

1983

George Brockel v. Industrial Commission of Utah : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

GEORGE BROCKEL,)
)
 Plaintiff -)
 Appellant,)
)
 -vs-) Case No. 18233
)
 INDUSTRIAL COMMISSION OF)
 UTAH, Department of)
 Employment Security,)
)
 Defendant -)
 Respondent.)

BRIEF OF APPELLANT

Appeal from a decision of the Industrial Commission of Utah affirming the transfer of funds to the North Dakota State Employment Security Agency.

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TABLE OF AUTHORITIES

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IN THE SUPREME COURT OF THE STATE OF UTAH

GEORGE BROCKEL,)	
Plaintiff -)	
Appellant,)	
-vs-)	Case No. 18233
INDUSTRIAL COMMISSION OF)	
UTAH, Department of)	
Employment Security,)	
Defendant -)	
Respondent.)	

BRIEF OF APPELLANT

NATURE OF THE CASE

This is a review of the decision of the Industrial Commission of Utah, affirming a decision of the Appeals Referee holding that the State of Utah had jurisdiction to recover an alleged overpayment of Unemployment Compensation benefits owing to the North Dakota Employment Security Office. (R. 0013) The action of the Industrial Commission left in effect a decision of the Appeals Referee, LaVone Liddle, dated August 10, 1981. (R. 0031) In that decision the Appeals Referee determined that the alleged overpayment owing to North Dakota was made within the past three years and that North Dakota was a "transferring state" that had requested repayment by the State of Utah. The referee held

that Utah did have jurisdiction to recover the funds for North Dakota. Based on the Appeals Referee's decision, Utah transferred \$1,400.00 to North Dakota in payment of the alleged overpayment.

DISPOSITION BELOW

The Industrial Commission of Utah, through its Board of Review, affirmed the previous decision of the Department of Employment Security and its Appeals Referee.

RELIEF SOUGHT ON APPEAL

Appellant asks the court to reverse the holding of the Industrial Commission for the reason that North Dakota was not a transferring State within the meaning of the law. Appellant seeks a determination that the Industrial Commission of Utah acted improperly by transferring \$1,400.00 of Unemployment Compensation benefits to North Dakota in payment of an alleged overpayment, when no basis in law existed for such a transfer. Appellant requests remittance to him of the \$1,400.00 in benefits.

STATEMENT OF FACTS

On May 7, 1981, appellant filed his claim for unemployment benefits with the Utah Department of Employment Security. (R. 0054) On his claim for unemployment benefits, appellant reported employment in three States: Utah, Wyoming and North Dakota. The appellant reported having worked at Mandan Supply, Inc. in Mandan, North Dakota from March 1, 1980 to April 30, 1980. (R. 0054) The

respondent treated the application as a combined wage claim and requested a transfer of wages from North Dakota. (R. 0050) The relevant base period was listed in the request as 4/1/80 to 3/31/81. On May 19, 1981 North Dakota returned the Request for Transfer of Wages form to respondent and noted:

No wages for transfer - employer contends that claimant was last employed on 2-14-80. (R. 0050)

The information supplied by North Dakota was received by respondent on May 22, 1981.

On May 27, 1981, the respondent prepared a Notice of Monetary Determination, listing appellant's four employers in Utah, Wyoming and North Dakota. (R. 0049) While wages were reported for the employers in Utah and Wyoming, the notice reported no wages for the one North Dakota employer listed. (R. 0049) This same form reported appellant's eligibility for maximum benefits of \$1,500.00, with a weekly benefit amount of \$150.00.

In a letter, dated May 12, 1981, North Dakota confirmed a telephone conversation of the same date with respondent wherein it advised of an alleged overpayment owing to North Dakota in the amount of \$1,400.00. (R. 0044) In its letter, North Dakota advised that the \$1,400.00 alleged overpayment resulted from two separate determinations by North Dakota Job Service, dated January 12, 1981 and October 7, 1980. North Dakota advised that

copies of both decisions had been mailed to the appellant and had become final. North Dakota requested respondent's assistance under Section 5928 E (1&2) Part V, ES Manual.

(R. 0044)

On June 5, 1981, respondent notified the appellant of the claim for repayment of an overpayment by North Dakota. (R. 0043) Appellant was advised that respondent was posting a \$1,400.00 overpayment to his claim, effective May 3, 1981. Appellant was further advised of his right to protest the decision within ten days from the date mailed.

(R. 0043)

On June 9, 1981, appellant filed in person for an interstate appeal on his previous determination. (R. 0042) On July 16, 1981, appellant was notified of a hearing date set for July 27, 1981. (R. 0040) The requested hearing was held on July 27, 1981 and a transcript of the hearing was made. (R. 0033-39) On August 10, 1981, the Appeals Referee reached a decision that Utah did have jurisdiction to transfer to North Dakota funds owing to appellant in satisfaction of the alleged overpayment. (R. 0031) On August 17, 1981, appellant filed his appeal to the Board of Review from the referee's decision. (R. 0030)

On October 6, 1981, after reviewing appellant's record and testimony, the respondent, through its Board of Review, referred the matter to the appellate authority for the North Dakota Bureau of Employment Security. (R. 0025)

The respondent requested the State of North Dakota to review whether appellant had a further right of appeal in North Dakota. North Dakota reviewed the matter and, in a decision dated November 24, 1981, affirmed the decision of the Appeals Referee in the two previous North Dakota determinations assessing an overpayment of \$1,500.00. (R. 0017) Respondent was advised of the North Dakota review decision on January 20, 1982. (R. 0015) Following receipt of the North Dakota review decision, respondent entered its decision, dated January 26, 1982, affirming the decision of the Appeals Referee that Utah did have jurisdiction to recover funds due the North Dakota agency and upholding the remittance of \$1,400.00 by respondent to the State of North Dakota. (R. 0014) On February 8, 1982 appellant filed his timely pro se petition for writ of review with the Supreme Court of the State of Utah. (R. 0010) Following dismissal of his petition on September 15, 1982 for lack of prosecution, appellant's petition was reinstated on March 21, 1983.

POINT I.

RESPONDENT ERRED IN REMITTING UNEMPLOYMENT
COMPENSATION BENEFITS TO THE STATE OF
NORTH DAKOTA, SINCE THAT STATE WAS NOT
A TRANSFERRING STATE UNDER THE PROVISIONS
OF THE FEDERAL UNEMPLOYMENT TAX ACT.

The Federal Unemployment Tax Act provides that states may participate in arrangements for the payment of

compensation on the basis of combined wage claims. The law provides:

Requirements.--The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides--

....

(9) (A) compensation shall not be denied or reduced to an individual solely because he files a claim in another State (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another State (or such a contiguous country) at the time he files a claim for unemployment compensation;

(B) the State shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the State law with his wages and employment covered under the unemployment compensation law of other States which are approved by the Secretary of Labor in consultation with the State unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations. Any such arrangement shall include provisions (i) applying the base period of a single State law to a claim involving the combining of an individual's wages and employment covered under two or more State laws, and (ii) avoiding duplicate use of wages and employment by reason of such combining;... 26 U.S.C. §3304 (a) (9) (B)

The regulations implementing the Federal Unemployment Tax Act are found at 20 C.F.R. Part 616 (1971). The regulations, as applied by respondent, are contained in its Employment Security Manual at Part V, Sections 5000-5999. The regulations define a transferring State as follows:

A State in which a Combined-Wage Claimant had covered employment and wages in the base period of a paying State, and which transfers such employment and wages to the paying State for its use in determining the benefit rights of such claimant under its law. 20 C.F.R. §616.6(f)

Paying state is defined as:

The State in which a Combined-Wage Claimant files a Combined-Wage Claim, if the Claimant qualifies for unemployment benefits in that State on the basis of combined employment and wages. 20 C.F.R. §616.6(e)

The regulations further provide for recovery of overpayments owing to transferring States:

If there is an overpayment outstanding in a transferring State and such transferring State so requests, the overpayment shall be deducted from any benefits the paying State would otherwise pay to the claimant on his Combined-Wage Claim except to the extent prohibited by the law of the paying State. The paying State shall transmit the amount deducted to the transferring State or credit the deduction against the transferring State's required reimbursement under this arrangement. This paragraph shall apply to overpayments only if the transferring State certifies to the paying State that the determination of overpayment was made within 3 years before the Combined-Wage Claim was filed and that repayment by the claimant is legally required and enforceable against him under the law of the transferring State. 20 C.F.R. §616.8(e)

Finally, the regulations provide that certain employment and wages are not transferrable. The regulation states:

Employment and wages transferred to the paying State by a transferring State

shall not include:

Any employment and wages which have been canceled or are otherwise unavailable to the claimant as a result of a determination by the transferring State made prior to its receipt of the request for transfer, if such determination has become final or is in the process of appeal but is still pending. If the appeal is finally decided in favor of the Combined-Wage Claimant, any employment and wages involved in the appeal shall forthwith be transferred to the paying State and any necessary redetermination shall be made by such paying State. 20 C.F.R. §616.9(b) (2)

Based on the above-cited regulations, the respondent did not have proper authority to remit \$1,400.00 in Unemployment Compensation benefits to North Dakota. Applying the facts contained in the record to the regulations cited, it is clear that North Dakota was not a transferring state as that term is defined in 20 C.F.R. §616.6(f). In the Request for Transfer of Wages submitted by respondent to North Dakota, the effective base period is listed as beginning on April 1, 1980 and ending March 31, 1981. (R. 0050) In its response to Utah's request, North Dakota noted that no wages were available for transfer, since the employer contended that the claimant (appellant) was last employed on February 14, 1980, a date preceding the start of the base period. (R. 0050) Further, respondent did not consider North Dakota a transferring State, since on its Notice of Monetary Determination, dated May 27, 1981, it

reported no wages for the one North Dakota employer listed by appellant in his claim for Unemployment Compensation benefits. (R. 0049) Therefore, North Dakota was not a transferring State and respondent should not have honored its request for remittance of appellant's Unemployment Compensation benefits.

In its letter of May 12, 1981 to respondent requesting the remittance of appellant's benefits, North Dakota based its request on Section 5928 E (1&2) of Part V of the Employment Security Manual. (R. 0044) The substance of the cited section of the Employment Security Manual is contained in 20 C.F.R. §616.8 setting forth the responsibilities of the paying State. A copy of the Employment Security Manual section relied on by the State of North Dakota is attached as Appendix A. A review of Section 5928 E (1) shows that is inapplicable, since appellant did not withdraw from a combined wage claim. Therefore, North Dakota's claim can only be made under Section 5928 E (2). However, as previously discussed, North Dakota was not a transferring State within the meaning of the definition cited, making the overpayment recovery language of Subsection (2) also inapplicable. The recovery of overpayments language contained in the regulations at 20 C.F.R. §616.8(e) cited above refers throughout to a "transferring State". Since North Dakota was not a transferring State, it cannot seek recovery of its alleged

overpayment under the cited sections of the Employment Security Manual.

That North Dakota was not a transferring State is further supported by a consideration of 20 C.F.R. §616.9(b) regarding the types of employment and wages not transferrable. This section of the regulations, found in the Employment Security Manual at Section 5908 B includes as non-transferable employment and wages any employment and wages which have been canceled or are otherwise unavailable to a claimant as a result of a determination by the transferring State made prior to its receipt of a request for transfer. In this case, North Dakota had previously ruled that appellant had an outstanding overpayment of \$1,400.00. Therefore, any employment and wages which may have accrued to appellant in the State of North Dakota would have first been applied to his alleged overpayment. North Dakota's determinations occurred prior to Utah's request for transfer of wages and, therefore, any employment and wages to which appellant might have been entitled in North Dakota were "canceled" or "otherwise unavailable". 20 C.F.R §616.9(b)(2)

CONCLUSION

The appellant filed a valid and proper claim for Unemployment Compensation benefits with the State of Utah based upon wages earned in the States of Utah and Wyoming. Appellant's claim for benefits was properly treated by

respondent as a combined wage claim. Although appellant listed employment with the State of North Dakota, a determination by that State's employment service revealed that no wages were available during the base period applicable in Utah. North Dakota so reported such information to the State of Utah.

North Dakota was not a transferring State within the meaning of the Unemployment Tax Act and regulations promulgated thereunder. Therefore, respondent acted without proper legal authority in complying with North Dakota's claim for payment of an alleged overpayment and in remitting appellant's Unemployment Compensation benefits to that State. The appellant has been deprived of a valuable right in violation of federal law and respectfully urges the court to reverse the decision of the Industrial Commission and order the prompt remittance to him of \$1,400.00 in Unemployment Compensation benefits.

DATED this 20th day of April, 1983.

Respectfully Submitted:

UTAH LEGAL SERVICES, INC.


MICHAEL E. BULSON
Attorney for Appellant

Part V	Unemployment Insurance Program	5928(5)
5000-5999	Benefit Claims	1/24/72

5928 Rights and Responsibilities of the Paying State--continued

- E. Collecting overpayments for other States. The procedures for combining wages present two situations in which one State may withhold benefit payments from a claimant and use them to reimburse a State by which the claimant was overpaid.
1. One involves the claimant's withdrawal from a combined-wage claim. If any benefits have been paid on the combined-wage claim, a condition for withdrawal is the claimant's agreement to reimburse the paying State either by cash or by authorizing any other State against which he claims benefits to deduct the amount due to the paying State from any benefit payments to which he is entitled. In this situation, the States may or may not have a paying-transferring State relationship. If they do, such recoveries may be included on the quarterly statement of charges. If not, normal procedures for exchanging money should be followed.
 2. The second situation occurs when a transferring State has an overpayment outstanding against the claimant established within 3 years prior to the effective date of the combined-wage claim.

APPENDIX "A"

CERTIFICATE OF MAILING

I hereby certify that I mailed true and correct copies of the above BRIEF OF APPELLANT to K. Allen Zabel, Attorney for Respondent, INDUSTRIAL COMMISSION OF UTAH, Department of Employment Security, P.O. Box 5800, Salt Lake City, Utah, 84110-5800, via first class U.S. Mail, postage prepaid this 20th day of April, 1983.


LINDA TAYLOR
Secretary