

1960

Arthur Clayton et al v. International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers : Petition for Rehearing and Brief in Support Thereof

Utah Supreme Court

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IN THE SUPREME COURT

of the
STATE OF UTAH

FILED

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ARTHUR CLAYTON, ET AL,
Plaintiffs and Appellants,

—vs.—

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS,
Defendants and Respondents.

Supreme Court, Utah

No. 9105

PETITION FOR REHEARING
and
BRIEF IN SUPPORT THEREOF

CLARENCE BECK
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*Attorneys for Defendants
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IN THE SUPREME COURT
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ARTHUR CLAYTON, ET AL,
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INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS,
Defendants and Respondents.

Case No.
9105

PETITION FOR REHEARING

Come now International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, defendants and respondents herein, and respectfully petition this Honorable Court for a rehearing in the above entitled case and for an order affirming the judgment of the trial court.

This petition for a rehearing is based upon the ground that this court erred in the following particulars:

POINT ONE

That the Court erred by inadvertently assuming the deposition of Mr. Latter and the constitution of defendant International were before the trial court and in evidence and before the trial court for consideration.

POINT TWO

That this court erred in basing and predicating its opinion on evidence which was not a part of the record made in the trial court and hence, not properly before this court for its consideration.

Respectfully submitted,

CLARENCE M. BECK
A. PARK SMOOT
Attorneys for Respondents

I, Clarence M. Beck, hereby certify that I am one of the attorneys for the respondents and petitioners herein and in my opinion there is good cause to believe, and that I do believe, that this court was in error in the particulars above stated and that a rehearing and re-examination of the records should be had to the end that the opinion heretofore rendered in the above entitled cause be confined to the record made in the court below.

CLARENCE M. BECK

BRIEF IN SUPPORT OF PETITION FOR REHEARING

POINT ONE

On Pages 2 and 3 of the opinion of the court refers to the deposition of Mr. Latter and at length cites from the constitution of the International. An examination of the record will show that neither the deposition of Mr. Latter nor the Constitution of the International were received in evidence. Indeed because and by reason of

the fact that Mr. Latter was present in court and testified in the cause, his deposition could not properly be received in evidence.

POINT TWO

The law in this state, and so far as we are able to ascertain, the law generally is that in cases appealed to an appellant court from a trial court, the appellant court is limited to the record made in the trial court. Among such authorities are: Rule 75 of the Utah Rules of Civil Procedure contains an enumeration of the matters that shall go into the record on appeal and the manner in which such record shall be prepared. Section 4 of Article 8 of the Constitution of Utah provides for the nature and extent of the jurisdiction of the Supreme Court. It contains this provision: "In other cases the Supreme Court shall have appellate jurisdiction only and power to issue writs necessary and proper for the exercise of that jurisdiction." This case falls within that class of cases where this court has only appellate jurisdiction.

Corina v. Corina, 80 Utah 486, 15 Pac. 2 631;

Mary Jane Stevens Co. v. Foley, 67 Utah 578, 248 Pac. 815.

WHEREFORE, we submit that the order of the trial court should be sustained in all respects.

CLARENCE M. BECK

A. PARK SMOOT

Attorneys for Respondent

IN THE SUPREME COURT
of the
STATE OF UTAH

ARTHUR CLAYTON, et al,
Plaintiff & Appellant

vs.

INTERNATIONAL
BROTHERHOOD, et al,
Defendants.

FILED

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Clerk, Supreme Court, Utah

Case No. 9105

BRIEF OF PLAINTIFF & APPELLANT

HANSON, BALDWIN & ALLEN

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Plaintiffs & Appellants*

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IN THE SUPREME COURT
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Defendants.

} Case No. 9105

BRIEF OF PLAINTIFF & APPELLANT

STATEMENT OF POINTS

THE TRIAL COURT ERRED IN GRANTING THE DEFENDANT'S MOTION TO QUASH THE SERVICE OF SUMMONS.

STATEMENT OF FACTS

This is an action by certain members of the Salt Lake Local Union No. 222 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers, to accomplish the dissolution of a trusteeship imposed upon the local union in 1941 and still in effect.

The Trusteeship was imposed by order of the

General President of the Defendant, pursuant to the provisions of the Constitution of the Defendant.

The present Trustee is Jack Annand, who was appointed by the International, or the General President of the International Union, about 1950, and who still holds that position.

Service of Summons in this action was made upon Fullmer Latter, Secretary-Treasurer and Business Agent of the Salt Lake Local No. 222.

Mr. Latter has claimed in an affidavit, supporting the defendant's Motion to Quash the Service of Summons, that he has no connection with the defendant; and upon that affidavit and the testimony of Mr. Latter at the hearing on the Motion and certain references to his deposition, the Trial Court entered an Order quashing the Service of Summons.

ARGUMENT

It is the position of the plaintiffs that the Service of Summons upon Fullmer Latter acquired for the trial court jurisdiction over the defendant.

This contention is based upon the following propositions:

Since the imposition of the Trusteeship in 1941, there has been a Trustee appointed by the General President of the International Union.

This is pursuant to a provision of the Constitution of the International Union in effect in 1941, and that provision is as follows:

**“POWER OF GENERAL PRESIDENT
TO APPOINT TRUSTEES AND DUTIES
AND OBLIGATIONS OF LOCALS UNDER
TRUSTEESHIP**

“Sec. 6. (a) If the General President has or receives information which leads him to believe that any of the officers of a local union are dishonest or incompetent, or that the organization is not being conducted for the benefit of the trade, he may appoint a Trustee to take charge and control of the affairs of the local union.

“(b). The Trustee shall be authorized and empowered to take full charge of the affairs of the local union, to remove for the period of his trusteeship any or all officers and appoint temporary officers during his trusteeship, and to take such other action as in his judgment is necessary for the preservation of the local union and its interests. He shall report from time to time on the affairs and transactions of the local union to the General President. His acts shall be subject to the supervision of the General President.”

It is clear that a Trustee appointed pursuant to the terms of the Constitution quoted is an Agent of the Defendant.

Since 1950, Jack Annand, of Los Angeles, California, has been and now is the Trustee of Local No. 222.

Fullmer Latter, upon whom service of Summons was made, is the appointee of Jack Annand, the Agent of the defendant, International Union.

The Trustee, pursuant to the provisions of the Constitution, may appoint temporary officials and remove them. Fullmer Latter and the other officers, are appointees of Jack Annand.

In the deposition of Fullmer Latter, the following testimony appears:

“Q Well, let me ask you: When it was placed in trusteeship were any officers appointed by the trustee?”

“A All of the officers that were then holding office were continued in office.

“Q By that, you mean they were appointed by the trustee to continue in office?”

“A Yes.

“Q And has that been the situation since that time, up to the present time?”

“A Yes.

“Q Then, as I understand it, at about the time of the second trusteeship all of the officers who had been elected were continued in office by the trustee under the trustee’s authority, is that right?”

“A Well, they were continued in office by the trustee.

“Q Yes, in other words, if the trustee had wanted to, when it went in trusteeship,

why, he could have reappointed new officers, could he not?

“A I didn’t get the first three or four words you said.

“Q Excuse me. I am sorry. I say, if the trustee had wanted to, when Local 222 went into trusteeship the second time, he could have reappointed new officers, as trustee?

“A I think he would have that power.”

In his deposition, Mr. Latter further says in response to questions, the following:

“Q Can you tell me the names of any of the individuals who have been appointed to fill those vacancies since the trusteeship has been invoked?

“A Well, there are the present officers, of course, Ernest Bailey . . .

“Q What is his capacity:

“A Vice President. William Fackrell, he acts as our Chairman.

“Q Is he President?

“A He is the President. John Pickett—Roy Critchfield is the recording secretary. He has resigned and has left the territory now. John Pickett is a trustee, Jim Pederson is a trustee, and Leo Smith is a trustee.

“Q And they are all appointees of the over-all trustee, Annan, is that right?

“A Trustee Annand, yes. I am the Secretary-Treasurer.

“Q And, of course, you were elected

when the Union went out of trusteeship briefly in 1937. Or was it '41?

“A Well, I think it was '40 or '41, Rex

“Q And you have held that position since that time, under the pleasure, or the authority of the trustee, is that right?

“A There has been no other election, that's right.”

Based upon these statements by Latter, it seems inescapable that Latter has been operating the business of Local No. 222 as the agent of the Defendant, International Union by a direct line of appointment from the General President of the International Union to Latter.

Mr. Latter must answer to Jack Annand. He was appointed by Annand, could be removed by Annand, and holds office at the pleasure of Annand.

Mr. Annand also controls the expenditures of the local union, and each check written must be signed by him. In Latter's deposition, he testifies as follows:

“Q Now, when the trusteeship was invoked, what happened to the Local's bank account? I mean, did it remain the same, or was it changed and put in the name of the trustee, or what happened to that?

“A No, sir. It was left in the name of the local union.

“Q And has it continued to be left in their name?

“A Yes, sir.

“Q Whose name is it in at the present time?

“A The local union.

“Q And who has the authority to, for instance, draw checks on it, draw and make pay checks and that sort of thing, expenses?

“A Make pay roll checks?

“Q Yes.

“A The pay roll checks are drawn in our office, and they are signed by Mr. Annand and myself.

“Q But each check has to be signed by both of you, is that right?

“A Oh, yes.

Mr. Annand is appointed by and holds the position of trustee by reason of a direct appointment of the General President of the International Union. Mr. Annand is answerable directly to the General President of the International Union by reason of the Constitutional provision of the International, which reads as follows:

“His acts shall be subject to the supervision of the General President.”

In connection with the effect of the Taft-Hartley Act upon the question of agency, the court's attention is invited to the case of *International Longshoremen's & Warehousemen's Union, Local 8, v. Hawaiian Pineapple Company, et al*, a 9th Circuit Decision, found at 226 Fed. 2d 875.

In that case an action was brought by the Pineapple Company for damages by reason of a secondary boycott under provisions of the Taft-Hartley Act. The defendant local and the International Union claimed as a defense that the persons acting were not acting as agents for either the local union or the International.

In answer to that contention the decision cites, Section 185 (e) of Title 29 U. S. C. A., as follows:

“For the purpose of this section, in determining whether any person is acting as ‘agent’ of another person, so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.”

At page 880 of the Opinion, the following language appears as a construction of this section:

“Probably the practical result of the Section in the case of labor unions was to restore the general rules of agency, particularly the rules of a parent authority which had been curtailed by the Wagner Act, 29 U. S. C. A. Section 151, et seq.”

The appellants claim that no clearer case of agency could be made out between the defendant, International Union, and its General President, and Fullmer Latter. It follows that by service upon Latter, jurisdiction of the defendant was acquired

by the Third District Court for every purpose contemplated by the lawsuit.

Mr. Latter testified in his deposition that part of the dues paid by members of the local union are remitted to the International. His testimony is as follows:

“Q Does any part of the dues go to the International?”

“A Yes. By Constitutional authority we pay forty cents out of each due. Not out of each dollar, out of each due. If the due is \$2.00, it would be forty cents; if it's \$6.00, it would be forty cents.

The question of jurisdiction of the International Union by service upon local union officials or appointees, has been raised many times. Among the decisions treating this question is *United Mine Workers of America v. Patton*, 211 Fed. 2d 742, a decision of the Court of Appeals for the 4th Circuit.

That case was a damage action because of a secondary boycott and one of the defenses raised was a lack of agency between the International Union and the local union officials involved.

The opinion contains the following discussion of that question:

“The chief arguments of defendants in support of their motion for a directed verdict is that there is no evidence that they authorized or ratified the strikes upon which plain-

tiffs rely for recovery. It is true that there is no evidence of any resolution of either the United Mine Workers or District 28 authorizing or ratifying the strikes. There is evidence, however, that the strikes were called by the field representative of the United Mine Workers, who was employed by District 28, and that he was engaged in the organization work that was being carried on by the International Union through District 28, which was a mere division of the International Union. Members of the Union are members of Local and District unions as well as the International; and of the \$4.00 monthly dues paid by them, \$2.00 goes to the International Union, \$1.00 to the local union, and \$1.00 to the district organization. It is clear that in carrying on organizational work the field representative is engaged in the business of both the International Union and the District, and that both are responsible for the acts done by him within the scope and course of his employment." (Citing Cases)

The problem of acquisition of the International Union of Teamsters by service upon district and local representatives has been presented to this court recently in the case of *Dairy Distributors v. Local Union 976, et al*, 329 P2 414.

That case was an action by the plaintiff for damages by reason of a secondary boycott under the provisions of the Taft-Hartley Act. Among other defenses, the defendants asserted that no jurisdiction was acquired over the Western Conference of

Teamsters, or the International Union, and that both were strangers to the action. Jurisdiction of the International Union and the Western Conference was acquired by service upon a Mr. Ballew, who was a representative of one of the divisions of the Western Conference. The evidence indicated that the Western Conference was a division of the International and that the local union members were members not only of their own union but also of the International. "

The opinion of this court, at page 419, of 329 P2, says as follows:

"The facts hereinabove mentioned, together with the facts that defendants' answer admitted that Local 976 of which Rash was an officer and Joint Council 67 engaged in picketing, the trustee for Local 976 apparently was appointed by the International Union and that Local 976 members paid part of their dues to the International, seem to dispose of defendants' Points III and IV having to do with the contention that the Western Conference and the International were strangers to this action of lack of a principal-agent relationship. We think a factual issue was precipitated such that we cannot say as a matter of law no agency existed."

CONCLUSION

Based upon the foregoing argument, it is the contention of the plaintiffs that the defendant is

properly before the Third District Court and that the matter ought to be tried upon its merits. To hold otherwise would permit the most unconscionable result.

The power reposed by the Constitution in the General President of the International Union would permit him at his pleasure to appoint a trustee for any local union after which the trustee would take over the assets and operation of the local union as provided by the constitution. He would then be able to appoint and remove officers of the local union as it pleased him to do so, as long as he held the position of trustee.

It is not even necessary that the trustee appointed by the General President of the International Union be a resident of the area in which the local is located, or even a resident of the United States. This would mean that if the trustee appointed were a nonresident, and the members of the local union desired to abolish the trusteeship or have it lifted, they would be powerless to do so or to recover the assets taken over by the trustee, unless by some miracle service of summons upon James Hoffa, or his successor could be had within the jurisdiction of the trial court where the local union was located.

In conclusion, therefore, it is respectfully submitted, that the trial court acquire jurisdiction for

all purposes, and that the trial court's order quashing the service of summons should be reversed and the cause remanded to that court for trial upon its merits.

Respectfully submitted,

HANSON, BALDWIN & ALLEN

*Attorneys for
Plaintiffs & Appellants*