

1978

Blair Sorenson v. the Industrial Commission of Utah and Jeffery Lynn Nelson : Rebuttal To Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

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

REBUTTAL TO BRIEF OF RESPONDENT

APPEAL FROM THE ORDER OF THE INDUSTRIAL
COMMISSION OF THE STATE OF UTAH

Joseph C. Foley, Administrative Law Judge

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| Utah Rules of Civil Procedure, Rule 75 | 5 |
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The appellant, contrary to the representations of the respondent, unequivocally denies that he had substantial amounts of work available for the appellant to perform and that neither he nor his wife had solicited appellant's services for any sustained period of time (R-19, 124, 144).

II

ARGUMENT

POINT I - APARTMENT OWNERSHIP IS PASSIVE INVESTMENT

Appellant initially makes the conclusionary statement that the appellant spent a substantial amount of time managing his apartments. However, the record establishes that the appellant for the year 1975 spent only 69-3/4 hours of personal labor in improving or managing his rental units (D. Exhibit D-3, R-167). All other work was handled by independent contractors and in no case have employees been hired to perform work. In addition, the appellant testified that he spent no more than 3 to 4 hours a week in other managerial chores (R-120).

Therefore, the uncontradicted facts establish that the appellant spends no more than four hours per week in managing his rental properties. Moreover, the appellant, at all times material herein, was employed as a full-time electronic technician at Hill Air Force Base in Clearfield, Utah and had annual earnings in 1975 of \$14,203.00. During the course of this employment, the appellant worked from 7:30 a.m. to 3:30 p.m. and attended the University of Utah for approximately 2 to 3 hours each week day evening (R-99, 124). These facts do not support respondent's contention that the appellant was spending substantial amounts of time in managing his investment properties.

It is respectfully suggested that the limited amounts of time that the appellant spent in managing his apartments, when juxtaposed with his full-time occupation, support appellant's argument that the renting and maintaining of apartments, in line with the decisions of the Supreme Court of Utah and of other jurisdictions, all of which cases are cited in appellant's brief, constitute no more than a passive investment.

POINT II - INDEPENDENT CONTRACTOR STATUS OF THE RESPONDENT

While the Industrial Commission and the Court have been presented with evidence relating to various times and circumstances wherein Nelson worked on buildings owned by the appellant, it is submitted that one of the seminal issues turns on whether or not he was an employee on the day that he sustained the injury for which workman's compensation has been awarded.

The respondent states, on page 13 of his brief, in the second paragraph thereof, that:

"The facts are vastly different than in this case where the appellant worked alongside respondent, furnished all the tools and materials and inspected the work and even made him redo certain tasks."

The record does not support this statement insofar as it alleges that the appellant worked alongside the respondent. To the contrary, the uncontradicted evidence establishes that the respondent only instructed the appellant to complete the project and had no further involvement in the actual work performed (R-49, 90, 122, 123).

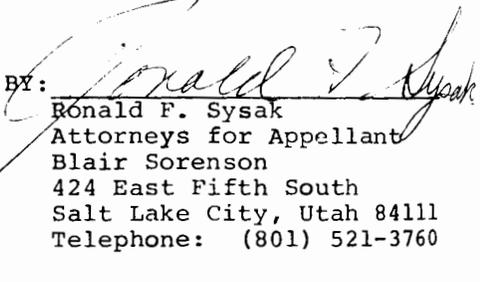
by Judge Rigtrup were not provided the Court. For these reasons, the notes maintained by Judge Rigtrup and that the affidavit of Administrative Law Judge Joseph C. Foley, if deemed to be evidence notwithstanding its untimely filing designation with the Supreme Court, should be viewed in conjunction with the notes of Judge Rigtrup. If this is done, it will amply support the argument of the appellant that such notes have no bearing on the constitutional argument alleging that the respondent was denied due process.

For the above reasons, and the reasons advanced in appellant's brief, the order of the Industrial Commission should be reversed.

Respectfully submitted,

PRINCE, YEATES & GELZAHLER

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MAILING CERTIFICATE

I hereby certify that I mailed two copies of the foregoing Rebuttal to Brief of Respondent to counsel for respondents, Russell J. Hadley, Kunz, Kunz & Hadley, Suite 300, 2605 Washinton Blvd., Ogden, Utah 84401, and Robert B. Hanson, Attorney General, 236 State Capitol, Salt Lake City, Utah 84114, postage prepaid by first class mail this 10th day of November, 1978.