

1981

Gerald L. Woodmansee v. The Industrial Commission of Utah, Department of Employment Security : Defendant's Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

GERALD L. WOODMANSEE,

Plaintiff-Appellant,

vs.

Case No. 17352

THE INDUSTRIAL COMMISSION
OF UTAH, DEPARTMENT OF
EMPLOYMENT SECURITY,

Defendant-Respondent.

DEFENDANT'S BRIEF

STATEMENT OF NATURE OF THE CASE

This is an action before the Supreme Court of the State of Utah pursuant to Section 35-4-10(1) Utah Code Annotated 1953, as amended, seeking judicial review of a decision of the Board of Review of the Industrial Commission of Utah, which affirmed the decision of an Appeal Referee which denied benefits to the Plaintiff, Gerald L. Woodmansee, effective June 1, 1980, pursuant to Section 35-4-5(1), Utah Code Annotated 1953, as amended (Pocket Supplement 1979), on the grounds the Plaintiff is an employee of an educational institution between two successive academic terms and has reasonable assurance of being recalled to work at the beginning of the next academic term.

DISPOSITION BELOW

Plaintiff was denied unemployment benefits by a Department Representative pursuant to Section 35-4-5(i), Utah Code Annotated 1953, as amended, (Pocket Supplement, 1979), on the grounds he is an employee of an educational institution between two successive academic terms and has reasonable assurance of being recalled to work at the beginning of the next academic term. Plaintiff appealed to an Appeal Referee, who affirmed the disqualification by decision dated August 15, 1980. The Board of Review affirmed the decision of the Appeal Referee by decision issued September 11, 1980, in Case Number 80-A-2412, 80-BR-265,

RELIEF SOUGHT ON REVIEW

Plaintiff seeks a finding by the Court that Plaintiff is on a temporary layoff with the Salt Lake City School District (R.0017) thus entitling him to unemployment benefits. Defendant seeks affirmance of the decision by the Board of Review.

STATEMENT OF FACTS

For 16 years prior to filing for unemployment compensation benefits on June 6, 1980, Plaintiff worked as a speech therapist (R.0021) or communication disorder specialist (R.0014) for the Salt Lake City School District. (R.0021) Plaintiff intended to go back to work for the school district in the same position when the next school term began in the Fall. (R.0014)

Plaintiff was a State Legislator for the prior 10 years. (R.0013) In the Summer of 1979, Plaintiff worked one and one-half months for Gibbons and Reed as a laborer but was unable to obtain employment with the company in the Summer of 1980. (R.0013-0014)

ARGUMENT

POINT I

IN REVIEWING A DETERMINATION OF THE INDUSTRIAL COMMISSION UNDER THE UTAH EMPLOYMENT SECURITY ACT THE COURT WILL AFFIRM THE COMMISSION'S FINDINGS IF SUCH ARE SUSTAINED BY SUBSTANTIAL COMPETENT EVIDENCE.

Respondent submits that this Court's review of determinations of the Department is limited to deciding whether there is substantial competent evidence to sustain such determinations. Martinez v. Board of Review, 25 U. 2d 131, 477 P. 2d 587 (1970). A reversal of an order of the Department denying compensation can only be justified if there is no substantial evidence to sustain the determination and the facts giving rise to a right to compensation are so persuasive that the Department's denial was clearly capricious, arbitrary, and unreasonable. Kennecott Copper Corporation Employees v. Department of Employment Security, 12 U. 2d 262, 372 P. 2d 987 (1962); Gocke v. Wiesley, 18 U. 2d 245, 420 P. 2d 44,45 (1966); Continental Oil Company v. Board of Review of the Industrial Commission, 568 P. 2d 727, (Utah 1977). In Members of Iron Workers Union of Provo v. Industrial Commission, 104 Utah 242, 248; 139 P. 2d 208, 211 (1943), this Court said:

If there is substantial competent evidence to sustain the findings and decisions of the Industrial Commission, this court may not set aside the decision even though on a review of the record we might well have reached a different result.

POINT II

THERE IS A PRESUMPTION THAT A STATUTE OR ORDER OF AN ADMINISTRATIVE BODY ACTING PURSUANT TO STATUTORY AUTHORITY IS CONSTITUTIONAL IN ALL CASES AND THE PRESUMPTION IS GREATER WHERE THE INTEREST OF THE STATE IS INVOLVED THAN IT IS WHERE ONLY PRIVATE INTERESTS ARE AFFECTED.

Section 35-4-5(1), Utah Code Annotated 1953, as amended, (Pocket Supplement 1979) provides as follows:

5. An individual shall be ineligible for benefits or for purposes of establishing a waiting period:

(1) For any week in which the individual's benefits are based on service for an educational institution in an instructional, research or principal administrative capacity and which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual performs services in the first of such academic years (or terms) and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for an educational institution in the second of such academic years or terms.

(2) For any week in which the individual's benefits are based on service in any other capacity for an educational institution (other than an institution of higher education) and which week begins during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms.

(3) With respect to any services described in clause (2) or (3), compensation payable on the basis of such services shall be denied to an individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

Benefits based on service in employment defined in Section 35-4-22(j)(2)(D) and (E) shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this act.

Plaintiff's Brief hints that he feels Section 35-4-5(1)(2), Utah Code Annotated 1953, as amended, (Pocket Supplement 1979), is unconstitutional. He does not specifically so state and cites no authority in support of this contention.

Defendants submit that the Utah State Legislature had a rational, constitutionally sound basis and interest in deciding that employees of educational institutions between two successive academic terms with reasonable assurance of being recalled to work at the beginning of the next academic term are not unemployed within the meaning of the Utah Employment Security Act. As stated by Chief Justice Ellett, concurring in Baird v. State, 574 P. 2d 713 (1978) at 722:

There is a presumption that a statute or order of an administrative body acting pursuant to Statutory Authority is constitutional in all cases Norvill v. State, 98 Utah 170, 97 P. 2d 937 (1940), 16 Am. Jur. 2d, Const. Law, 144.; and the presumption is greater where the interest of the State is involved than it is where only private interests are affected. 16 C.J.S. Const. Law § 99

POINT III

THE BOARD OF REVIEW OF THE INDUSTRIAL COMMISSION OF UTAH DID NOT ERR IN DENYING UNEMPLOYMENT COMPENSATION BENEFITS TO PLAINTIFF.

Plaintiff clearly falls within the provisions of Subparagraph (2) of the above-cited Section 35-4-5(1) as an individual whose "benefits are based on service in any other capacity for an educational institution. . . during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms."

Plaintiff's claim for unemployment benefits (R.0021) shows Plaintiff has worked for the Salt Lake School District for 16 years. At his hearing before the Appeal Referee, Plaintiff was asked: "Will you be going back to the School District in the same position this Fall?" Plaintiff answered, "Yes." (R.0014)

Plaintiff does not deny that he falls within this statutory definition. He simply contends that the statute was "forced by Federal considerations to deny him his individual rights." (Plaintiff's Brief, page 1) and further contends in his Summary (Plaintiff's Brief, page 2) that: "The Petitioner feels wronged by the decisions and laws upon which they were made."

The responsibility for writing the statutes for the State of Utah lies with the Utah State Legislature of which Plaintiff was formerly a member. In performing that responsibility, the Legislature has decided that school employees are not unemployed within the meaning of the Utah Employment Security Act during the period between terms. This applies not only to the educators but to the custodians, lunchroom workers, bus drivers, and other school workers as noted by the Appeal Referee (R.0011). As a State Legislator, Plaintiff unsuccessfully sought to raise a distinction between educators and other school employees. (R.0014) Plaintiff now seeks to have this Court raise that distinction. However, the Legislature clearly considered the distinction between educators and other school employees, but decided to treat both groups in the same manner with respect to unemployment insurance eligibility, as evidenced by the inclusion of Subparagraph (2) in Section 35-4-5(i) of the Act. The duty of the Board of Review and of this Court is to uphold and give effect to the clear meaning of statutes properly enacted by the Legislature, as in the instant case.

CONCLUSION

The decision of the Department Representative, Appeal Referee, and Board of Review that the Plaintiff-Appellant is an employee of an educational institution between two successive academic terms and has reasonable assurance

being recalled to work at the beginning of the next academic term is supported by substantial, competent, uncontroverted evidence. The decision should, therefore be affirmed.

Respectfully submitted this ____ day of September, 1981.

DAVID L. WILKINSON,
Attorney General of Utah

K. ALLAN ZABEL
LORIN R. BLAUER
Special Assistants
Attorney General

BY: _____
Lorin R. Blauer
Special Assistant Attorney General

CERTIFICATE OF MAILING

I do hereby certify that I mailed two copies of the foregoing Defendant's Brief to Mr. Gerald L. Woodmansee, Pro se, 877 Catherine Street, Salt Lake City, Utah 84116, this ____ day of September, 1981.
