

1988

Gary Allen dba Allen's Layton General Tire v. Department of Employment Security : Reply Brief

Utah Court of Appeals

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SUMMARY OF ARGUMENT

Not only has Respondent failed to respond to the central issue of this appeal. Respondent has failed to understand and respond to the points raised by Petitioner since Petitioner's first letter to the Department objecting to the increase in Petitioner's assessment.

SMITH AND RITCH INTENDED TO QUIT EMPLOYMENT WITH THE TIRE BUSINESS AT THE TIME THEY SOLD THE BUSINESS TO PETITIONER AND THEREFORE BENEFITS SHOULD NOT BE CHARGED TO PETITIONER.

It does not matter if Petitioner is a successor business that issue is not material to this appeal nor to the hearing held in May 1988, unfortunately that is the only issue addressed by respondent throughout this process. The central issues are should Petitioner's account be charged for the unemployment benefits of individuals who quit employment, had no desire to work for Petitioner, intended to leave the business they operated and led Petitioner to believe they did not want to work for Petitioner's business.

ARGUMENT

This reply will briefly address each point raised by the Department of Employment.

Point I

The findings of the Commission are based upon incorrect and incomplete fact and law. It is clear that the Commission has never fully considered the issue that Smith and

Ritch quit their employment. The commission simply wanted to charge Petitioner with the cost of benefits paid to Smith and Ritch without any consideration as to the underlying facts that it was their determination to quit their positions with the tire business.

Notice was not given to Petitioner until over a year after benefits were paid. The Department then focused on the immaterial issue of successorship, rather than Smith and Ritch's voluntary termination of employment.

Point II

It is conceded that Officers of Corporations shall constitute employment and therefore those officers are entitled to receive benefits.

However, that is not an issue in this case.

Officers of a corporation are entitled to benefits just like every other employee, however, they are not entitled to benefits if they voluntarily terminate the employment relationship. They receive no special benefits to unemployment compensation because they are officers.

Officers of a corporation which goes out of business totally, ceases to exist or operate and there is no successor business are entitled to benefits and those benefits are charged to the general fund. That is the closest situation which is applicable in this case.

Point III

Even if Petitioner is the successor to the corporation

that does not change the facts that Smith and Ritch quit and voluntarily terminated the employment relationship. A fact which Respondent fails to address and has failed to address continually throughout this process which is clear from the totality of the record on file with the court.

Point IV

The Court should follow the Pennsylvania rule in this situation. Smith and Ritch acted and treated the corporation as if it were a partnership and they were self-employed. They should not be eligible for benefits charged to Petitioner.

CONCLUSION

The grave financial injustice which will fall upon Petitioner the party who is least able to bear that burden, coupled with the intention and consideration paid at the time the parties originally entered into the transaction for the purchase and sale of the business compels the court to find for Petitioner.

This case should not be decided in the vacuum of legal theory but understanding the economic and business realities of the dealings between unsophisticated individuals closing down a failing business and another attempting to begin life anew with the purchase of a business. All the parties knew that Smith and Ritch did not want to nor did they contemplate working for the new business and for the Commission to penalize Allen because of a theory of reduction of force is patently unfair.

Any reduction in force was contemplated by Smith and Ritch at the time they decided to sell or bankrupt the business not as a result of any action by Allen when he purchased the business. In fact the purchase of the business by Allen saved the jobs of the other employees of the business.

At the time of the sale the parties contemplated that Allen, the Petitioner, would pay a fixed sum to Smith and Ritch for the business. If the court rules against Petitioner then it will in fact require Allen to pay substantially more for this business. The business was not economically viable before Allen purchased it supporting two full time managers. The business is still not economically strong enough to allow Allen to earn a profit from the business. He has not taken a paycheck out of the business since the day he began.

For the above reasons and those set forth in Petitioner's Brief previously filed with the Court Petitioner respectfully requests this Court to grant its Petition that it be relieved of the increase in its assessment since the date of the increase.

Dated May 17, 1989

E. Lawrence Brock,
Attorney for Petitioner
Gary Allen dba,
Allen's Layton General Tire

CERTIFICATE OF MAILING

I certify that I caused to be mailed the foregoing
PETITIONER'S REPLY BRIEF to:

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May 17, 1989

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