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Troy A. Nance and Thomas B. Hanley v. Sheet Metal Workers International Association : Reply and Answer Brief for Defendant and Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

TROY O. NANCE, and
THOMAS B. HANLEY,
*Plaintiffs and Respondents
and Cross-Appellants,*

vs.

SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION,
an unincorporated association,
Defendant and Appellant.

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Case
No. 9111

Reply and Answer Brief For Defendant and Appellant

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REPLY TO PLAINTIFFS' STATEMENT OF FACTS

It is needless to point out each precise area of disagreement between the parties with respect to the facts. We do not agree entirely with plaintiffs' statement of facts and will point out briefly some of the new matter that is inaccurately stated in their recitation.

I.

At page 2 of plaintiffs' brief, they state that the first phase of the case (tried to the court sitting without a jury)

“related to the legality of the expulsion, *the right to recover exemplary damages and attorneys fees.*” With respect to the right to recover exemplary damages and attorneys fees, the record shows the following significant stipulation of counsel with the court (Pre-T., 9-5-58, 1):

“THE COURT: The record will show as to No. 3783, set for trial October 6, 1958, that the trial will be proceeded with without empaneling a jury, on the matter of whether the expulsion of the petitioner and the intervenor was or was not wrongful, and that will be decided by the court without a jury; that if the court finds that the expulsion was wrongful in either case, then the case would be consolidated with No. 3784 upon the question of the petitioner’s or the intervenor’s damages and the jury would be called upon to render a verdict upon the issue of the amount of damages.

“MR. FISHER: It will also be understood that the trial in 3784 in any event will commence immediately after the trial in 3783?

“THE COURT: The court proposes to set the trial of case 3784 to follow immediately upon completion of the trial of 3783 before the court upon the issue of the expulsion of the petitioner and the intervenor, and the record may show that counsel on each side consent to that method of procedure.

“MR. McCUNE: We so stipulate.

“MR. SANDACK: We would so stipulate.”

The entire first phase of this case was tried precisely in accordance with this stipulation.

It was not until the first phase of the case had been concluded and the court had announced its decision finding the expulsions were void that the court, in its Order of Jan-

uary 21, 1959, unilaterally set aside this stipulation and decided that not all of the damage issues would be thrown to the jury. This action by the court was in derogation of the stipulation and was done over vigorous protest on the part of counsel for the union as earlier discussed in our opening brief.

Moreover, it is erroneous to state that, “* * * the court postponed decision [on December 30, 1958, or January 9, 1959] on the issues whether the defendant had acted wrongfully and maliciously and whether, as a consequence thereof, plaintiffs were entitled to recover punitive and exemplary damages and attorneys fees pending the trial of the issues to be tried before the jury.” Reference to plaintiffs’ appendix, pages 9 through 12, shows that the court, at those times, made absolutely no reservation of any damage issues to be decided by the court alone. The court had no intention of adjudicating any damage issues (whether compensatory, nominal or punitive) until its sudden change of position announced January 21, 1959, in its “Order as to Issues to be Submitted to Jury.”

II.

Plaintiffs’ comments at pages 6 and 7 of their brief, imputing to defendant sole responsibility for the length of trial, appear to be uncalled for. The prolixity of the trial both before the court and before the jury was certainly not the result of any plan on the part of counsel for the union. The damage claims alone approximated nearly one-half million dollars. The alleged activities covered the years 1954 up to the time of trial in 1958 and involved conduct alleged to have taken place in Nevada, Arizona, California,

Utah, Montreal, Canada, Washington, D. C. and Miami, Florida. The trial court permitted plaintiffs and their witnesses to testify extensively as to hearsay reports and conversations, and defendant had the burden to bring into court the essential proof and witnesses to refute the evidence attributed to them.

III.

Under the heading, "FACTS PRECEDING UNION CHARGES", pages 10 through 19, plaintiffs' brief, is a resume of the testimony most favorable to plaintiffs directed to the issue that union president Byron and other general officers engaged in a conspiracy to oust and suppress Hanley and Nance of union membership on account of their advocacy of political resolutions. It should be noted that all of this testimony is refuted by witnesses who appeared for the union (see pages 46 and 47 of our opening brief), but we think the short answer, rather than detail such testimony and burden this brief, is that the trial court did not credit plaintiffs' testimony on this conspiracy theory.

The defendant previously has conceded that the trial court found that, in preferring charges against Hanley and Nance, President Byron was motivated in part at least by a wrongful desire to prevent them from promoting these resolutions; but the court further found that Byron also had received reports and information pertaining to activities of Hanley and Nance which, if assumed to be true, would have given him probable cause to believe that the charges which he preferred, or at least some of them, were true. (See plaintiffs' appendix, page 23, paragraph 12.) This does not constitute a finding that the charges were

illegal because they were preferred maliciously; nor was it a finding that President Byron acted improperly in preferring them.

We point out further that plaintiffs' insinuations at page 21 of their brief that Grant Stetter, the private investigator employed by the union, conducted a biased investigation of Hanley and Nance is not substantiated by any finding of the trial court.

Likewise, there is no finding by the trial court that Vice President Fitzgerald, who was a member of the union trial board, or any other member of the union trial board, was hostile to or biased against plaintiffs (See p. 28, plaintiffs' brief). In fact, as was shown in our opening brief, the trial court's decision that plaintiffs' trials were void was based almost entirely on the premise that their trials should not have proceeded in absentia. That premise would have been wholly untenable if the court believed that the trial board would not have given them an impartial trial.

Finally, the trial court made no finding that any member of the union's Grievance and Appeals Committee at the Montreal Convention was hostile to or biased against Hanley and Nance or that any of such members were importuned by President Byron, any other general officer, or any other person, to deal prejudicially with the appeals of Hanley or Nance.

REPLY TO POINT IA OF PLAINTIFFS' BRIEF

Two statements made in plaintiffs' argument under Point IA fairly bring the crucial issue of this lawsuit into

focus. At page 52, they state, "The responsibility for conducting orderly trials rested on the defendant and on the defendant alone", and at page 55, "* * * their [Hanley's and Nance's] conduct was neither improper nor censurable under the circumstances."

In our opening brief, we pointed out that a labor union trial, as distinguished from a trial in a court of law, depends almost entirely upon the willingness of the union member to submit himself in good faith before the trial board to stand trial in accordance with the rules of procedure of that board. Without this willingness to comply, it would be absolutely impossible to conduct an orderly trial or hearing. A union trial board cannot compel compliance with its procedure by force. Thus, plaintiffs' statement that the responsibility for conducting orderly trials rests on the union is not only meaningless but undoubtedly false if by it they mean to say that the union has the sole duty to maintain order and, in fact, must maintain it despite anything that might happen at the trials. Such an impossible burden can not be cast upon the Union. All of the duty is not placed on the union; the persons accused also have an equally significant duty to conduct themselves properly at these trials and to refrain from disorder, disobedience, or contumacity.

The "open hearings" on June 3, 4 and 7 were indeed a "sham and farce", but they became so on account of the inexcusable misconduct of Messrs. Hanley and Nance and their cohorts, who contended that they were willing to stand trial and yet, by their conduct and design, refused to submit even to the preliminary orders for holding the trial and who thus prevented the trials from ever commencing.

The initial procedural rules of the union trial board, namely: Exclusion from the trial room of witnesses, spectators and newspaper reporters during the course of proceedings, were manifestly not unreasonable. The separation of witnesses rule has long been honored in the courts. There is no authority of which we are aware that requires private union trials to be open to the public. It was not the duty of the trial board to conduct trials under terms demanded by Hanley and Nance; rather, it was the duty of Hanley and Nance to comply with the trial board's rules of procedure, unless the same could be said to be so unreasonable that insistence upon them would be equivalent to a denial of due process.

But nothing we say here could convincingly demonstrate the merit of our position as well as a careful reading of the complete verbatim transcripts of the open hearings, contained in the appendix to our opening brief. These transcripts supply the answer to the crucial question of this lawsuit: *Whether Hanley and Nance wrongfully refused to stand trial, or whether they were improperly denied a trial.*

REPLY TO POINT II OF PLAINTIFFS' BRIEF

Plaintiffs contend that the trial court found that their expulsions were also independently illegal on the ground that the proceedings were malicious. We understand this contention to mean that even if the trial court had held that the expulsion proceedings were not violative of due process of law, the court nevertheless would have held the expulsions to be null and void on account of malicious motives harbored by a few of defendant union's officials. There is no support for this proposition in any of

the memoranda issued by the trial court or in its Findings of Fact, Conclusions of Law, and final Judgment. It is clear, as we pointed out in our opening brief, that the only ground upon which the expulsions were ruled invalid was denial of due process. The findings of the court pertaining to malice are directed exclusively to the proposition that if it can be shown that illegal proceedings are also tainted with malice, a right to recover exemplary damages therefor may lie.

We attempted, moreover, in our opening brief, to demonstrate that Judge Hoyt erred in finding that the expulsions were even partially motivated by malice. We further pointed out that the inference that President Byron was motivated by a proper objective in preferring the charges against the plaintiffs is distinctly stronger than the inference that he was maliciously motivated. In this connection, counsel for plaintiffs properly point out in their brief that the case of *N.L.R.B. v. Huber & Huber Motor Exp.*, 223 F. 2d 748 (C.A. 5th 1955), which was cited at page 47 of our opening brief, was overruled in the subsequent decision of *N.L.R.B. v. Fox Manufacturing Co.*, 238 F. 2d 211 (C.A. 5th 1956). It is fair to state, however, that the Fifth Circuit overruled this case only because of the requirement of the National Labor Relations Act that, upon review, a decision of the National Labor Relations Board must be sustained if there is substantial evidence on the record considered as a whole to support the findings of that Board. Thus, the rule to be applied there was the one imposed by federal statute rather than the rule of the Common Law. This does not detract in any measure from the general proposition that when different inferences may be drawn from the same set of circumstances, it is the duty of the trial court to presume in favor of innocent conduct rather

than in favor of intentional and guilty misconduct. See *State v. Musser, Utah*, 175 P. 2d 724, Syllabus 25.

REPLY TO PLAINTIFFS' POINT III

At page 62 of the plaintiffs' brief, they state as a general proposition that an award of punitive damages may be made by the judge where the factual issues are tried by him. Neither the weight of authorities nor those cited by plaintiffs support this proposition. The plaintiffs have really cited authorities for the limited proposition that in an action at law for money damages only when the parties expressly waive their rights to trial by jury a court may make any damage awards the jury might have made. This is wholly inapposite to the present case where Nance sued for a writ of mandamus and Hanley sued for a mandatory injunction, and both sought damages as relief incidental to the primary prayer for reinstatement to membership in the union.

Thus, *Calvat v. Franklin*, 990 Colo. 444, 9 P. 2d 1061, involves an action at law in which both parties expressly waived a trial by jury. At page 1063, the court held:

“If it [the court] may award actual damages, and if, as the [statute] provides an award of exemplary damages may be made in addition to an award for actual damages, a court also has the power, when the parties themselves waive a jury and ask the court to try such issues, to award exemplary damages.”

All this case holds is that it is the waiver of the jury trial by the parties which clothed the trial court with authority to award exemplary damages.

Pure Oil Co. v. Quarles, 183 Okla. 418, 82 P. 2d 970, is an action at law for pollution damages to a stream in which the parties also waived a jury. At page 975, that court holds:

“We may say here, that we are unable to find merit in the defendants’ contention that only a jury may, under this statute, award exemplary damages; that the court in a tort action where jury is waived is unauthorized to do so. In such case, the court in all respects exercises the function of the jury, and its findings have the force and effect of a jury verdict. [Citations] Although we held in *Mid Continent Petroleum Corp. v. Bettis*, 180 Okla. 193, 69 P. 2d 346, that the court in an equity case, tried without jury, may not render judgment for exemplary damages, we there recognized the power of the court to do so in tort actions where jury is waived.”

Pickwick Stages v. Board of Trustees of the City of El Paso De Robles, 54 Cal. App. 730, 215 Pac. 558, is another example of an action at law for money damages only which was tried to the court.

Not only do these cases fail to support the proposition for which plaintiffs cite them, they manifestly support our position (stated at pages 51-53, opening brief) to the effect that a court in mandamus or equitable proceedings may not award exemplary damages.

The plaintiff, moreover, at pages 63 and 64 of their brief evidently contend that the trial court was entitled to disregard the verdict of the jury that no actual damages were suffered as a result of plaintiffs’ expulsions and to award nominal damages. This amounts to an argument that the court in fact granted the plaintiffs a judgment

notwithstanding the verdict. The contrary is true, of course, and the judge expressly denied plaintiffs' motion for judgment notwithstanding the verdict at the same time it denied their motion for a new trial.

We think the glaring weakness in plaintiffs' argument that there is a right to recovery of exemplary damages in the circumstances is found at page 65 of their brief. There, the most that they can state is that in a proceeding such as this, damages *resembling* exemplary damages, such as damages for mental suffering, humiliation, et cetera, are clearly recoverable. Damages "resembling" exemplary damages are still not exemplary damages any more than one identical twin, who resembles the other, is the other. We stress the fact that they do not cite a single case in which an expelled union member proceeding in mandamus or in equity for reinstatement to union membership and damages has been awarded exemplary damages. We know of no such case either. Damages for mental suffering, humiliation, et cetera, such as were allowed in the case of *Nissen v. International Brotherhood*, 229 Iowa 1028, 295 N. W. 858, 141 ALR 598, were compensatory in nature rather than exemplary. See 15 Am. Jur. 595, where the text reads:

"Damages for mental suffering are generally regarded as being actual or compensatory in character, and not as vindictive or punitive * * *."

See also, 15 Am. Jur. 603, where it is said:

"Mental suffering consisting in a sense of insult, indignity, or humiliation or an injury to the feelings which accompanies or follows a physical act injury or which is caused by a wanton, intentional, or malicious act is generally considered to be a proper element of compensatory damages in an action brought to recov-

er for such physical injury or such wanton, intention, or malicious act.”

The plaintiffs contend at page 69 of their brief that the case of *Martin v. Curran*, 303 N.Y. 276, 101 N.E. 2d 683, which we cited at page 57 of our opening brief has been overruled in the later New York decision of *Madden v. Atkins*, 4 N.Y. 2d 283, 151 N.E. 2d 73. We dispute this. We call attention to the fact that *Martin v. Curran*, supra, was cited in support of the proposition that a labor union should not be held liable in exemplary damages for malicious acts of some of its officers or members unless it can be shown that such acts were known to and ratified or approved in some manner by the labor organization, i.e. the membership as a whole. *Martin v. Curran*, supra, involved an action for libel, a cause of action in which malice is an essential ingredient. The Court of Appeals in *Martin v. Curran* refused to hold the labor organization liable in damages for the malicious publication because there was no showing that the union membership as a whole approved or sanctioned the same.

The case of *Madden v. Atkins*, supra, on the other hand, is simply an action for reinstatement to membership and actual compensatory damages suffered as a result of a wrongful expulsion. The New York Court of Appeals in *Madden v. Atkins*, supra, concluded that it was not necessary in order to hold the labor organization liable for compensatory damages proximately caused by the wrongful expulsion to prove that the membership as a whole approved or ratified the expulsion. The question of exemplary damages was never raised nor discussed by the court in *Madden v. Atkins*, supra, and the case does not impair the soundness of the *Martin v. Curran* proposition that liability

which is founded upon malicious conduct will not be imputed to a labor organization unless the malice was known to and ratified by the membership as a whole.

At page 74 of plaintiffs' brief, they state: "The damages suffered by plaintiffs were great and extensive. Their loss of earnings alone exceeded the amount of punitive damages awarded. In addition, they suffered humiliation by being branded as expelled members." These are the very issues that were submitted to the jury, and plaintiffs are simply disagreeing with the jury's verdict. The trial court upheld the verdict of the jury and denied their motions for judgment n.o.v. and a new trial, and consequently, these jury findings are res adjudicata.

ANSWER TO POINT VII PLAINTIFFS' CROSS APPEAL

Under Point VII of their brief, plaintiffs make their argument in support of the points raised on their cross appeal. The plaintiffs have apparently withdrawn one of their grounds on cross appeal, namely; that the court erred in denying their motion for judgment notwithstanding the verdict. (See Statement of Points on Cross Appeal, R. 692.) It will not be necessary, therefore, to discuss that ground.

Earlier, counsel for the plaintiffs represented to this court in a memorandum in support of their Motion for Reconsideration of Motion to Settle the Record that they did not intend to rely on any of the transcript evidence in support of their cross appeal, but would limit themselves to an argument that the court's factual determination and its conclusions entitled them, as a matter of law, to a new

trial. At page 6 of the memorandum mentioned above, they stated:

“Insofar as [plaintiffs’] cross appeal is concerned, we intend to urge only that having found that the jury’s verdict was against the weight of the evidence, the trial court committed reversible error in failing to grant a new trial. No transcript of the evidence is necessary to sustain this position.”

A careful reading of plaintiffs’ argument under Point VII leads us to conclude that plaintiffs have, in fact, honored the representation that they did not intend to ~~reply~~ ^{rely} at all upon any evidence contained in the transcript of the trial to the jury in support of the contention that the court erred in denying their motion for a new trial. It would appear they have thus limited themselves to the court’s Findings of Fact, Conclusions of Law, and Judgment.

We must then appraise the arguments contained in Point VII of their brief in the light of Utah law, under which the granting or denying of a motion for new trial is a matter that rests in the sound discretion of the trial court. In Utah, the granting or denying of a motion for new trial will not be disturbed upon review except in circumstances when the action of the trial court can be said to constitute an abuse of discretion.

The plaintiffs, at pages 85 through 87 of their brief, set out in full findings of fact Nos. 17 (a) through 17 (i) contained in the order denying plaintiffs’ motions for judgment notwithstanding the verdict and for a new trial. It is evidently on the strength of these findings that they conclude that the court had the duty under the law to grant their motion for a new trial, and that its refusal to do so was error.

This argument is not tenable. What the plaintiffs have done is quote some of the court's findings of fact, while omitting others, so that the facts which they have recited in their brief are, in effect, quoted out of context. Thus, the plaintiffs have quite conveniently ignored finding of fact No. 18, which follows immediately after finding of fact No. 17 (i), wherein Judge Hoyt further found:

“That there was irreconcilable conflict in the testimony of witnesses as to the foregoing matters and particularly as to whether the so-called referral system continued to be used by local union officers of the respondent association. That there was much testimony on the part of witnesses on each side which the court believes was false and evasive regarding this and other matters above-mentioned. That respondent failed to call as witnesses the business agent of its Las Vegas Local or its International Representative for the Nevada area. That it appears reasonable to believe that these two union officers should have known better than any other witnesses called by respondent whether the referral system continued to be used in the Las Vegas area and whether or not the petitioner and intervenor were or were not denied work referrals.”

When finding of fact No. 18 is considered in juxtaposition with findings of fact Nos. 17 (a) through 17 (i), it becomes evident that Judge Hoyt conceded that irreconcilable conflict existed *as to every material issue in the case*. He was unable to resolve these conflicts and, moreover, he could not even determine whether the witnesses called by the plaintiffs or those called by the defendant were testifying truthfully. With the record in this state, it seems utterly inconceivable to contend that the trial court's denial of plaintiffs' motion for a new trial amounted to an abuse of discretion.

It is quite clear that for the plaintiffs to succeed under Utah law on the ground that the evidence is insufficient to justify the verdict, considerably more must be shown than that the trial court, upon its view of the evidence, is inclined to disagree with the verdict of the jury. Even under general principles of law, such a disagreement or dissatisfaction with a jury's verdict should not induce the trial court to grant a new trial. Thus, at 39 Am. Jur. 139, Section 129, the text states :

“* * * Under a statute authorizing the granting of a new trial where the verdict is not sustained by sufficient evidence, a new trial may be granted though the evidence was sufficient to take the case to the jury. It is not, however, a sufficient ground for a new trial that the verdict is merely contrary to what appears to be a preponderance of the testimony, or that the court, acting as trier of the facts, would have arrived at a conclusion opposed to that of the jury. It has been said that the only question before the court is whether the evidence was so overwhelmingly in favor of the defendant that a verdict for the plaintiff can only be explained on the ground of prejudice, partiality, corruption, or mistake. * * *”

The Utah cases are in accord with the proposition quoted above.

In *Valiotis v. Utah-Apex Mining Co.*, 55 Utah 151, 184 Pac. 802, in determining whether the trial court had properly exercised its discretion in denying a motion for a new trial, this court held :

“This court has repeatedly held that the discretion of the trial court exercised in granting or refusing to grant a motion for a new trial based on the insufficiency of the evidence to justify the verdict can-

not be interfered with when, upon examination of the evidence as disclosed by the record, it is apparent that there is a substantial conflict of evidence as to material issues of fact in the case relative to which the insufficiency is alleged.”

In *Valiotis*, the ground relied upon was, “that the verdict was against the weight of the evidence”, and this court clearly held that such was not a proper ground upon which to base an order granting a new trial.

In *Uptown Appliance & Radio Co. v. Flint, Utah*, 29 P. 2d 826, this court stated at page 829:

“Jury trials are a part of the fundamental tenets of our judicial system and where, as in this case a litigant has fully, completely and without restraint been permitted to show his full grievance to a jury and they have conscientiously and without any showing of prejudice or other extraneous influences decided the matter there must be some basic and compelling reason so inherent in the evidence that the trial judge would be warranted in placing his judgment as to the result to be reached over and above that of the jury.

“ ‘A court, vacating a verdict and granting a new trial by merely setting up his opinion or judgment against that of the jury, but usurps judicial power and prostitutes the constitutional trial by jury.’ *Jensen v. Denver & Rio Grande Railroad Company*, 44 Utah 100, 138 P. 1185, 1192.

“The result reached by the jury in this case seems to be in accordance with the evidence produced.

“This being the state of the evidence we believe, and so hold, that an order to retry this matter is not

warranted and to that extent is an abuse of discretion upon the part of the trial judge.”

In *Holmes v. Nelson, Utah*, 326 P. 2d 722 at page 726, Justice Crockett, concurring, wrote:

“If the trial court is to fulfill his function of maintaining general supervision over litigation to see that justice is done, it is necessary that he have the power to set aside verdicts and grant new trials when the objective is not served. But such prerogative should be exercised with caution and forbearance consistent with his important and imperative duty to safeguard the right of trial by jury. The verdict, when supported by substantial evidence, should be regarded as presumptively correct and should not be interfered with merely because the judge might disagree with the result. The prerogative should only be exercised when, in the view of the trial court, it seems clear that the jury has misapplied or failed to take into account proven facts; or misunderstood or disregarded the law; or made findings clearly against the weight of evidence so that the verdict is offensive to his sense of justice to the extent that he cannot in good conscience permit it to stand.”

The Florida decision, *Gulf Power Co. v. Bagby*, 113 Fla. 739, 152 So. 23, cited at page 88 of the plaintiffs’ brief is not good law in Utah, and it appears to be one of the cases decided under the “thirteenth juror” concept, under which theory the trial court acts as the final, or thirteenth, juror and is placed under an affirmative duty to set aside the verdict any time the verdict does not coincide with its own analysis or appraisal of the evidence. This concept, as Justice Crockett pointed out in his concurring opinion in *Holmes v. Nelson*, supra, has never prevailed in Utah.

In view of the law of Utah and the fact that the con-

flicting evidence on the material issues was in the opinion of the trial court irreconcilable, it is clear beyond peradventure that the denial of the plaintiffs' motion for a new trial was a proper exercise of judicial discretion.

CONCLUSION

We respectfully submit that the matters raised by plaintiffs as an answer to the points discussed in our opening brief in support of our appeal lack merit, and that defendant union is entitled to a reversal of the judgment of the court below on the issues of the alleged wrongful expulsion, exemplary damages, attorneys fees, and court costs. The plaintiffs, moreover, have failed to show that the trial court erred in denying their motion for a new trial in connection with the damage issues tried before the jury, and, accordingly, their cross appeal should be denied.

Respectfully submitted,

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