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Don Adamson v. United Mine Workers of America : Supplemental Brief of Defendant and Respondent

Utah Supreme Court

Dart & Sheya; Attorneys for Defendant and Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

DON ADAMSON,
Plaintiff and Appellant,

vs.

UNITED MINE WORKERS OF AMERICA,
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INDEX

STATUTES CITED

INDEX OF CASES

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ARGUMENT IN ANSWER TO PLAINTIFF'S ADDITIONAL CITATIONS SUBMITTED SINCE ARGUMENT OF ABOVE CASE

POINT I

PLAINTIFF'S ADDITIONAL CITATIONS ARE NOT APPLICABLE HEREIN

Comes now the above named defendant, and after obtaining permission from the Honorable Chief Justice of this Court, files its Supplemental Brief answering the additional citations submitted by the plaintiff since this case was argued before this Court on September 20, 1954, to-wit: **United Mine Workers of America v. Patton, U. S. Circuit**

Court, 211 Federal 2d, 742, and United Construction Workers v. Laburnum Construction Corporation, 75 S. E. 2d, 694 (Virginia).

The plaintiffs in the Patton case brought action to recover damages under the Labor Management Relations Act, **29 U.S.C.A. sec. 141,** et seq. Plaintiffs were partners conducting coal mining operations in western Virginia. Defendants were the United Mine Workers of America, International Union, and District 28 of said organization. Plaintiffs claimed that defendants by a strike at the mines of the Clinchfield Coal Corporation caused that corporation to cease doing business with plaintiffs, resulting in destruction of plaintiffs' business.

First of all, in the Patton case there was evidence that the strikes in question were called by the Field Representative of the United Mine Workers (International), who was employed by District 28, and that he was engaged in the organization work that was being carried on by International through District 28, a division of International. The Court said on Page 746:

> "It is clear that in carrying on organizational work the field representative is engaged in the business of both the international union and the district and that both are responsible for acts done by him within the scope and course of his employment (citing cases)."

On the other hand, there is no evidence in the Adamson case, which is before this Court, that any strike was called by a field representative of International, or that International was engaged in any organizational work through District 22 at the time of the alleged grievances. The evi-

dence is to the effect that the work stoppage, or strike, in the Adamson case was called and conducted by the individual employees of the Coal Creek Coal Company and Eastern Utah Coal Company, its successor, and that neither the District nor International actually participated therein.

Another important difference between the Patton case and the case at bar is that in the former, the Court held that Section 6 of the Norris-LaGuardia Act was not adopted by the Labor Management Relations Act, and that its application to suits under that act was expressly excluded by **Section 301 (e) 61 Stat. 156, 157, 29 U.S.C.A. Sec. 185 (e)** which provides:

> "For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

The Court then points out that the history of the Labor Management Relations Act shows clearly that the intent of Congress was to apply to suits of this character the common law rules with respect to liability for the acts of an agent.

Therefore, the Patton case was decided under the Labor Management Relations Act which expressly excluded Sec. 6 of the Norris-LaGuardia Act, which the Court in the Patton case quotes on p. 747, footnote 2, as follows:

> "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual

officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

We call attention to the similarity of language contained in said **Sec. 6** and that of **Sec. 34-1-26, Utah Code Annotated, 1953,** fully set forth on p. 23 of Defendant's brief herein, which said statute applies to the Adamson case and is still in full force and effect. Our Utah statute requires that before the defendant can be held liable for the unlawful acts of its officers, members, or agents, there must be proof by the weight of the evidence and without the aid of any presumptions of law or fact, both of the doing of such acts by such officers, members, or agents, and actual participation in, or actual authorization thereof, or ratification after actual knowledge thereof by said association or organization. Since these requirements were not necessary in the Patton case, and were expressly excluded therefrom, it being decided under the common law rules of agency, and provisions of Federal Law not applicable herein, the two cases are definitely distinguishable, and the Patton case is not in point.

The second new case cited by plaintiff, to-wit: **United Construction Workers v. Laburnum Construction Corp.,** supra, was a tort action against United Construction Workers, United Mine Workers of America, and District 50, United Mine Workers of America. There was evidence in said case that defendants' agents came to the place where plaintiff was doing certain construction work and demanded that plaintiff's employees become members of the United Construction Workers; that plaintiff recognize that organization as sole bargaining agent for its employees on said

projects; that if plaintiff and its employees refused to comply, it would not be allowed to continue said work. Plaintiff and its employees refused to comply, and a series of violent and unlawful acts by defendants' agents ensued, resulting in the abandonment of the projects.

The United Construction Workers, affiliated with the United Mine Workers of America, is governed by an administrative officer, who has general and complete supervision over the administration of its affairs. The administrative officer is authorized to appoint regional directors, charged with the duty of supervising organizing activities within their regions, among other things. The administrative officer also appoints field representatives, who work under the direction of the regional directors while engaged in organizing activities, and other duties.

District 50, United Mine Workers of America is likewise governed by an administrative officer with the same powers of general and complete supervision and administration of the affairs of the district. He also appoints regional directors and field representatives to work under them while engaged in organizing activities. Regional directors have the duty of supervising organizing activities within their regions, among other things. We have been reliably informed that both the United Construction Workers and said District 50 were governed in this manner during the period involved in the United Construction Workers' case.

William O. Hart, the agent involved in said case, was a Field Representative of the United Construction Workers and said District 50, working under David Hunter, Regional Director of Region 58 of United Construction Workers and District 50. As Field Representative, part of his duties was organizing workers. The torts in said case arose out of

organizing activities and were ratified by David Hunter, said Regional Director. Hart's conduct was admittedly pursuant to the Regional Director's orders. Therefore, the Regional Director and Field Representative were acting within the scope of their employment, to-wit: organizing workers, when they committed the torts sued upon. They were both appointed by the administrative officer in charge of the affairs of the union to perform such organizational activities. There is a direct connection, therefore, between the administrative officer and the regional director and field representative, and they were acting within the scope of their employment when the torts were committed.

The court also found that District 50 is at least the agent of the United Mine Workers of America (International) in organizing workers in businesses other than that of mining coal. Therefore, International was held liable along with the other two organizations.

However, in the Adamson case, the evidence does not show that Harry Mangus, or any of the pickets, were authorized by International to perform any organizational activities whatsoever, or that they were acting for or on behalf of the defendant. The evidence is to the effect that the work stoppage and picketing were instituted and maintained by the employees themselves on their own initiative, and without any sanction whatsoever from either District 22, or the defendant, International. The evidence also discloses that Harry Mangus was a district officer only and was acting from time to time either on his own volition, or at the request of the officers of the local union to whom the employees belonged. The evidence further shows that the officers of District 22 are either elected or appointed within the District, not by any administrative officer in Washing-

ton, D. C. District 22 is autonomous; therefore, the agency shown in the United Construction Workers' case is lacking in the Adamson case. Furthermore, there was shown in the United Construction Workers' case that the regional director and field representative were acting within the course of their employment, to-wit: the organizing of workers, when they committed the torts for which suit was brought, whereas in the Adamson case, it is not shown that either Harry Mangus or any of the pickets were engaged in any course of employment of the defendant whatsoever.

We submit, therefore, that said two new cases cited by plaintiff since the argument of this case are readily distinguishable from the case at bar, and are not authorities in point on the issue of agency involved in the Adamson case.

Respectfully submitted,

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