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Don Adamson v. United Mine Workers of America : Brief of Appellant

Utah Supreme Court

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Case No. 8161

IN THE SUPREME COURT
of the
STATE OF UTAH

DON ADAMSON,
Plaintiff and Appellant,

— vs. —

UNITED MINE WORKERS OF AMERICA,
Defendant and Respondent.

APPELLANT'S BRIEF

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STATEMENT OF THE CASE

This is an action brought by Don Adamson against the United Mine Workers of America for assault and battery and false imprisonment arising out of the conduct of an alleged picket line of the defendant, occurring on or about April 6, 1952. The defendant is the International Union with offices in Washington, D.C. and Price, Utah.

Plaintiff at the trial before a jury put on evidence of the events leading up to the acts complained of without

the testimony of the plaintiff himself as to the actual acts or damage resulting therefrom. Throughout the presentation of this evidence, defendant made repeated objections to the testimony or statements of any of the District officers or Local officers of the defendant on the grounds that no agency relationship had been established. These objections were in some cases sustained and in some cases overruled, with the reservation that they would be sustained if the agency were not established at the conclusion of plaintiff's case.

The evidence hinges generally around the statements and activities of the District No. 22 officers, including Harry Mangus, District Board Member, in threatening strike and violence to the operators and employees of the Eastern Utah Coal Company if they didn't join the U.M.W. and sign a contract with the union.

Prior to putting on evidence of the actual violence to the plaintiff and his damages, plaintiff, in view of the objections as to agency raised throughout the evidence, submitted this question to the Court. The Court ruled as a matter of law that no agency had been established and granted defendant's Motion to Dismiss. From this ruling plaintiff appeals.

STATEMENT OF THE FACTS

A picket line of about 150-200 men (R. 87) was established across the road leading to the Coal mine of the Eastern Utah Coal Company on or about April 6, 1952

(R. 10 & 70). The men came from various places throughout the County, not just from the local union (R. 60).

Prior to April 6, 1952, Harry Mangus and other officers went to the mine attempting to organize it, and threatening to prevent any coal from going down the canyon (R. 69, 83, 134, 140, 162 & 163). These men were representatives of the United Mine Workers, as brought out by counsel for defendant on cross examination (R. 94, 95).

Subsequent to these conversations and threats, the plaintiff Don Adamson, Henry Beal and Austin Beal on April 6, 1952, were at the mine (R. 84-88) when the acts of violence occurred.

Thereafter on April 7, 1952, a contract was signed between the Coal Company and the International Union, all as a result of the threats, violence and strike activities (Exhibit B) (R. 142-145). Thereafter, the next day, in fact, the pickets were taken off by Mr. Mangus (R. 167).

Plaintiff introduced in evidence Exhibit "A" which is the Constitution of the International. Articles III, VII and XVI of the Constitution designate the jurisdiction, authority to call strikes and the officers, including the Executive Board Member of the District. Mr. Mangus signed an affidavit in support of Defendant's Motion for Change of Venue as said District Executive Board Member, (R. 96, 110, 111, 115). As such an officer Mr. Mangus had conducted the aforesaid activities complained of.

After the violent activities, and with knowledge thereof the International ratified said activities by receiving the benefits of the contract executed April 7, 1952, which agreement is signed by John L. Lewis for the International.

STATEMENT OF POINTS ON APPEAL

I. THE COURT ERRED IN DISMISSING THE ACTION UPON THE GROUNDS OF LACK OF AGENCY.

ARGUMENT

A. THE QUESTION OF THE EXISTENCE OF AN AGENCY RELATIONSHIP IS A QUESTION OF FACT TO BE DETERMINED BY THE TRIER OF THE FACTS.

B. IN DETERMINING THE AGENCY QUESTION THE QUESTION OF RATIFICATION IS ONE OF FACT TO BE DETERMINED BY THE TRIER OF FACTS.

A. THE QUESTION OF THE EXISTENCE OF AN AGENCY RELATIONSHIP IS A QUESTION OF FACT TO BE DETERMINED BY THE TRIER OF THE FACTS.

For the Court to take from the jury a question of fact such as the existence of an agency relationship, the evidence must be such that no inference can be made, but that agency does not exist. Furthermore, the evidence from which this inference is made, must be without conflicting evidence whatsoever.

This principal is followed in the following cases:

Goddard v. Lexington Motor Co., 223 Pac. 340, 63 U. 161, also see numerous authorities in 3 C.J.S. #330:

The Utah Court quotes and holds:

> "When any evidence is adduced tending to prove the existence of a disputed agency, its existence or nonexistence is as a general rule a question of fact for the jury, aided by proper instructions from the Court, even though the evidence is not full and satisfactory, and in such cases it is error for the Court to take the question from the jury by directing a Verdict by instruction by nonsuit or by sustaining a demurrer to the evidence." Also see *California Jewelry Co. v. McDonald,* 30 P. 2d 778 (Ida.).

(a) There is strong evidence in the record that the local and district organizations are under the control of the International. Article III, Sec. 2 of the Constitution of the International (Exhibit "A"), states in part: "All District, Sub-Districts and Local Unions must be chartered by and shall be under the jurisdiction of and subject to the laws of the International Union and rulings of the International Executive Board . . ." Sec. 3 provides that if an individual is ruled against by the local he may appeal to the International. The Constitution is replete with provisions making the District or Local under and subject to the International Rules.

Article XVI, Section 1 of the Constitution, (Exhibit "A") gives authority to the District to call strikes, provided that said strikes are authorized by the International.

Therefore in view of the foregoing written authorizations the alleged principal has held out authority for

the District to act for it in the handling of economic actions. The handling of the strike activities therefore are within the express authority of the District.

(b) The Constitution also provides that the Executive Board Member from each of the Districts is an officer of the International. See Article VII, entitled Officers. Mr. Harry Mangus, signed an affidavit as Executive District Board Member and as an officer of the defendant (R. 96, 110, 111). It should be noted that the defendant used this affidavit as a basis of removal of the case from the venue of Salt Lake County to Carbon County. Thus we have the express authority conferred upon Harry Mangus as an Executive Board Member. We have reliance by the International upon the affidavit of Mr. Mangus the Executive Board Member in the removal of the cause to Carbon County. Are we to say that there is no evidence that Mangus had express or apparent authority from the International.

Defendant, raised during the trial, for the first time, the idea that all of the officers including Harry Mangus were confused as to whom the suit was against. However at page 15 of the record, Mr. J. E. Brimley signed the verified complaint, distinguishing between the District and the defendant (the International):

> "That he is the President of District 22, United Mine Workers of America, which is affiliated with the defendant herein; that he had read the above

and foregoing Answer, and that the matters stated therein are true to the best knowledge, information, and belief of this affiant.

(s) J. E. Brimley"

Mr. Brimley stated that he was not confused as to who the defendant was when the action was commenced the second time, which culminated in this action (R. 131).

Therefore, on the general question of agency, sufficient facts were put in evidence to show an agency relationship between the International and the District Officer, and certainly, at least to rebut all inferences, or presumptions that there is no agency whatsoever.

B. IN DETERMINING THE AGENCY QUESTION THE QUESTION OF RATIFICATION IS ONE OF FACT TO BE DETERMINED BY THE TRIER OF FACTS.

Appellant's contention is that the International ratified the alleged activities by receiving the benefit of the final signed contract executed the day after the violence. The question of ratification is one of fact to be decided by the trier of the facts. This principal of law is coextensive with that supporting the argument under Point A above. See the case of *Kerr Gifford & Company v. American Distilling Company,* 95 P. 26 694.

There is surely evidence of ratification in the record. The threats of violence were made, the picket line and violent activities were set up, the defendant knowing of the propensities for violence warned against it, (R. 14)

the contract was signed on behalf of the International by John L. Lewis, and the pickets were immediately called off (Exhibit B) (R. 142-145, 167).

The mine owners had always dealt with and only had had contact with the District office in all dealings with the Union (R. 115, 145, 168). The defendant elicited evidence on cross examination that the four men that went up to the mine to threaten the men were representatives of the Defendant (R. 94, 95). All of which certainly raises an evidentiary question as to apparent authority to bind the Union for the activities conducted by its members at the picket line.

Throughout the evidence the Court continually ruled that no evidence of agency had been submitted, and that much of the testimony would have to be stricken. However, under the prevailing view allowing the jury to determine questions of fact, such evidence was competent. This principle is upheld in the following cases:

Hayward v. Yost, 242 P 2d 971 (Ida.):

> "Where there are corroborative facts and circumstances disclosed by the evidence, agency then becomes a fact question for the jury."

Maynard v. Hall, 143 P. 2d 884 (Ariz.):

> "It is not disputed that agency can not ordinarily be established by the declarations of an

> agent. However, the exception to the rule is where upon the whole case there appears other evidence from which an inference of agency arises, then res gestae statements are admissible and it is a matter for the court or jury to then determine."

Finally, we maintain, that distinguishing between questions of fact and questions of law is fundamental in the jury system of trying cases. The Court here, notwithstanding, considerable evidence showing agency relationship, by ratification, by apparent authority and by express authority, has decided for itself the fact question of agency, contrary to the accepted principles of law, as set forth in the case of *McCowan v. Sisters of Most Precious Blood of Enid,* 253 P. 2d 830 (Okla.):

> "Obviously there is a conflict in the testimony on the issue of agency which is a question of fact. It is a fundamental principal of our system of jurisprudence in trials by jury that all questions of law must be decided by the Court and all questions of fact, and those depending upon disputed testimony by the jury; and when the facts pertaining to the existence or non-existence of an agency are conflicting, or conflicting inferences may be drawn from the evidence, the question presented is one of fact for the jury, or for the Court as the trier of fact if the case is tried without a jury. And even though the evidence is not full or satisfactory, it is the better practice to submit the question to the triers of facts."

Wherefore, appellant respectfully petitions the Honorable Court for its decision reversing the ruling of the trial court so that the matter may be tried as to all questions of fact by the jury.

Respectfully submitted,

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