

1968

Virgil E. Norton v. Department of Employment Security, and Board of Review of The Industrial Commission of Utah : Brief of Appellant

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

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. Paul N. Cotro-Manes; Attorneys for Appellant

Recommended Citation

Brief of Appellant, *Norton v. Indus. Comm'n of Utah*, No. 11292 (1968).
https://digitalcommons.law.byu.edu/uofu_sc2/3420

This Brief of Appellant 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 (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

VIRGIL E. NORTON, *Appellant,*

vs.

DEPARTMENT OF EMPLOY-
MENT SECURITY, AND BOARD
OF REVIEW OF THE INDUS-
TRIAL COMMISSION OF UTAH,

Respondents.

Case No.
11292

BRIEF OF APPELLANT

Appeal from the Order of the Board of Review of the
Industrial Commission of Utah

Paul N. Cotro-Manes, of
COTRO-MANES, FANKHAUSER & BEASLEY
430 Judge Building
Salt Lake City, Utah 84111
Attorneys for Appellant

FRED F. DREMMAN, Special
Assistant Attorney General
174 Social Hall Avenue
Salt Lake City, Utah
Attorney for Department of Employment Security

PHIL L. HANSEN, Attorney General
State Capitol
Salt Lake City, Utah
Attorney for Industrial Commission of Utah

FILED
AUG 7 - 1968

Clerk, Supreme Court, Utah

TABLE OF CONTENTS

	Page
Nature of the Case	1
Disposition of Case by Administrative Agency.....	2
Relief Sought on Appeal	2
Statement of Facts	2
Argument	3
POINT I. THE DEPARTMENT OF EMPLOYMENT SECURITY AND THE BOARD OF REVIEW IMPROPERLY APPLIED THE LAW OF THE STATE OF UTAH TO THE FACTS OF THE CASE.	
	3
POINT II. SECTION 35-4-5 (g) IS UNCONSTITUTIONAL AS IT DISCRIMINATES AGAINST APPELLANT.	
	7
Summary	10

AUTHORITIES CITED

Allied Stores of Ohio v. Bowers (1959) 358 US 522, 3 L.ed 2d 480, 79 S.Ct 437	9
Heathman v. Giles, 13 U.2d 368, 374 P.2d 839	10

	Page
Kennecott Copper Employees, et al., v. Department of Employment Security, 13 U.2d 262, 372 P.2d 987	6, 9
McGowan v. Maryland, (1961) 366 US 420, 6 L.ed 2d 393, 81 S. Ct 1101	8
Rinaldi v. Yeager (1966) 384 US 305, 16 L.ed 2d 577, 86 S.Ct 1497	8

STATUTES CITED

35-4-5 (g), Utah Code Annotated, 1953, as amended by the Session Laws of 1963	4, 7
--	------

IN THE SUPREME COURT OF THE STATE OF UTAH

VIRGIL E. NORTON,

Appellant,

vs.

DEPARTMENT OF EMPLOY-
MENT SECURITY, AND BOARD
OF REVIEW OF THE INDUS-
TRIAL COMMISSION OF UTAH,

Respondents.

Case No.
11292

BRIEF OF APPELLANT

NATURE OF THE CASE

This matter arises under the Utah Employment Security Act wherein the appellant seeks to recover unemployment compensation for a period of time when he was unemployed. Compensation was denied him by the respondents on the basis that he was a full time student, pursuant to the provisions of 35-4-5(g), Utah Code Annotated, 1953, as amended by the Session Laws of 1963.

DISPOSITION OF CASE BY ADMINISTRATIVE AGENCY

This is an appeal from a judgment and order holding that the appellant was a full time student at the time of his discharge from his employment, and therefore was not entitled to recover unemployment compensation.

RELIEF SOUGHT ON APPEAL

The appellant seeks a reversal of the Board of Review's decision in this matter, and an award to the appellant of compensation as provided by law.

STATEMENT OF FACTS

The appellant had been employed full time as a painter for Trane Company from August 8, 1966, to January 19, 1968 (R-15). In this endeavor, he was earning approximately \$440.00 per month, and had during the year 1967 earned a total income of \$5,229.52 (R-16).

In addition to being employed by Trane Company as a painter, the appellant concurrently attended Westminster College at various times as a full time student, pursuing his college work in the mornings and continuing his full time occupation as a painter in the afternoons, he having worked the afternoon shift at Trane Company throughout the entire period of time that he was employed.

During the year 1966, Mr. Norton, the appellant, while still engaged as a full time painter, attended a fall semester at Westminster College, which semester ran through the month of January, 1967 (R-16). At the termination of this semester, he was compelled to leave his educational endeavors because of reasons of health. He did, however, continue his occupation as a painter, and worked through the entire year until January of 1968, when he was discharged for "reduction in force" by his employer (R-15). The appellant had returned to Westminster College in the fall semester of 1967, and carried a full course of instruction from September, 1967, through January of 1968 (R-17).

On the basis that Mr. Norton was a full time student, the Department of Employment Security denied him unemployment compensation and this action was affirmed by the Board of Review (R-6, 23, 29). The appellant took all necessary steps to perfect his appeal to the Supreme Court from the decision of the Board of Review, and this matter is now properly before the Supreme Court for review.

ARGUMENT

POINT I

THE DEPARTMENT OF EMPLOYMENT SECURITY AND THE BOARD OF REVIEW IMPROPERLY APPLIED THE LAW OF THE STATE OF UTAH TO THE FACTS OF THE CASE.

One of the disputes between appellant and respondent is whether or not Section 35-4-5 (g), Utah Code Annotated, 1953, as amended by the Session Laws of 1963, is applicable under the facts of the instant case.

This section of Utah law states:

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

(g) for any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance; unless the major portion of his wages for insured work during his base period was for services performed while attending school, provided, however, that notwithstanding the provisions of this subsection an otherwise eligible individual shall not be ineligible to receive benefits while attending night school, a part time training course, or a course approved by the Commission; and provided further that satisfactory attendance and satisfactory progress in a course approved by the Commission shall be evidence of availability.”

There is no dispute of the fact that the appellant had been engaged as a full time painter at Trane Company from September, 1966, through December 31, 1967. The fact that he did upon occasion attend Westminster College as a full time student does not in any way detract from or change his status as a full time employee under the Workmen's Compensation Act, and in particular under the unemployment provisions there

of. Had he not been attending Westminster College during the Fall of 1967, this dispute would not have arisen, nor can the respondent say that he would not have been entitled to unemployment benefits upon his involuntary termination in January of 1968, from his full time employment.

The fact that he was attending Westminster College for the fall semester does not change his status as a full time employee. It is submitted that because he was in fact a full time employee, otherwise entitled to unemployment benefits, the mere entering of a school on a full time basis, while still maintaining his status as a full time employee, does not bring him within the purview of 35-4-5 (g), Utah Code Annotated, 1953, as amended.

It is submitted that the purposes and intent of this section of the Utah law was to exclude from unemployment compensation privileges, students who merely worked part time or for several months a year while they pursued their normal course of education, normally working only during the summer months. It is easy to see that many abuses had arisen prior to the enactment of this act, or could have arisen where a student, going to the college on a full time basis, would work during the summer months to earn enough money to go back to school, and because of his termination of his employment after summer employment then be entitled to unemployment compensation.

However, these are not the facts before the Court

today. The appellant in this case was in fact a bona fide full time employee who had earned in excess of \$5,000.00 from his employment during the calendar year involved. The mere fact that he desired to return to college full time while still maintaining his full time employment does not in any way throw him into the category of a full time student. The fact that he saw fit to try to enhance his future earning capabilities by obtaining a college education by performing not only full time employment but likewise going to Westminster College on a full time basis does not change his basic status of a full time employee.

It is respectfully submitted that under the facts the appellant, even though he was attending a college or school on a full time basis, was still a full time employee and not under the purview or the intent of Section 35-4-5 (g), Utah Code Annotated, 1953, as amended.

The Supreme Court of Utah, in the case of *Kenecott Copper Employees, et al, v. Department of Employment Security*, 13 U. 2d 262, 372 P.2d 987, stated:

“The Employment Security Act was designed to ease the burdens of unemployment and multi-various evils which ramify from it. Its primary purpose is to assist the worker and his family in times when, without fault on his part, he is out of work. The secondary purpose is to provide stability for the general economy by assuring continuing of purchasing power.”

In light of the Supreme Court's announcement of the aims of the Employment Security Act, it is abundantly clear that the section of law relied upon in denying appellant his rights to unemployment security are not applicable.

POINT II

SECTION 35-4-5 (g), IS UNCONSTITUTIONAL AS IT DISCRIMINATES AGAINST APPELLANT.

Section 35-4-5 (g) contains the following language:

“(g) * * * That notwithstanding the provisions of this subsection, an otherwise eligible individual shall not be ineligible to receive benefits while attending night school, a part time training course or a course approved by the Commission;
* * * ”

It is submitted that the language of the Legislature in exempting night school but not day school where it does not conflict with a person's employment is discriminatory and contrary to the Constitution of Utah and the Constitution of the United States.

Article I, Section 2, of the Constitution of Utah, provides that there shall be equal protection and benefits afforded to the citizens of the State of Utah, and it is respectfully submitted that 35-4-5 (g) does not comply with equal protections to the citizens as it discriminates against whether a person attends day school or night school, and has the effect of depriving one

who is attending day school from rights under the Unemployment Compensation Act, but affords coverage to those who attend night school although their situations may be identical, the facts of the case differing only as to the time of attendance and not to the extent or to any other factor. Likewise Section 35-4-5 (g) offends the Fourteenth Amendment to the Constitution of the United States.

In the case of *McGowan v. Maryland* (1961), 366 US 420, 6 L.ed 2d 393, 81 S.Ct 1101, it was held:

“Although no precise formula has been developed, the court has held that the Fourteenth Amendment provides the states a wide scope of discretion in enacting laws which effect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state’s objective. State legislatures are presumed to have acted with their constitutional power despite the fact that in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.” (Citing Cases)

In a more recent case, the Supreme Court of the United States, in *Rinaldi v. Yeager* (1966), 384 US 305, 16 L.ed 2d 577, 86 S.Ct 1497, stated:

“The equal protection clause requires more of the state law than nondiscriminatory application within the class it establishes. (Citing Cases) It also imposes a requirement of some rationality in the nature of the class singled out. To be sure,

the constitutional demand is not a demand that a statute necessarily apply equally to all persons. The constitution does not require things which are different in fact to be treated in law as though they were the same. (Citing Cases) Hence legislation may impose special burdens upon defined classes in order to achieve permissible ends. But the equal protection clause does require that, in defining a class subject to legislation, the distinctions that are drawn have some relevance to the purposes for which the classification is made." (Citing Cases)

It is submitted that in this day and age of manufacturing companies and concerns commonly working two and three shifts a day, it is immaterial whether or not a person is employed full time at night and desires to go to day school, or whether he is employed full time during the day and desires to go to night school. The legislative intent of the Act in question was to promulgate the welfare of the worker and of his family. *Kennecott Copper Corp. Employees, et al, v. Department of Employment Security*, 13 U. 2d 262, 372 P.2d 987.

There is no rational basis for singling out an employee who goes to night school from an employee who goes to day school.

In the case of *Allied Stores of Ohio v. Bowers* (1959) 358 US 522, 3 L.ed 480, 79 S.Ct. 437, the Supreme Court of the United States said:

"But there is a point beyond which the State cannot go without violating the equal protection

clause. The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. The rule often has been stated to be that classification must rest upon some ground of difference having a fair and substantial relation to the object to the legislation.' ”
(Citing Cases)

The constitutionality of 35-4-5 (g) need not be determined if the court rules that the statute is inapplicable as set forth in Point I above. *Heathman v. Giles*, 13 U. 2d 368, 374 P.2d 839. However, if the Court does not distinguish this case on its facts, it then must declare this section of the Utah Law unconstitutional.

SUMMARY

It is respectfully submitted that the Board of Review has misapplied the law to the facts, or in the alternative the law as applied is unconstitutional as it violates the equal protection guarantees of the Utah and United States Constitutions.

COTRO-MANES, FANKHAUSER
& BEASLEY

By

Paul N. Cotro-Manes

430 Judge Building
Salt Lake City, Utah

Attorneys for Appellant