1978

Blair Sorenson v. the Industrial Commission of Utah and Jeffery Lynn Nelson : Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT OF THE

STATE OF UTAH

BLAIR SORENSON,	:	
Appellant,	:	
vs.	:	Case No. 15916
THE INDUSTRIAL COMMISSION OF UTAH and JEFFERY LYNN NELSON,	:	
Respondents.	:	

BRIEF OF APPELLANT

NATURE OF THE CASE

Respondent Nelson sought benefits under the Workmen's Compensation Act for injuries which he alleges he suffered while performing certain projects for appellant.

DISPOSITION BY THE INDUSTRIAL COMMISSION

The evidence was heard by Kenneth Rigtrup, Administrative Law Judge, on March 15, 1976. The Order of the Industrial Commission was signed by Joseph C. Foley, Administrative Law Judge, on April 14, 1978 in which respondent Nelson was awarded compensation pursuant to the Workmen's Compensation Act. The Commission denied appellant's Motion For Review on June 19, 1978.

RELIEF SOUGHT ON APPEAL

The appellant asks the court to reverse the order of the Industrial Commission or to remand the cause for a full hearing and determination by a single Administrative Law Judge

STATEMENT OF FACTS

Appellant Blair Sorenson was, at all times pertinent to this case (February 1975 - August 1975), a full-time electri at Hill Air Force Base (R. 99). In addition, Mr. Sorenson owned as investments ten pieces of real estate on which apartments or houses were situated (R. 126).

Respondent Jeffery L. Nelson was, at all times pertinent to this case, either a full-time student (R. 66), a full-time employee of various construction companies (R. 76, 77, 78), or unemployed (R. 77, 78). In addition, Nelson completed five projects for appellant at various investment properties owned by appellant.

In February, 1975 Sorenson met Nelson in a class they were taking together at the University of Utah (R. 71). At that time, Nelson was a full-time student looking for part-time work as a carpenter (R. 71). Sorenson, upon discovering that Nelson was a carpenter, asked Nelson if he would like to give him a bid on a fire-burned floor in one of Sorenson's apartments (R. 103, 104). Nelson stated that he would do the work for $4.00 per hour, but Sorenson let the work out to an

independent contractor (R. 103). The cost of the work was covered by an insurance policy Sorenson had on his apartment building (R. 103, 104).

On February 22, 1975 Nelson and Sorenson painted an apartment that Sorenson owned (540 East Seventh South) and Sorenson paid Nelson with a check for $18.00 (R. 34, 73, 107, 130). The painting, which took approximately five hours, was the first of the five jobs that Nelson was to complete (R. 34). The second project was in March, 1975 when Nelson helped Sorenson put a bathtub in an apartment (540 East Seventh South). That project took approximately one hour and Sorenson paid Nelson with a check for $5.00 (R. 38, 115).

In April, 1975 Nelson moved into one of Sorenson's apartments (R. 30). After this point in time, all work done by Nelson was credited to an outstanding debt he owed Sorenson for rent. Sorenson was, in all instances after April, 1975, simply allowing Nelson to work off rent due by arranging projects for Nelson to complete (R. 107, 129).

On June 7, 1975, Nelson, using his own tools, worked four to five hours installing new sheetrock and soundboard at a Sorenson-owned apartment located at 1125 Princeton (R. 43, 44, 74, 106, 107, 256). Sorenson had met Nelson on the previous day at the Princeton location and Sorenson showed Nelson what work needed to be done (R.43). Nelson, having the necessary skills and equipment, completed the project by himself without any direction from Sorenson (R. 75, 256).

Nelson finished the Spring quarter at the University of Utah on June 10, 1975 and went to work for Bishop's Castles as a carpenter (R. 76). Nelson was employed there until July 7, 1975 (R. 76). Around July 4, 1975, Nelson helped Sorenson install a new kitchen cabinet in Sorenson's 1144 East Fifth South apartments (R. 78). The project was completed over several days with the work being done on a part-time basis (R. 46).

From July 7, 1975 to August 1, 1975, Nelson was unemployed (R. 77, 78). At the end of July, 1975 Nelson completed the fifth project that Sorenson had given him. Nelson and Sorenson painted one of the apartments in the structure located at 1144 East Fifth South (R. 47, 48). On August 1, 1975 Nelson went to work full-time with the Ron J. Stacey Construction Company, where he remained employed until August 15, 1975 (R. 51, 67). Nelson quit his job with Stacey believing that he would soon have another job as a carpenter with Kahley Construction Company (R. 86).

On August 27, 1975 Nelson undertook a project which Sorenson described to him the day before (R. 52, 122, 123). Sorenson told Nelson that the building at 1144 East Fifth South needed to be prepared for painting and that Nelson should scrape and wash the building (R. 88, 122, 123). Nelson, on August 27 and 29, proceeded to scrape and wash down the building in the manner and using the method which he chose. Nelson was not told by Sorenson how he was to complete the project or when he was

to work on it. Sorenson only instructed Nelson to complete the project (R. 49, 90, 122, 123).

On August 29, 1975 Nelson, while scrubbing down the apartment building, fell off the ladder he was using and suffered injuries to his right arm and leg, such injuries resulting in a claim filed with the Industrial Commission for workmen's compensation (R. 55).

Summarizing the circumstances surrounding the activities of Nelson and Sorenson, Nelson only worked for Sorenson on a part-time weekend basis (R. 86). Sorenson knew of Nelson's full-time jobs and the fact that Nelson was looking for full-time employment with construction companies during periods of unemployment (R. 91). Nelson was never told that there was any definite amount of work or projects available (R. 124, 144). Nelson stated that no definite time period was ever mentioned by Sorenson regarding how long projects would remain available to be worked on (R. 91). Nelson supplied his own tools when he was completing carpentry projects while Sorenson only supplied tools and materials for painting projects completed by Nelson (R. 256).

Sorenson worked full time for Hill Air Force Base during all times pertinent to the case (R. 99). In addition, Sorenson was attending the University of Utah as a full-time student (R. 124). Sorenson's 19 rental units on ten pieces of real estate are simply investments (R. 126). The minimum amount of upkeep required has been handled by Sorenson or

contracted out to independent contractors (R. 120, 132). (All references to "respondent" in Argument sections that follow are to Jeffery Nelson, unless otherwise noted.)

ARGUMENT

I.

THE ORDER OF THE INDUSTRIAL COMMISSION SHOULD BE REVERSED SINCE APPELLANT WAS NOT AN EMPLOYER AS DEFINED UNDER SECTION 35-1-42 OF THE WORKMENS COMPENSATION ACT

The Workmen's Compensation Code, Section 35-1-42, Utah Code Annotated (1953), expressly provides the following definition of an employer:

> "Every person, firm and private corporation, including every public utility, having in service one or more workmen or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, except agricultural laborers and domestic service; . . .
>
> "The term 'regularly' as herein used shall include all employment in the usual course of the trade, business, profession or occupation of the employer, whether continuous throughout the year or for only a portion of the year."

It is the contention of appellant that the ownership and maintenance of his rental units is an investment and not a business within the meaning of the aforementioned Workmen's Compensation Code. The Supreme Court of Utah, in Sommerville v. Industrial Comm'n, 113 Utah 504, 196 P.2d 718 (1948), reached a similar conclusion. In that case, plaintiff, the claimant under the Workmen's Compensation Act, was injured while working on a building owned by the defendant and leased to another for retail grocery business. The defendant hired the plaintiff, who performed certain work on the rental property and in the

course of such work was injured. The Court determined that the defendant, who earned her livelihood as a restaurant owner, was not engaged in the real estate or rental business as that term is used within the meaning of the Workmen's Compensation Act, and stated:

> "It is true that the property upon which plaintiff was working when he was injured was rental property from which presumably Mrs. Cook derived some income. But there is nothing in the record to indicate that she spent any substantial portion of her time in managing or operating this property, and it was not part of her trade or business within the meaning of the statute. It was a matter of investment. See Clausen v. Dinnebeil, 125 N.J.L. 223, 15 A.2d 205; Ostile v. H. F. Kirks & Son, 189 Minn. 34, 248 N.W. 283; Ford v. Industrial Acc. Comm., 53 Cal. App. 542, 200 P.667; Setter v. Wilson, 140 Kan. 447, 37 P.2d 50; and Annotation at 50 A.L.R. 1176.
>
> "This is not to say that one may not be engaged in two or more businesses, or a profession or trade and a business at the same time, and be responsible under the Workmen's Compensation Act in both or all fields of activity. Nor do we hold that the owning and operating of real estate for rental purposes may not, in some instances, be a business within the meaning of the Workmen's Compensation Act. Our holding is limited to the facts of this case, i.e., that where a person owns one piece of real estate which he 'rents out' to tenants, but does not either personally or by agent devote a substantial amount of time to the operation or management of such property, the owning and renting of such property does not constitute a business within the meaning of the Workmen's Compensation Act.
>
> "Therefore, Mrs. Cook was engaged in the coffee shop business, and the building upon which plaintiff was working at the time of

> his injury was wholly disconnected from and unrelated to that business. Since we have held that the owning and renting of this property did not constitute 'a trade, business or occupation', within the meaning of the Act, and since this property was in no wise connected with the coffee shop business, it follows that the services being rendered by palintiff at the time of this accident was not necessary to, in furtherance of or a part of plaintiff's usual trade, business, or occupation, and, hence under the rules and definitions previously laid down by this court, his employment (if he were an employee at all) would be only casual, and therefore he would not be entitled to compensation under the act." (196 P.2d at 721)

The case further dealt with the question of whether the plaintiff's relationship to the defendant was that of an employee or an independent contractor. The Court in this regard found the applicant to be an independent contractor since defendant did not attempt to control the work in any particular manner, but on the contrary, merely showed the plaintiff and another what work she wanted done and left it entirely up to plaintiff as to the method or manner of accomplishing the desired result. The defendant, however, did supply all of the tools and materials needed for the job and agreed to pay plaintiff on an hourly basis. The Court, notwithstanding these facts, held:

> "It is now well settled in this jurisdiction that the crucial factor in determining whether an applicant for workmen's compensation is an employee or an independent contractor is whether or not the person for whom the services were performed had the right to control the execution of the work. See the recent

case of Christean v. Industrial Comm'n., Utah, 196 P.2d 502, reviewing most of the Utah cases on this question." (196 P.2d at 720)

An authoritative case concerning the issue of whether the renting of apartments if deemed to be a business within Workmen's Compensation is Marsh v. Groner, 102 A.127 (Pa., 1917). The facts involved therein are relatively simple. The defendant was a married woman residing with her husband in a house owned by herself, and in the course of enlarging and remodeling this home engaged the plaintiff to do some plastering work about the premises, which would have required at most a couple of days to complete. The claimant had been engaged in work for only a short period of time when the scaffolding on which he was standing gave way and he fell to the ground, sustaining injuries. The Court stated:

> "It is an indispensable condition to his recovery under this act that the claimant show that he received his injury while engaged in the regular course of the business of his employer. Section 104 of the act reads:
>
> "'The term "employee" [sic], as used in this act, is declared to be synonymous with servant, and includes all natural persons who perform services for another for a valuable consideration, exclusive of persons whose employment is casual in character and not in the regular course of the business of the employer.'
>
> "We derive from this by necessary implication that only such employers are made liable under the act as are themselves engaged in regular business. This must be so if any effect whatever is to be given the exclusion clause . . . What gives rise to the question is the indefiniteness and want of precision of meaning of the word 'business' as it occurs in

> the act. It is a word which embraces a wide variety of subjects, and, being without a technical or precise meaning, excluding any other, it may convey an entirely different meaning in one connection from what it imports when used in another . . . It would be a very exceptional person--we do not know how to otherwise describe him--who would not understand that the reference is to the habitual or regular occupation that the party was engaged in with a view to winning a livelihood or some gain. These objects are necessarily implied when one's business is spoken of. Eliminate them, livelihood and gain, and it is no longer business, but amusement, which no one ever confounds with business . . ." (102 A.2d at 128).

Clearly, the overwhelming preponderance of evidence establishes that the appellant in the present case, while the owner of several apartment units, operated such property at a loss in excess of $4,000 for 1975. Appellant's livelihood and income was derived from his employment as an electronic technician at Hill Air Force Base. Therefore, it cannot be concluded that the renting of apartment units is any more than a passive investment when viewed in light of the surrounding circumstances establishing the limited amount of time spent by appellant in managing such units and the lack of income therefrom.

Numerous other states have determined that the mere owning of a building, maintaining it and keeping it in repair so that it may produce income is not sufficient to constitute a trade or business within the Workmen's Compensation Act. Setter v. Wilson, 140 Kan. 447, 37 P.2d 50 (1934), and Ford v. Industrial Comm'n, 53 Cal. App. 542, 200 P.667 (1921), wherein the Court

held that an owner who lets his house for profit and at irregular times when demanded has labor performed in the repair thereof is not engaged in the pursuit of a "trade" or "business" within the Workmen's Compensation Act. As the Court stated:

> " . . . [T]he petitioner herein had no business other than renting the building for profit. Upon the authority thereof we can but repeat that where an individual invests his money in a house or houses which as owner he lets for profit, and at irregular times when demanded has labor performed in the repair thereof, he is not engaged in the prosecution of a trade or business, within the meaning of the act and upon which a charge as compensation for injury sustained by an employee casually engaged in doing such work can be imposed." (200 P. 668)

The Supreme Court of Minnesota, in Billmayer v. Sanford, 225 N.W. 426, held that a woman owning rental property accommodating some eight or nine tenants was not engaged in business within the meaning of the Workmen's Compensation Act when the claimant, who was hired to perform certain work on such property, was injured. The Court specifically held that the owning and letting of these houses did not constitute a business. In addition, the Court determined that the plaintiff, who was engaged to perform certain work on the rental property on a daily basis for approximately three weeks, was engaged in "casual employment" within the meaning of the Workmen's Compensation Act. The Court stated:

> " . . . A thing is casual when it comes without regularity and is of comparatively minor importance. It is usually temporary and of short duration. Where the employment cannot be characterized as permanent or periodi-

> cally regular, but occurs by chance, or with the intention and understanding on the part of both employer and employee that it shall not be continuous, it is casual.
>
> "Relator did not need a regular employee. She had some odd jobs to be done. They were of unknown but short duration. She was not carrying on any business or occupation. The employment was necessarily understood by both parties as temporary. It could not be continuous. It was a mere incident. It was an occasional irregular employment. The very nature of the work leads to the conclusion that the employment was casual. The work was of a casual nature. Where one is not employed in a business, trade, occupation, or profession, the employee is not within the act unless his employment is stable." (225 N.W. at 427)

The uncontradicted facts of the instant case show that respondent in the past was employed on a casual basis and had no reasonable anticipation of working on any continuing basis for appellant. In fact, the job in question was never completed, and no additional work of any sustained nature was performed by appellant on his rental property for the balance of the year after respondent's accident on August 29, 1975. Moreover, respondent admitted that he was actively seeking full-time employment and had an application outstanding at the time for work with a general contractor in this area.

Other jurisdictions holding that the mere renting and repairing of rental units is not a business within the meaning of the Workmen's Compensation statute are as follows: Clausen v. Dinnebeil, 125 N.J.L. 223, 15 A.2d 205; People ex rel Voelkel v. Browne, 52 N.Y.S.2d 822, 268 App. Div. 596. See also in this

regard 50 A.L.R. 1176, Annotation, listing those cases holding that an owner of rental property is not engaged in a business.

The Utah Supreme Court, in Morgan v. Salt Lake City, 78 Utah 403, 3 P.2d 510 (1931), was faced with the situation of whether a statute authorizing a municipality to collect a license fee from a private corporation or business was applicable to a person maintaining a room open to the public where cards were being played. The Court, in determining that this was not a business within the meaning of the licensing statute, held that:

> "What ordinarily is meant by the term 'business'? It is a pursuit or occupation in which a person is engaged to procure a living. It is synonymous with calling, occupation, or trade, and is defined as any particular occupation or employment habitually engaged in for a livelihood or gain."

It is submitted that the issue of whether the renting of apartment units constitutes a business must be evaluated in light of the time spent by the apartment owner in managing the business and the income, if any, realized from such pursuit. In the event that a person is not engaged in the buying and selling of realty but rather in investing in land and real estate for income purposes, it is no more than a passive investment. This is buttressed by the fact that a relatively small portion of appellant's time is actually spent in the management of apartment units. In fact, appellant's full-time occupation requires approximately ten hours of his time and school requires 12 to 15 hours per week, leaving very little

time left for the management of another business.

When all of the facts and circumstances are viewed, it must be concluded that the renting of apartment units does not constitute a business within the meaning of the Workmen's Compensation Act.

II.

RESPONDENT WAS AN INDEPENDENT CONTRACTOR AS DEFINED UNDER THE WORKMEN'S COMPENSATION ACT

The uncontradicted facts establish that respondent, while engaged in work on August 27 and August 29, 1975, was performing work pursuant to an understanding that he would receive a $4 per hour credit on rent which he was obligated to pay appellant but that the time and manner in which the work was to be performed was not controlled by appellant. The Supreme Court of Utah, in numerous cases, has held that the test of an employment relationship is whether the employer retains supervision and control over the work to be performed. See Weber County-Ogden City Relief Committee v. Industrial Com 93 Utah 85, 71 P.2d 177 (1937); Overman v. Industrial Comm'n, 1 Utah 468, 136 P.2d 945 (1943); Auerbach Co. v. Industrial Comm 113 Utah 347, 195 P.2d 245 (1948).

The fact situation in the present case comes squarely within the ruling of the Sommerville case, supra. The respond retained control over when his working periods begun and ended notwithstanding the fact that the supplies and materials were made available by appellant. At no time during the day of

August 27 did appellant supervise or control the work performed by respondent, and when the work was continued on August 29, it was done on the same basis.

The clear understanding between the parties was that respondent would receive $4 per hour credit for work performed. The facts therefore conclusively establish that respondent was an independent contractor rather than an employee of appellant. This is further supported by the previous employment history of respondent which involved unsupervised work involving either his performance of carpentry work, in which he is an experienced journeyman, or in simple manual tasks, none of which required the direct supervision of appellant.

It is further submitted that the work performed by respondent in most cases was work performed in order to reduce a pre-existing debt, i.e., the payment of rent to appellant. In fact, with the exception of two checks--one for $18 and one for $5 paid in March of 1975--no money was paid by appellant to respondent for work performed. To hold that respondent was an employee of appellant would subject all property owners dealing in rental properties on an investment basis as employers, subject to the Workmen's Compensation Act, which was not contemplated by the legislators in the passage of such Act, and would be in clear contravention of the precise wording and intent of the statute and the law as enunciated in the Sommerville case, supra.

Moreover, respondent was not receiving direct compensation

for services rendered, as is generally the situation in an employer-employee relationship. See in this regard Todd School for Boys. v. Industrial Comm'n, 107 N.E.2d 745 (Ill. 1952).

In Oberhansly v. Travelers Ins. Co., 5 Utah 2d 15, 295 P.2d 1093 (1956), the Utah Supreme Court stated that under the Workmen's Compensation Act it is essential that in resolving an employee-employer relationship that some consideration be in fact paid or payable to an employee since the term employee indicates a person hired to work for wages as the employer may direct.

In the instant case, respondent was not to receive any direct compensation but rather a reduction in his rent, and it cannot be said that he was working for consideration within the meaning of the Workmen's Compensation Act.

III.

THE ORDER OF THE INDUSTRIAL COMMISSION SHOULD BE REVERSED SINCE APPELLANT WAS DENIED THE RIGHT TO HAVE A DECISION RENDERED BY THE ADMINISTRATIVE LAW JUDGE WHO HEARD THE EVIDENCE

The appellant submits that the Administrative Law Judge's Findings of Fact, enumerated 1, 3, 4, 5 and 6, which relate to factual determinations concerning the question of whether or not the respondent was or was not an independent contractor, are erroneous. The appellant, through testimony, established that the respondent was a journeyman carpenter and that while certain work was performed at the direction of the defendant, the manner and means by which the work was to be

performed was not controlled or directed by the appellant, and that on most occasions the respondent supplied his own tools and was not always paid on an hourly basis.

It is axiomatic in the common law that the single most important criterion to be employed in evaluating the question of whether a person is an employee or an independent contractor is whether or not the appellant attempts to control or direct the actual execution of the work being performed or, rather, is in effect purchasing the end result.

It is the appellant's position that the facts bearing on this issue were presented to the Administrative Law Judge, Kenneth Rigtrup, who did not issue the Findings of Fact in the instant decision because of his termination of service with the Industrial Commission. It is well established that as a matter of due process, the defendant is entitled to a decision by the Administrative Law Judge who has heard the conflicting testimony and can make appropriate credibility resolutions. In Crow v. Industrial Comm'n, 104 Utah 333, 140 P.2d 321 (1943), the Supreme Court reversed the decision of the Industrial Commission in a similar situation and stated:

> "This case, however, must be reversed for another reason. Commissioner Jugler, the only Commissioner who heard the evidence and saw the demeanor of the witnesses while testifying did not participate in the decision, and as far as the record discloses, he made no findings, either written or oral, which made his opinion of the evidence available to the Commission in making its decision. Where, as in this case, the evidence is not entirely documentary and

> there is sharp conflict in the evidence, the credibility, or lack thereof, of the witnesses is of paramount importance. Only a person who actually hears and sees a witness while testifying is in a position to determine the weight of credibility which be given to such testimony. The opinion of such person is a necessary factor in making any findings of fact. This situation is analogous to that of a judge who has tried a case, sitting without a jury, and whose office is either terminated or he resigns or dies before he has made the findings of fact and conclusions of law. As stated in Case v. Fox, et al, 138 Ore. 453, 7 P.2d 267, Pg. 268, ' . . . we can readily perceive that a successor to a trial judge who was removed by death before he had announced any findings of fact, or had in any other manner announced judgment upon the cause, could not render findings of fact . . . '"

For the reasons advanced above, appellant further objects to the findings set forth in paragraphs 10 and 11 of the Findings of Fact and Conclusions of Law. Simple justice requires that the Administrative Law Judge who heard the disputed testimony concerning appellant's disability should decide such issue. While the appellant did not object to the findings of the Medical Panel, it is also manifest that the Commission can consider testimony of the respondent that he engaged in certain sporting activities while allegedly totally disabled and respondent's doctor's statement to the effect that the respondent had no permanent disability. It is not clear from the decision if such information was considered by the Administrative Law Judge. Since the Administrative Law Judge was not present during the testimony of the respondent and the appellant, any finding concerning the extent of disability, either permanent or partial, is suspect

and should be reversed.

The appellant further submits that the rate of compensation set forth in the Order was established without the taking of testimony in the presence of appellant concerning the average weekly wage of the respondent who was only casually engaged in work.

IV.

RESPONDENT FAILED TO ESTABLISH THE NATURE AND EXTENT OF HIS INJURIES IN FRONT OF THE ADMINISTRATIVE LAW JUDGE MAKING THE FINAL DECISION

It is the position of the appellant that the respondent has not met his burden of proof and has failed to establish the nature and extent of his injuries through competent medical evidence nor the extent of any alleged permanent or partial disability. At the hearing there was no medical evidence presented, and furthermore, the facts establish that within two weeks after the cast was removed from respondent's right hand he went on a hunting trip. His testimony, however, is that he cannot engage in any gainful employment and bases this on no more than his subjective testimony that his wrist hurts when he engages in certain kinds of activity. It is appellant's position that the respondent should establish the nature and extent of his injury and any disability connected therewith in front of the Administrative Law Judge who will hear the conflicting testimony and make the appropriate Findings of Fact. Moreover, an opportunity to review such findings in front of the Administrative

Law Judge making the Findings of Fact should be afforded the appellant since the existence of a disability is, in the opinion of appellant, in dispute.

CONCLUSION

Appellant's investments in nineteen rental units do not constitute a business and, thus, appellant is not an employ under Section 35-1-42 of the Workmen's Compensation Act. To hold otherwise would subject the appellant and people similarly situated to requirements which would make the ownership of real property investments impractical. The Utah court, in the Sommerville case, recognized the possibility of such an inequitable result and held that the defendant was engaged in the business of managing a restaurant and owned the real estate solely as an investment. The reasoning of Sommerville should be applied to the instant case.

Furthermore, respondent was an independent contractor who simply completed specified projects in whatever manner and by whatever means he chose. Appellant had no control over how the work was performed or the time period in which it was to be completed.

Finally, due process considerations require a remand since appellant was denied the opportunity to have a single Administrative Law Judge render a decision on the facts and la

For the above reasons, the order of the Industrial Commission should be reversed.

Respectfully submitted,

PRINCE, YEATES & GELDZAHLER

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CERTIFICATE OF MAILING

I hereby certify that I mailed two (2) copies, postage prepaid, of the foregoing Brief of Appellant to counsel for Respondent, Russell J. Hadley of Kunz, Kunz, Rencher & Hadley, Suite 300, 2605 Washington Boulevard, Ogden, Utah 84401 and to Robert B. Hanson, Attorney General and counsel for the Industrial Commission, 236 State Capitol, Salt Lake City, Utah 84114, this 21st day of August, 1978.