

1958

Ralph E. Child v. Board of Review of the Industrial Comm. Of Utah : Rebuttal of Plaintiff

Utah Supreme Court

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Ralph E. Child;

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In the Supreme Court of the
State of Utah

FILED

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RALPH E. CHILD

Plaintiff,

vs.

BOARD OF REVIEW OF THE
INDUSTRIAL COMMISSION
OF THE STATE OF UTAH
DEPARTMENT OF EM-
PLOYMENT SECURITY,

Defendant.

Clerk, Supreme Court 1958

Case No.

8873

Rebuttal of Plaintiff

Submitted by RALPH E. CHILD

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In the Supreme Court of the State of Utah

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Rebuttal of Plaintiff

STATEMENT OF THE CASE

In December, 1957, Ralph E. Child, the appellant, applied at the Provo office of the Employment Security for benefits due under the Unemployment Act, Sec. 35-4 Utah Code Annotated, and he returned for questioning at 11:40 a.m. every Thursday morning as instructed.

On January 16, 1958, a representative of the Department of Employment Security of the Industrial Commission of Utah denied, by letter, benefits

to Ralph E. Child; whereupon the appellant filed a written appeal within the time required by statute. The matter was heard by the appeals referee on February 6, 1958, at Provo, Utah. The referee, by letter, upheld the decision of the representative of the Department of Employment Security.

On February 20, 1958, the appellant appealed the decision of the referee to the Board of Reviews of the Industrial Commission, which affirmed the decision of the referee. The appellant then appealed the decision of the Board of Reviews to the Supreme Court of the State of Utah.

The appellant paid the filing fee and filed a brief with the Utah Supreme Court setting forth his contentions as applied to the reasons he was led to believe were the basis of denial of benefits by the Board of Reviews.

The appellant has at hand the Brief of Respondent, to which he takes exception as follows:

EXCEPTIONS TO RESPONDENT'S STATEMENT OF FACTS

Referring to Paragraph 1, page 4: There is nothing in the transcript from which it could be concluded that the Southeast Service is a separate corporation or company. It operates as a part of the Ralph Child Construction Company, and has its own bank account for bookkeeping purposes only.

The implication in the last paragraph on page 5 is that the appellant "might" have received wages from the other companies prior to the time that he made claim for benefits. This is an unwarranted assumption and is intended to cast doubt on the integrity of the appellant.

The last paragraph on page 6 states that “. . . the Southeast Service monies are deposited in the bank account of the Ralph Child Construction Company; . . . ” This is wholly untrue, as the Southeast Service has had its own bank account since its inception. The employees are properly reported under the name of the Construction Company to avoid the complications of an additional series of tax reports.

EXCEPTIONS TO STATEMENT OF POINTS

Exception to Point 1, which defines Unemployment 35-4-22 (m)

Section 35-4-22 (m), UCA 1953 says:

“ ‘Unemployment.’ (1) An individual shall be deemed ‘unemployed’ in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than fulltime work if the wages payable to him with respect to such week are less than his weekly benefit amount. The Commission shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedure as to total unemployment, part total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the Commission deems necessary.”

It will be noted here that an individual is unemployed “. . . in any week during which he performs no services and with respect to which no wages are payable to him . . . ”

The material facts are the time and the wages. If no wages are payable, he is unemployed, within the meaning of the Act.

On page 8, last paragraph, appears a list of eligibility requirements. The appellant met all of these requirements, to wit:

A—He made claim for benefits weekly;

B—He registered for work;

C—He was able to work and available for work and furthermore applied in numerous places for work on a weekly salary basis.

Exception is taken to paragraph 2, page 10, wherein respondent states that “. . . the act of Child in laying himself off without the Board of Directors taking any action . . .”

This is not true. The minutes of the corporation show that he was laid off by an act of the Board of Directors.

The last paragraph of Page 10 is also a misstatement of fact: “The services which were performed for all of the four companies were accounted for and paid by the Ralph Child Construction Company.”

All of the work performed as president of the companies was on a non-remunerative basis. The wages paid the appellant were paid him for actually being on the job, directing operations, laying out work, supervising employees, expediting materials, protecting the work from the elements, coordinating subcontractors, and other activities necessary to running the jobs on the site.

Exception is taken to paragraphs 3 and 4 on page 11: “So long as Child remained the operating head of the several companies charged with the re-

sponsibilities for all of the company operations, he could not have been anything but **fully employed** . . .”

This is an especially interesting conclusion because it puts a ceiling on Child's ability; for in addition to being operating head of the four companies mentioned, which “fully employed” him, he was president of the Utah Racing Association, which gathered in excess of 50,000 names to put pari mutual on the ballot; had charge of all of the race meets throughout the State, hiring and paying a racing secretary, starters, responsible for moving the gate, for jockeys, horses, purses, dues, etc. He also held down an active position in politics. He was and is president of Spring Acres Corporation; and as a Springville City councilman had charge of over two hundred thousand dollars worth of water and sewer improvements for Springville City. He also held office in other organizations. What right has the Board of Review to say how much work or responsibility keeps Child FULLY EMPLOYED? He did not receive salary, commission or remuneration in any form for any of this work.

Exception is taken to all of the cases cited by the respondent on pages 12 and 13 because in none of these cases were the claimants available for work nor had they applied for work.

Paragraph 3 page 14: “The efforts of the appellant during the months in which no active job contract performance was being carried out could very well yield all of the business for the operating season; and, therefore, be the reason for the success or failure of the company on a year-round basis.”

This would indicate that when a person or company is unemployed they should do nothing to

find employment. A person going to school might be laying the groundwork for employment opportunities later on; certainly, to be consistent, the respondent would have to conclude that an unemployed person should not look for work because he would then be employed looking for work and therefore ineligible.

Paragraph 4, page 14, contends that a person cannot be president of several companies without having a week of less than full time work. If this be true, then it would follow that if he consolidated his four companies into one, he would be one-fourth employed, or if he divided them he would be twice as employed.

Exception is taken to Point II of the Respondent's Brief:

If it is within the power of the Industrial Commission to be the sole judges of the facts and to distort them conveniently, then the court is completely superfluous, because the facts can be twisted in order to evade the law.

Exception is taken to paragraph 2, page 18:

This is an unwarranted assumption and has no basis in fact. I personally know of a successful construction company that is operated by a mortician. I know of one operated by an insurance broker and of one operated by a banker. I also know that one of the larger contractors in the state operates in addition to his construction business, two Lumber and Hardware stores, one service station, a Ready-Mix Concrete business, a large farm, and one of the largest coal mines in Carbon County.

The paragraph at the bottom of page 18 states: "The fact that there is a seasonality factor which

limits the performance of construction contracts during the cold months of the year does not leave the appellant as President and Manager with no work or obligations during those cold months.”

Let me point out here that lack of “obligations” is not a prerequisite to eligibility, — eligibility being A—Registered for work; B—able and available to work.

In various places in the respondent’s brief there are references to appellants “laying himself off,” as though it were done deliberately for the purpose of collecting unemployment benefits. Let me point out that there is no justification for the respondents casting any insinuations upon the integrity of the appellant. Had he WANTED to “lay himself off” he could have done so during the winter of 1956-57, because of seasonality or cold weather. He was working and the construction company was contributing on him during that winter. It might also be noted that since May 1st, 1958, the appellant has been actively running the job, on the job, from ten to fourteen hours per day. This can be verified by contacting the Brigham Young University.

RECAPITULATION OF FACTS

1—The appellant, Ralph E. Child, worked for the Ralph Child Construction Company as manager and received wages in the amount of \$165.00 per week, upon which wage taxes were collected by the Department of Employment Security.

2—Because of lack of work, he became unemployed, within the meaning of the statute 35-4-22 (m) Utah Code Annotated.

3—Upon becoming eligible for benefits, he

A—Made proper claim for benefits;

B—Registered for work;

C—Was able and available for work;

D—Applied for work with other firms.

CONCLUSION

It was never the intention of the legislature to indicate that to be eligible for unemployment benefits, one should not look for work, or be mentally, physically, spiritually, or politically stagnant. It would appear from the Respondent's Brief that to be so eligible, the appellant could do absolutely nothing to further either his or his company's interests. It was the intention of the legislature under the statute, 35-4-20 UCA, to relieve the hardship of unemployment, not to reduce a person to total immobility.

The Department of Employment Security has demanded payment of taxes and has collected penalty and interest on same. To refuse to pay when the situation is not in their favor seems to be closely akin to fraud. It should be a two-way street: If the appellant is an employee for contribution purposes, he should be an employee for benefit purposes. The Ralph Child Construction Company is an employing unit, and Ralph E. Child as manager is an employee. He confronts the Court with the unfairness of the Department of Employment Security in collecting taxes and then refusing to pay legitimate claims. This appears to the appellant as being the same as an insurance company's refusing to pay a death claim, after having collected

premiums for years on the deceased. It is the contention of the appellant that such action is basically dishonest, and that such action was not the intention of the legislature.

I respectfully submit these facts to the Court, and urge that they rule in my favor for the unemployment monies due me from December, 1957 to April, 1958; or that the Department of Employment Security be required to refund me the money collected, with interest, and grant the Ralph Child Construction Company immunity from further taxation on me as their manager.

Respectfully submitted,

Ralph E. Child.