are lost it is the loss of a ‘bodily function not otherwise provided for’ in the schedule, and that, therefore, the compensation must be awarded in proportion to the loss of use, to be ascertained by evidence, which the loss bears to the total loss of the hand. Commenting upon the position taken by the Commission, counsel for plaintiffs say it is difficult to see how they arrive at a 50% loss of his hand on this basis, because the only evidence in the record shows that the loss should be ‘around 30 or 40 per cent.’ That was the effect of the testimony of a physician at the hearing before the Commission. A majority of the Commission disregarded the testimony of the physician, evidently believing that they knew as much as he about the degree of efficiency lost by the amputation of the

fingers of a hand. Besides, when the physician's testimony was objected to by counsel for Erickson, it was stipulated by the parties that if the Commission deemed it a matter for expert testimony the Commission might make such inquiry from reputable physicians as it deemed advisable. At the hearing it was the contention of Erickson's counsel that it was a matter of which the Commission and courts would take judicial notice, and that any intelligent person conversant with the needs of a working man in his particular trade could determine the damage resulting from the loss of a finger as well as a medical man. Some medical men's judgment would be sound, not particularly because of their medical training, but by reason of their general common sense. The testimony of other medical experts would be entirely worthless, because of eccentricities of the particular physician. At any rate, the physician would know no more about such matters than any other intelligent man, and no more than the members of the Commission. The Commission determined that Erickson's loss of efficiency of his right hand was 50 per cent. Erickson is a miner, and was working as a miner at the time of the accident. What can he now earn as a miner? Counsel for plaintiffs argue that with three fingers amputated one can, with the thumb and little finger alone, do many things; that one can grasp objects such as shovels and tools and use them efficiently. That all depends upon what is regarded as efficient use. We do not think that a carpenter with three fingers of his right hand amputated could possibly be 50 per cent efficient at his trade, even if he could grasp tools with the thumb and little finger. A miner handling pick and shovel or a drill hammer eight hours per day, using only the thumb and little finger of his right hand, would, it appears to us, have the greatest difficulty in doing 50 per cent of the work he could do before the loss

of the fingers. Doubtless one can, as suggested by counsel, button his own clothes and tie a necktie with only the thumb and little finger. In fact many men could easily dispense with the use of three fingers and tie a four-in-hand with neatness and dispatch, but tying neckties is not of great importance in a miner's life and work. The thing of importance here is whether the miner could still earn a miner's wages as a miner, or at anything else that a miner can do, and that question we unhesitatingly answer in the negative. We are impressed, from what is common knowledge of which courts take judicial notice, that the appellant's loss of the usability of his hand in his vocation as a miner exceeds the 50 per cent loss of efficiency found by the Commission, and that if the Commission made any mistake it was not in finding the percentage of loss of claimant's right hand to be in excess of 50 per cent. As to the percentage of loss of efficiency, we are, however, not concerned. That is a question of fact wholly within the province of the Commission for decision. If it adopted the proper method of estimating compensation, as we think it did, the question of the amount of the loss of efficiency is wholly one of fact that is not reviewable here."

We submit therefore that there is substantial, competent evidence in the record sufficient to base the finding of the Commission that there was a 75% loss of the applicant's hand at the wrist. Again we suggest that this is a question of fact to be determined by the Commission from the evidence and not a question of law, and that there being substantial, competent evidence upon which the Commission could base such finding, that the same is conclusive and will not be reviewed by this court.

We next desire to discuss the proposition of whether the application of the law with respect to illegal employment in awarding double compensation was proper and within the jurisdiction of the Commission.

There is no dispute that the applicant was under the age required by law when she was employed by the plaintiff, Royal Canning Corporation, and there likewise is no dispute that she did not have a permit to work as required by the statute.

The only question that plaintiffs' raise with respect to this matter is that some person whom they say had some connection with the Industrial Commission requested the employment, and that the plaintiff was attempting to cooperate with that person and by reason of such cooperation, the plaintiff failed to obtain the permit required by law. There was some claim by the plaintiffs that the duty was upon the applicant to obtain the permit. Now with respect to the connection of the person with the Industrial Commission through which the plaintiff attempted to charge the Commission with sending the applicant to work; we call the court's attention to the transcript number 12 on pages 26 and 27, the following questions were propounded to Mr. Stringham, by Mr. Jones:

“Q. Which would be sent to you by the Industrial Commission and you would employ them?

A. Yes.

Mr. Shields: Wait a minute.

Commissioner Judgler: Not the Industrial Commission, you don't mean that.

A. The employment office under the direction of the Industrial Commission.

Mr. Shields: I object to that because that is a conclusion.

By Mr. Jones:

Q. Who had direction of that? Was there some lady who used to come over from Salt Lake to work with you in this placement bureau?

A. I imagine that was worked with the placement bureau.

Q. What was her name?

A. Lottie Shupe.

Com. Judgler: Mrs. Shupe is director of the Women's Division of the Industrial Commission and has nothing to do with the employment division.

Mr. Jones: You know what her position is?

Com. Judgler: She has no connection with the unemployment division."

Counsel in his brief then cited some criminal cases which go to the question of inducement wherein the court holds that, where defendant is lured by an officer into commission of an act, there should not be a conviction. We fail to see any connection between these cases, and the case at bar.

We call the court's attention to the fact that an award is made to the applicant here under the provisions of the statute and just how her rights can be jeopardized or set aside by any act of the Commission, assuming that the Commission was in any way responsible for the

failure of the employer to obtain the permit is just a little difficult to understand.

We feel that this matter being statutory, the statutes should be strictly construed and applied. Let us see what the legislature says with respect to this matter. We call the court's attention to Section 14-6-3 of Chapter 11 in the Laws of Utah, 1933, which reads as follows:

“No minor under eighteen years of age shall be employed, permitted, or suffered to work in any place of employment, dangerous or prejudicial to the life, health, safety or welfare of such minor. \* \* \* No minor under eighteen years of age shall be employed, permitted or suffered to work in oiling, cleaning, or wiping machinery in motion, in applying belts to a pulley in motion or assisting therein, or in proximity to any unguarded belt or gearing.”

We desire to call the court's attention again to the report made by the plaintiff, Royal Canning Corporation in reporting this accident. Under question number 21 on the report, we find the following, “Was the machinery or part guarded?” “Yes”. “Was guard properly attached at the time of injury?” No answer. “If not, who removed it?” “A. Removed for repair.”

Mr. Stringham testified, transcript 12 at page 46, as follows:

“Q. Mr. Stringham at the place where she was injured is where the guard was missing?

A. Yes, sir.”

Again the testimony of Ruth Douglas, transcript number 12, page 40:



“Q. On the other side where she went the guard was out where the machinery had been broken?

A. Yes.”

It then is not a question of whether or not the plaintiffs actually placed her to work on the side of the belt, where the machinery was unguarded, but if she was permitted to work by the employer in proximity to an unguarded belt or gearing, the employer comes within the provisions of the statute, above quoted.

Now with respect to the permit and upon whom rests the duty with respect to obtaining the permit, we desire to call the court's attention to Section 14-6-5 of Chap. 11 of the Session Laws of Utah, 1933, which is as follows:

“No minor under eighteen years of age shall be employed, permitted, or suffered to work in, about, or in connection with any occupation, unless his employer has procured before the employment of said minor an employment certificate issued as hereinafter prescribed, except that such minors may be employed without such a certificate outside of school hours, in housework, agricultural work and in casual work usual to the home of the employer; *provided*, that such employment shall not be in connection with nor form a part of the business, trade, profession or occupation of the employer.”

Section 14-6-6 designates who shall issue such permits and Section 14-6-8 prescribes the method of obtaining such permit.

We are unable to determine how the language could be more specific in prescribing a duty upon an employer



to refuse to employ or permit the employment of a minor in a business, such as the plaintiffs in this case operates, without that permit which the statute positively says must be procured by such employer.

We see in the Section no exceptions and no place to inject excuses. It simply calls upon the employer to procure the permit and until he does so, not to permit such employee to work. The law is very specific.

We submit, therefore, that the applicant in this case was illegally employed for two reasons, (1), that she was permitted or suffered to work around unguarded machinery and (2), she was also permitted and suffered to work in the business of the plaintiff without the plaintiff having procured the permit required by the law, and the plaintiff was not mistaken by the situation. He was advised when the applicant filled out her application, which is in the record as applicant's "Exhibit A". Under the question "age", is found, 16. At that time the plaintiff was put on notice as to the age of the applicant.

With respect to the procedure in cases of illegal employment, we call the court's attention to Section 14-6-27, of Chapter 11 of the Session Laws of Utah, 1933, which reads as follows:

"In the event of accidental injury to a minor who is found upon investigation to be illegally employed by an employer subject to the provisions of the compensation law, said minor shall not be debarred from receiving compensation, but shall be entitled to double the compensation to which

he would be entitled if legally employed; *provided*, that the insurance carrier shall be liable for all reasonable medical and hospital expenses incurred in healing the injury, plus one-half of the compensation to be paid, and the employer shall be liable for the additional one-half of said compensation as a penalty for the illegal employment of said minor.”

This Section of the statute is not meaningless, and as we view it, it was the intent of the legislature in such cases, as the case at bar, that not only should the Commission apply the statute, but the injured employee, as a matter of right, is entitled to have the statute applied on her behalf.

We do not believe the Commission erred in applying this Section of the statute, in granting double compensation in this case.

For the reasons herein stated, we respectfully submit that the findings and order of the Commission in this case should be sustained and judgment by this court should be so entered.

Respectfully submitted,

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