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Ous P. Lexes, Ralph M. Garner, Peter John Kanon
and Thomas L. Anderson v. The Industrial
Commission of Utah and American Smelting and
Refining Company : Brief of Defendants

Utah Supreme Court

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In the Supreme Court of the State of Utah

GUS P. LEXES, RALPH M. GARNER,
PETER JOHN KANON and
THOMAS L. ANDERSON, Em-
ployees of the American Smelting &
Refining Company,

Petitioners,

vs.

THE INDUSTRIAL COMMISSION
OF UTAH, Department of Employ-
ment Security and AMERICAN
SMELTING & REFINING COM-
PANY,

Defendants

Case No. 7623

DEFENDANTS' BRIEF

FILED

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Case No. 7623

DEFENDANTS' BRIEF

STATEMENT OF CASE

On July 11, 1950, a representative of the Department of Employment Security of the Industrial Commission of Utah, issued a decision holding the claimants in this matter to be ineligible to receive unemployment compensation benefits from June 25, 1950, through July 8, 1950.

On July 19, 1950, the Department received an appeal filed on behalf of the claimants. The appeal was referred to the Appeals Referee on July 21, 1950, and an appeal hearing was conducted on August 21, 1950. The Referee upheld the decision of the representative, and the matter was appealed to the Board of Review of the Industrial Commission. The Board of Review, on the 5th day of December, 1950, issued a decision upholding the decision of the representative and the Referee. The matter is now before this court on a Petition for Review.

STATEMENT OF FACTS

Prior to June 25, 1950, certain switching was being done on the premises of the American Smelting & Refining Company, Garfield, Utah, pursuant to a contract with the D & RGW Railroad. Under the contract railroad employees (members of the Switchmen's Union of North America) did the switching as employees of the D & RGW.

On June 25, 1950, pursuant to a strike order, members of the Switchmen's Union of North America who were employed by the Denver & Rio Grande Western Railroad (including those at the American Smelting & Refining Plant at Garfield, Utah) left their work (Tr. 32).

The contract between Local Union No. 4347, United Steel Workers of America, C.I.O., and American Smelting & Refining Company provided that the union would have jurisdiction over the jobs which were vacated by the striking switchmen (Tr. 49). Pursuant to the provisions of the con-

tract, the company and the union entered into arrangements whereby on June 26 (Tr. 48) members of Local Union No. 4347 took over such switching work, using equipment furnished by the American Smelting & Refining Company. At that time the contract with the D & RGW had been cancelled and there were no positions in the plant operations which were being filled by railroad employees.

On June 28, 1950, the Switchmen's Union of North America established pickets at the gates of the plant. At that time, and immediately prior thereto, the company had been operating three shifts (Tr. 4), one shift commencing at 7:45 a.m. (the morning shift), the afternoon shift reporting at 3:45 p.m., and the evening shift reporting at 11:45 p.m. When the morning shift reported for work on the morning of June 28, 1950, it encountered the pickets of the Switchmen's Union.

On the 23rd day of June, the Executive Board of Local Union 4347, United Steel Workers of America, C.I.O., met and discussed the company's proposal to take over the switchmen's job in event the D & RGW workers left the plant. At that time the Board agreed that if there was a picket line established by the Switchmen's Union, the members of Local No. 4347 would not enter the plant (Tr. 17, 18). On or about the same time one of the officers of the Executive Board notified the management of the American Smelting & Refining Company that the members of Local Union No. 4347 would take over the switching operations formerly done by members of the Switchmen's Union, but that if a picket line was established, the members of the union would not cross the line (Tr. 18).

The employees of the American Smelting & Refining Company, upon finding the pickets of the Switchmen's Union, stayed outside the plant (Tr. 19). A delegation of members of Local Union No. 4347 (representing (A.S. & R. employees) was sent into the plant to advise certain A.F. of L. union members who were working on a construction project to get out and stay out during the existence of the picket lines (Tr. 20).

At about 10:30 a.m., June 28, 1950, the union representatives met with the representatives of management and discussed the existence of the picket line (Tr. 36). At that time the union advised the management that the men were honoring the picket line and would not come through, and the union representatives suggested to the management that the afternoon and night shifts be advised as to the situation and that the afternoon and night shift workers were not to report for work. Such a notice appeared on various radios that afternoon and evening (Tr. 36, 41).

Members of Local Union No. 4347, United Steel Workers of America (employees of the A.S. & R. Company) worked with the pickets of the Switchmen's Union in order to point out which individuals were supervisory employees of the company and therefore entitled to go through the line (Tr. 44).

The workmen on the afternoon and evening shifts did not report for work (Tr. 60).

There was no dispute between the Switchmen's Union of North America and the American Smelting & Refining Company either prior to or at the time the Switchmen's Union established their picket line at the A.S. & R. property.

STATEMENT OF POINTS

- I. THE CLAIMANTS WERE NOT AVAILABLE FOR WORK WITHIN THE MEANING OF THE UTAH EMPLOYMENT SECURITY ACT AND WERE THEREFORE INELIGIBLE TO RECEIVE UNEMPLOYMENT COMPENSATION BENEFITS FOR THE PERIOD COMMENCING JUNE 25, 1950, AND ENDING JULY 8, 1950.
- II. THE PETITIONERS LEFT WORK VOLUNTARILY WITHOUT GOOD CAUSE.
- III. THE UNEMPLOYMENT OF THE CLAIMANTS WAS NOT DUE TO THE EMPLOYER'S FAULT.

ARGUMENT

I

THE CLAIMANTS WERE NOT AVAILABLE FOR WORK WITHIN THE MEANING OF THE UTAH EMPLOYMENT SECURITY ACT AND WERE THEREFORE INELIGIBLE TO RECEIVE UNEMPLOYMENT COMPENSATION BENEFITS FOR THE PERIOD COMMENCING JUNE 25, 1950, AND ENDING JULY 8, 1950.

The Utah Employment Security Act provides, Sec. 42-2a-4, Utah Code Annotated 1943, that to be eligible to receive benefits with respect to any week a claimant must make a claim for benefits for that week, he must *register* for work, and he must be *able* and *available* for work. The word "avail-

ability" is generally defined as being at disposal, accessible, attainable, ready or handy, and usable. The claimant is considered to be available for work only when he is prepared to accept at once an offer of any suitable work brought to his notice. The question of availability usually arises in two types of situations; one where, by some overt act such as leaving his usual employment or leaving the general area where his type of employment is available or assuming obligations extraneous to employment or the like, the claimant has materially lessened his opportunity of working or has restricted his sphere of employment; and the other where the claimant has failed to apply for, or has refused to accept employment. In the situations of the first type the mental attitude and the intentions of the claimant toward accepting suitable work are an important test even though he has placed himself in a position which, viewed objectively, would seem consistent with availability. The acceptance of his customary employment or any suitable work, of course, constitutes the best evidence of mental willingness to work.

In the instant case there can be no contention that the usual work of the claimants at the American Smelting & Refining properties was not suitable.

The petitioners call the court's attention to Section 42-2a-5(c) (2), Utah Code Annotated 1943 (Utah Employment Security Act) which sets up certain standards applying to offers of *new work*. That section quoted by the petitioners provides that *new work* may not be offered to a claimant if the position offered is vacant due directly to a strike, lockout, or other labor dispute. The primary intent of this statutory

provision is to bar a referral of workers which would have the effect of setting up a system of strike breaking.

In the instant case there was no offer of *new work* to any of the claimants. The work which was involved was their customary usual occupation. As early as June 23, 1950, the Executive Board of Local Union 4347, United Steel Workers of America, C.I.O., had determined that its members would not violate any picket line which might be established by the Switchmen's Union (Tr. 17, 18). They notified the management on or about that time that if the picket line were established they would not be available for work. On June 28 at the time the picket line was established the members of the Executive Board again notified the company that its members would not cross the picket line and that there would be no employees available to continue operations.

The situation wherein a non-striking union refuses to cross picket lines is not a novel one. The instant case differs from many others only by virtue of the fact that there was no strike and no dispute in existence between the Switchmen's Union of North America and the American Smelting & Refining Company. The strike and the dispute was between the Switchmen's Union of North America and the Denver & Rio Grande Western Railroad Company. The reason given by the claimants for failing to cross the picket lines is very well expressed by one of claimants' witnesses, who, when asked why union members respected picket lines, replied:

"Well, every union man on joining a union pledges that he will work for the betterment of organized labor and that he will not under any circumstances take an-

other man's job and that he will cease work on the orders of his union, and there is also a common belief among organized labor that what hurts one union man hurts another and to undermine the—for the C.I.O., for example, to undermine the A. F. of L. union by crossing their picket lines and aid in breaking the strike would undermine all of our rights." (Tr. 39).

In essence, then, the honoring by one union of the picket lines of another union is an economic weapon which has been adopted by the entire union movement. This choice of action on the part of union members does not in any manner or means change the general purpose of unemployment compensation laws. These laws are established to accumulate funds by levying contributions against the employers or payrolls; said funds to be used for the payment of unemployment compensation to individuals who become unemployed through no fault of their own. Unemployment compensation is provided to carry individuals over temporary periods wherein they are unable to work because of factors beyond their control. The intent of employment security and unemployment compensation cannot be changed by reason of possible stigmas or union penalties which spring from and are inherent in the union movement and which are subject to change only by the unions themselves. To hold that the unions could establish rules under which unemployment compensation would be paid would necessarily mean that employers or employer groups could also establish rules under which unemployment compensation would be paid or denied as the case might be.

The right of the union as an organization or the individual member of the union to recognize picket lines or abide by other

union rules must not be confused with the right of such individuals to unemployment compensation. Voluntary actions in many instances deny unemployment benefits to individual workers. They are denied benefits in cases of misconduct in connection with their work, in cases of voluntary quits, in cases where they are physically unable to work, and in many other instances where the underlying reason for their unemployment lies in some volitional act on their part.

In *Bodinson Manufacturing Company vs. California Employment Commission*, 17 Cal. 2d 321, 109 P. 2d 935, and 101 P. 2d 165, a strike was called by the welders union. The machinists did not go on strike but refused to cross the picket line of the welders. The Commission determined that the machinists were eligible for benefits. The court in holding that this determination was erroneous stated:

"The weakness of this argument is not in the underlying premises upon which respondents rely, but in its application to the present case based upon the assumption that the employees who refused to pass the picket line did not act of their own volition. It is true that under the proper construction of the statute an employee who is prevented from working through no act of his own is entitled to compensation, as for example, where he is barred by force from the premises where he has been working, but that is not the situation here. If the picket line was maintained within the limits permitted by law, as this one presumably was, no physical compulsion was exerted to prevent correspondents from working. They were unemployed solely because in accordance with their union principles they did not choose to work in a plant where certain of their fellow employees were on strike. Their own

consciences and faith in their union principles dictated their action. This choice is one which members of organized labor are frequently called upon to make, and in the eyes of the law this kind of choice has never been deemed involuntary. This very point was considered by us in a recent case dealing with the right of labor unions to picket, wherein the employer sought an injunction on the ground that the picket line operated as an unlawful compulsion upon other union men. We said . . . 'It is obviously untrue that when truck drivers employed by other firms refuse to go through the picket line, they do so involuntarily. Such refusal is undoubtedly based upon the freely adopted rules of the local union to which they belong.' Fairly interpreted it was intended to disqualify those workers who voluntarily leave their work because of a trade dispute. Co-respondents in this proceeding, in fact, left their work because of a trade dispute and are consequently ineligible to receive benefit payments."

In the instant case the workers remained away from their employment solely because of their adherence to the union principle of honoring picket lines. The defendants do not question the union principles involved. We do, however, contend that benefits are not payable to claimants whose unemployment is due directly to their voluntarily staying away from work due to the carrying out of those principles. We think it makes little difference whether the picket line is a legal one or one which constitutes a secondary boycott. In the instant case, the union to which the claimants belonged not only recognized the picket line, but took an active part in enforcing the picket line by sending a delegation into the plant to order certain A. F. of L. construction workers off the property. In

other words, the union was adding its own economic strength to that of the Switchmen's Union.

In the case of American Brake Shoe Company vs. Frank Annunzio, Director of Labor, et al, 405 Ill. 44, claimants who did not cross the picket lines set up by members of a different union at the company in which they worked were held disqualified from unemployment benefits. In commenting upon the eligibility of the workers the court said:

"It appears to us from the evidence of the sole witness from the Die Sinkers' Conference that the real reason for the die sinkers failing to report for work was that they did not care to be classified as 'scabs.' Peaceful picketing by employees to gain rights from employers is recognized as a legal activity, but picketing coupled with violence is not recognized as a legal activity. In this case it appears that the die sinkers could have entered their place of employment without sustaining bodily harm, and since this court will not assume that picketing normally will bring violence, therefore it appears to us that the die sinkers voluntarily remained away from their employment because they did not care to be classified as 'scabs' by fellow employees. Since the fear of such classification appeared to be the motivation for their failure to enter their place of employment, it logically follows that they were either participating in the labor dispute by failing to cross the picket line or voluntarily remaining away from their employment, either of which would disqualify them from compensation benefits. The die sinkers were unemployed solely because in accordance with their union principles they did not choose to work in a plant where certain employees from another plant of their employer were conducting picketing."

In the case of Local Union No. 222, Oil Workers Inter-

national Union, et al, vs. Robert L. Gordon, Director of Labor, et al (Illinois Supreme Court, May 18, 1950) 406 Ill. 145, the production and maintenance workers of Local No. 222 whose place of employment was shut down when a picket line was set up by employees of another company who were members of the same international union, the court, in holding the workers ineligible for unemployment compensation benefits because of the workers' observance of the picket line, said:

"The stoppage in the case at bar resulted from a conference not between the Texas Company and the pickets, but between Local 222 and the Texas Company. There is no showing in the case at bar of any threat of violence . . . In the case of American Brake Shoe Company vs. Annunzio, 405 Ill. 44, we held that employees are ineligible for unemployment compensation where they elect not to cross the picket line established by other employees from another plant of the same employer who are members of a different labor union. We held that they must be regarded as either participating in the labor dispute which caused the picketing or being voluntarily unemployed because they did not care to cross the picket line. We cannot see how the plaintiffs in this case can be any more entitled to benefits than the plaintiffs in the American Brake Shoe case because the substance of the termination arrangements of the negotiations merely were that both the union and the employer understood that Local Union 222 would respect the picket line and, therefore, there would be a work stoppage."

In the instant case, as hereinbefore pointed out, the union had on one or more occasions advised the company that its members would not cross the picket line and that consequently the workers on the second and third shifts should be notified

of that situation; in other words, that they were not to report for work. Naturally, with no workers reporting for work because of unavailability due to their refusal to cross the picket line, a work stoppage resulted. Had the men presented themselves as being ready and willing to work, the operations of the American Smelting and Refining Company would have continued at the normal pace.

The Indiana Board of Review in Decision No. 48-LDR-6, 4-18-49, quoted at C.C.H. paragraph 8163, holds that members of one union who refuse to cross the picket line established by another union are ineligible for benefits because they are voluntarily unemployed and because their unemployment results from the individual act of each claimant in failing to cross the picket line. The decision holds that the refusal to cross the picket line is tantamount to an individual act of participation by each claimant in the labor dispute.

The Oregon Appeals Referee, in case No. 46-RA-144, March 9, 1946, quoted at C.C.H. paragraph 8059, held that even though the claimant states that he is not a member of the striking union and is not involved in the strike, he expresses interest in the dispute and participation in the dispute which creates his unemployment by his refusal to cross the picket line which has been established by workers in the factory at which he was last employed.

The case of Carl W. Franke vs. Unemployment Compensation Board of Review, 166 Pa. Super. 251, 70 A. 2d 461 (9950), involved bus drivers who were unemployed during a strike of the maintenance workers at the garage where the

buses were kept. The court, in holding the bus drivers ineligible for unemployment compensation benefits because their unemployment was due to their unwillingness to make a reasonable effort to cross the picket line of the maintenance workers, said:

“A non-striking employee’s refusal to cross a picket line would be a ‘voluntary’ suspension of work within the meaning of Section 402(d) where the decision was his own. Phillips, Unemployment Compensation Case, 163 Pa. Super. Court 374, 62 A. 2d 84.” (Citing other cases).

In the matter of Frank H. McGann vs. Unemployment Compensation Board of Review, 163 Pa. Super. 379, 62 A. 2d 87, the court held that if a claimant is prevented from peacefully pursuing his employment because of the militant attitude of the picket line, because of incidents of violence, and because of threats of physical violence, his unemployment would be involuntary. However, the court said that a mere statement by a claimant that he refused to cross the picket line because of fear of bodily harm is not enough to demonstrate that his unemployment was involuntary in a situation where there was not a single overt act of violence of any character, leading a reasonable person to believe that he would be in physical danger in the event he attempted to cross the picket lines. The strike and picket lines are not always accompanied by violence, intimidation, and physical restraint. In the absence of evidence to the contrary, we may assume that picketing is carried on peacefully and within the limits permitted by law. The court held that there was substantial and competent evidence supporting the finding that claimants

made no efforts to cross the picket lines, that they were not actually threatened, and that there was no attempted violence, and that therefore they were subject to disqualification for voluntary suspension of work resulting from an industrial dispute.

In the case of Joseph D. Phillips vs. Unemployment Compensation Board of Review, 163 Pa. Super. 374, 62 A. 2d 84, the court held that the claimant, a member of a machinists union, who refused to cross a picket line established by an office employees' union, was unemployed due to a voluntary suspension of work resulting from an industrial dispute. The claimant was not prevented from crossing the picket line, and his adherence to union principles dictated his decision not to cross it, and that he had made the strikers' cause his own by voluntarily suspending his work.

In the case of Joseph P. Stillman et al vs. Unemployment Compensation Board of Review, 161 Pa. Super. 569, 56 A. 2d 380, the court cited with approval the findings of the Board. These findings are as follows:

"8. After the members of the tool and die makers union established a picket line at the Meadville plant, the other employees who were members of affiliated unions of the American Federation of Labor failed to report for work because of their unwillingness to cross the picket lines. The employer company was at all times ready and willing to continue operations and would have been able to do so to a very considerable extent for some time after the strike by the tool and die makers. No action was taken by the employer, nor was any authorized action taken on its behalf, to close the plant or to afford a basis for reasonable belief on the part

of any employees that the plant had been closed to them. The failure of the employees to work was not in any measure due to the fact that they were prevented from working. There was no violence, nor were there any threats of violence on the picket line. Their failure and refusal to work was due to (a) their objections, based upon principle, to crossing a picket line; and (b) their unwillingness to risk the consequences which might be imposed by their unions by reason of crossing the picket line."

"9. The tool and die makers went out on strike at the Erie plant on or about November 8, 1945. The company was also ready, able, and willing to continue operations at this plant. The suspension at the Erie plant likewise resulted from the failure or refusal of the employees to report for work after the strike by the tool and die makers at that plant. Their failure to work was based upon their objections in principle or their apprehension with regard to crossing a picket line."

See also *Miller vs. Unemployment Compensation Bd. of Review*, 152 Pa. Super. 315, 321, 31 A. 2d 740.

In the matter of the appeals of employees of the Pacific Telephone & Telegraph Company, decided by the Washington Supreme Court (Case No. 30668), October 22, 1948, 31 Wash. 659, 198 P 2d 675, the court said:

"Originally, the picket lines were maintained only by members of the plant union. However, the other employees (the claimants herein) refused to go through the picket lines although their jobs were at all times available to them. There was no violence or forceful effort made to prevent the claimants from working, but these employees had heard of violence in the east;

had heard rumors that probably pictures would be taken of anybody trying to enter the buildings; or that they would be branded as 'scabs.' The telephone operators testified that they were kept from the job through fear; some because of their husbands' jobs; some because they were just afraid to cross picket lines. Although in Spokane and Seattle only members of the plant union maintained the picket lines, in Tacoma toward the end of the strike some telephone operators also acted as pickets."

In the case of Phillip Meyer et al vs. Industrial Commission of Missouri, et al, decided by the St. Louis Court of Appeals, October 18, 1949, C.C.H. Mo. 8151, machinists who were unemployed because of a strike by the moulders in the employer's iron working plant, who refused to cross picket lines set up by the striking moulders, were disqualified for unemployment compensation benefits where their refusal to cross the picket lines was voluntary in that in the absence of proof to the contrary it is to be presumed that the picket lines were maintained and conducted in an orderly manner and there was no threat of bodily harm. The court said:

"It seems to stand without dispute that one who voluntarily refused to cross the picket line to go to his work is participating in the work stoppage. This is true regardless of the fact that he may not profit by the strike since by refusing to work he has added his strength to the cause of the strikers and placed them in a better bargaining position.

"The question for determination here is whether or not the refusal to cross the picket line was voluntary in view of the conduct of the pickets and by reason of testimony of the witnesses that they were afraid to cross the line. Generally a voluntary act is an act of

one's own choice and the motives that cause the choice to be made do not enter into the question. Such a conception of the word 'voluntary,' however, presupposes freedom to choose a course of action, and so in determining whether or not the refusal to cross the line was a voluntary act, we must decide whether there was any restraint that prevented the workers from doing so. Such restraint might be actual physical restraint, or it might be such conduct on the part of the pickets as to reasonably give rise to a fear of bodily injury."

The several state unemployment compensation laws are patterned upon the provisions of the British and Canadian acts. We cite two decisions of the Canadian Umpire dealing with unemployment compensation insurance and with the eligibility of workers who refused to cross picket lines. In Case No. CUB-287, decided September 10, 1947, and published in the Selected Decisions of Umpire, 1943-1948, the facts and holding were as follows: The claimant, a carpenter and member of a union, hereinafter referred to as "Union A," lost his employment by reason of a stoppage of work which occurred as a result of a labor-dispute between the employer and the hod carriers employed on the project, who were members of a union to which the claimant did not belong and which will be referred to as "Union B." He made a claim for unemployment compensation benefits contending that he was not participating in, financing or directly interested in the labor dispute but that he, as a member of Union A, was obligated under penalty of a fine authorized by the constitution of the parent body to respect the picket line set up by Union B, which had the same affiliation. He was disqualified for the period of the work stoppage.

In Case No. CUB-320, decided February 5, 1948, and published in Selected Decisions of the Umpire, 1943-1948, by the Unemployment Insurance Commission of Canada, a claimant, a union member, who stated that he was not available for work because of the existence of a strike at his last place of employment was not available on the day on which he made he made his claim for benefits, and that due to a continuation of the strike, he continued to be not available for work.

In the instant case, while there was no statement on the part of the claimants that they were not available for work, the record shows that they were not available for the principal and usual work for which they were best fitted.

This court in *Members of the Iron Workers of Provo, Utah, (Employees of Pacific States Cast Iron Pipe Company) vs. Industrial Commission of Utah, et al*, 139 P. 2d 208, in discussing the failure of claimants to report for work because of a picket line, cited with favor the case of *Bodinson Manufacturing Company vs. California Employment Commission*, *supra*, stating that:

"The Supreme Court of California held that if the applicant was not physically prevented from working, but he merely exercised the choice of following union principles by not going through the picket line, he was not out of work involuntarily and he was not eligible for unemployment compensation."

This court also referred to the case of *In Re Persons Employed, etc.*, 7 Wash. 2d 580, 110 P. 2d 877, in which the court held that inasmuch as members of the union which did not call a strike agreed not to go through a picket line estab-

lished by other unions, they were thereby participating in a labor dispute and that there was no need for determining whether or not the applicants were of the same "class" of workers as the strikers or whether they were employed in a separate unit of the company.

In the instant case, we do not, of course, have a labor dispute existing between the company and the picketing workers or the company employees; however, the same principle is involved.

Insofar as the unions are concerned, "in unity there is strength," and the overall aims of union negotiations are furthered by a full and complete cooperation regarding the recognition of pickets. Regardless of how laudable these union principles might be, they cannot be construed as controlling the matter of the eligibility of affected individuals for unemployment compensation benefits. We find several court cases involving the question of whether or not the intent and the provisions of the act rather than rules established by unions or employers, or both, are controlling in determining who shall receive unemployment benefits. In *Levinson vs. UCC Circuit Court, Jasper County, Missouri, No. 47785*, decided December 14, 1942, the Missouri Court held that a claimant who was discharged for failure to join a union with which his employer had entered closed shop contract was eligible for unemployment compensation benefits. The court said:

"It is the opinion of the court that an employee who is performing satisfactory work and who is discharged or required to quit for refusal to join a union cannot be considered as having separated from his

work voluntarily without good cause or had been separated from work for misconduct connected with work, and such employee is therefore eligible for benefits under the unemployment compensation law.”

In the case of *Prince vs. Schick, Inc.*, Super. Ct., Fairfield County, Connecticut, No. 75665, August 27, 1948; C.C.H., U.I. Rep., Volume II, page 10, 583, it was held:

“In reality there is no connection between the contract obligation assumed by the defendant employer to discharge any of his employees suspended or expelled by the union and the plaintiff’s rights under the unemployment compensation act. Obviously, too, there is no identity or mutual dependency between plaintiff’s obligations to his union as a member thereof and his right to the bounty of the state as conferred by the unemployment compensation act. Of course, too, the defendant employer and the union to which he belonged could not agree together to a course of action which would, in effect, enlarge the scope of the law insofar as the disqualification due to ‘willful misconduct’ beyond that sanctioned by the legislative intention is concerned.”

To hold that the rights of employees to unemployment compensation under the Utah Employment Security Act can be determined by a decision of the employer or a decision of the union, would raise serious constitutional questions. It is questionable whether it could be said that due process of law has been granted to an employee whose claim for benefits has been denied on grounds of union rule or employer rule. It is also questionable whether the Legislature or the Commission could so delegate the function of determining claimant’s rights. To hold that an employer rule or a union rule or principle is

controlling, would be to constitute the employer or the union as sole judge of eligibility. In such a case it would be necessary to include in the findings of the representative the local union's constitution and by-laws as well as those of the parent organization, together with a detailed and comprehensive statement of the union rule or principles involved.

Again, we reiterate that the right to unemployment compensation benefits under the Utah Employment Security Act must not be confused with the right of the individual worker to fulfill his obligations to the union movement by voluntarily honoring picket lines and by otherwise participating in disputes. Benefits under the Employment Security Act were definitely not intended to be available to underwrite actions of either employers or unions in their exercise of economic pressure moves.

II

THE PETITIONERS LEFT WORK VOLUNTARILY WITHOUT GOOD CAUSE.

We feel that the question of the claimants' leaving work voluntarily has been properly answered in the argument under Point I. As was pointed out, they certainly voluntarily deprived the employer of their services unless it is determined that union rules and principles supersede the intent of the legislative act and that in following those union rules or principles the claimants were not exercising their own volition. The claimants were represented by their union, and the union, acting as agent for the claimants, had voted (prior to the estab-

lishment of the picket line) to honor the picket lines established by the Switchmen's Union of North America.

III

THE UNEMPLOYMENT OF THE CLAIMANTS WAS NOT DUE TO THE EMPLOYER'S FAULT.

The contention of petitioners that the inability of petitioners to gain access to their place of work was attributable to their employer because the employer failed to take steps to remove what the management felt was a secondary boycott appears rather inconsistent in view of the union's own actions. Prior to the establishment of the picket line, the union Executive Board, being in full possession of all of the facts which were possessed by the company management, had voted to recognize the picket line. It must have been as obvious to the union on the 23rd day of June, when such action was formulated by the union, as it was to the management of the company on the 28th day of June, that there was no dispute existing between the company and the members of the Switchmen's Union of North America. The union knew at least by June 25 that there were not even any positions on the premises of the company which were being filled by railroad employees.

If the company knew that the picketing constituted a secondary boycott within the definitions of the State of Utah, then the union officers also knew. Knowing this the union voted to recognize the picketing by the Switchmen's Union and in effect to lend its support to the demands of that union.

Certainly all that the company did, from a practical standpoint, was to recognize the practical situation existing by reason of the union's announcement that its members would not cross the picket line. The unemployment of the claimants resulted directly from their decision to follow their union principles, and not from any action taken by the company. From the standpoint of the members, their decision was a sound one; from the standpoint of their being eligible to receive unemployment compensation during the period they were so unemployed, the soundness of their action in following union principles cannot be the controlling factor.

We respectfully submit that the claimants, by reason of their voluntary action in withholding their services from their regular employer, the American Smelting & Refining Company, thereby made themselves unavailable for work within the meaning of the Act and are therefore ineligible for unemployment compensation benefits. When an individual's usual wages, working conditions, etc., have not changed as regards his regular and current employer, such employment cannot be deemed otherwise than suitable, and the individual worker must make himself available to the employer to perform required services.

Respectfully submitted,

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