

1957

J. B. & R. E. Walker, Inc., et al v. Industrial Commission et al : Defendant's Brief

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

E. R. Callister; William R. Ingebretsen; Attorneys for Defendants;

Recommended Citation

Brief of Respondent, *Walker Inc. v. Industrial Comm. Of Utah*, No. 8751 (Utah Supreme Court, 1957).
https://digitalcommons.law.byu.edu/uofu_sc1/2958

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

JAN 10 1958

In the

LAW LIBRARY

Supreme Court of the State of Utah

J. B. & R. E. WALKER, INC., et al.,
Plaintiffs,

vs.

INDUSTRIAL COMMISSION, et al.,
Defendants.

Case No.
8751

DEFENDANT'S BRIEF

FILED

DEC 19 1957

E. R. CALLISTER,
Attorney General,

Supreme Court, Utah

WILLIAM R. INGEBRETSEN,
Attorneys for Defendants.

TABLE OF CONTENTS

	Page
POINTS TO BE ARGUED	2
ARGUMENT	2
POINT I. THE DECEASED, J O H N R O B E R T DUKES, WAS KILLED IN THE COURSE OF HIS EMPLOYMENT	2
CONCLUSION	5

CASES CITED

Black v. Town of Springfield, 217 S. C. 413, 60 S. E. 2d 854	4
Cohen v. Birmingham Fabricating Co., 224 Ala. 67, 139 So. 97	4
Holloway v. Ideal Seating Co., 313 Mich. 267, 211 N. W. 2d 125	3
Kasper v. Liberty Foundry Co. (Mo. App.), 54 S. W. 2d 1002	3
Kensington Steel Corp. v. Industrial Comm., 385 Ill. 504, 53 N. E. 2d 395	4
M. & K. Corporation v. Industrial Commission (Utah), 189 P. 2d 132	2, 4
Rampano Iron Works, 210 App. Div. 506, 206 N. Y. S. 868	3, 4
Rendino v. Continental Can Company, 226 N. Y. 565, 123 N. E. 886	3
Shoffler v. Lehigh Valley Coal Co., 290 Pa. 480, 139 A. 192	4
U. S. Rubber Reclaiming Co., 256 N. Y. 571, 177 N. E. 144	4

In the Supreme Court of the State of Utah

J. B. & R. E. WALKER, INC., et al.,
Plaintiffs,

vs.

INDUSTRIAL COMMISSION, et al.,
Defendants.

Case No.
8751

DEFENDANT'S BRIEF

We agree generally with the statement of facts as contained in plaintiff's brief. It is the application of the rules of law set forth in the cases cited by plaintiffs to the factual situation with which we do and must disagree.

It is our contention that the Court's problem is, in fact, one of examining the record to determine whether there is any evidence to support the findings of the Commission.

POINTS TO BE ARGUED

POINT I

THE DECEASED, JOHN ROBERT DUKES,
WAS KILLED IN THE COURSE OF HIS EM-
PLOYMENT.

ARGUMENT

POINT I

THE DECEASED, JOHN ROBERT DUKES,
WAS KILLED IN THE COURSE OF HIS EM-
PLOYMENT.

It is not necessary that this Court look to cases decided by the Courts of other jurisdictions. The problem to be decided is set forth in the decision of *M. & K. Corporation vs. Industrial Commission*, (Ut.), 189 Pac. (2d) 132, wherein the Supreme Court of the State of Utah made the following observations:

“Not every violation by an employee of a statutory provision or of a rule or regulation of his employer constitutes a departure from the course of his employment. The general rule is that where the employee, at the time of the accident, is engaged in doing a thing or rendering a service which he is employed or authorized to do, either expressly or by the nature of and the surrounding facts and circumstances of his employment, or is doing something which is incidental thereto, but does such act or renders such service or incidental in an unlawful or forbidden manner, he does not thereby depart from the course of his employment even though the accident occurs as a consequence of such violation. It is

only when the act or service which the employee is performing is itself prohibited, as distinguished from the manner in which the act is done or the service performed, that the violation of the employer takes the employee outside of the course of his employment and defeats a recovery."

"The true test is: Was the regulation calculated to limit the scope of the employment or was it calculated only to govern the manner or performing a more comprehensive task.

"But it must always be kept in mind that the question to be determined is: Was the employee acting in the course of his employment? And that in determining that question it is necessary to decide: What was he employed to do?"

The record shows that John Robert Dukes was employed as a helper to the plant operator (R. 10). The deceased however, had been assigned various jobs and duties during the course of his employment. He had performed the duties of operating the scales; lubrication man; repair man; general clean-up work; and on at least one occasion prior to the accident, he operated the Hough Loader, upon which he was riding at the time of his death.

We submit that in all of the cases cited by plaintiffs in their brief, the employee was employed for a specific and particular job i. e. In *Kasper vs. Liberty Foundry Co.*, (Mo. App.), 54 S. W. (2d) 1002, a moulder; In *Holloway vs. Ideal Seating Co.*, 313 Mich. 267, 211 N. W. (2d) 125, a helper to a punch press operator; In *Rendino vs. Continental Can Company*, 226 N. Y. 565, 123 N. E. 886, employed to dip cans in a liquid; In *Rampano Iron Works*, 210 App. Div.

506, 206 N. Y. S. 868, employee whose duty it was to operate an air hammer; In *U. S. Rubber Reclaiming Co.*, 256 N. Y. 571, 177 N. E. 144, foreman in the tube department; In *Kensington Steel Corp. vs. Industrial Comm.*, 385 Ill. 504, 53 N. E. (2d) 395, a truck driver; In *Shoffler vs. Lehigh Valley Coal Co.*, 290 Pa. 480, 139 A. 192, a spragger; In *Cohen vs. Birmingham Fabricating Co.*, 224 Ala. 67, 139 So. 97, sales manager; In *Black vs. Town of Springfield*, 217 S. C. 413, 60 S. E. (2d) 854, Chief of Police.

We also submit that in each case cited by plaintiffs in their brief the restriction or rule of the company was an absolute rule against the doing of the act by the employee.

In the instant case, the deceased, we admit, had been instructed not to operate the Hough Loader until such time as he had been instructed in its operation. The record is clear that the deceased had received instructions on the use of said machine at a time prior to the date of the accident. The record is also clear that on the date of the accident, he was asked by his immediate superior whether or not he knew how to operate said piece of equipment and that he had replied in the affirmative, and apparently based on his answer was not prohibited from operating the Loader.

We submit that the deceased at the time of the accident was engaged in doing a thing or rendering a service which he was employed or authorized to do, and that the regulation was only calculated to govern the matter of performing said task and was not a regulation calculated to limit the scope of his employment, and therefore the rule enunciated in the *M. & K. Corporation* case (*ibid*) is decisive.

CONCLUSION

We respectfully submit therefore that the order of the Industrial Commission should be sustained and that plaintiff's Writ of Certiorari should be denied.

Respectfully submitted,

E. R. CALLISTER,
Attorney General,

WILLIAM R. INGEBRETSEN,
Attorneys for Defendants.

5245 South State St.,
Murray, Utah.

