

1962

# Troy O. Nance and Thomas B. Hanley v. Sheet Metal Workers International Association : Brief of Appellant

Utah Supreme Court

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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

vs.

No. 9631

SHEET METAL WORKERS  
INTERNATIONAL ASSOCIATION,  
an unincorporated association,  
Defendant-Appellant

**FILED**  
APR 20 1962

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## APPELLANT'S BRIEF

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Clk. Supreme Court, Utah  
**UNIVERSITY UTAH**

Appeal from the Amended Judgment of the  
Fifth District Court for Juab County, 1962  
Hon. Will L. Hoyt, Judge.

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No. 9631

SHEET METAL WORKERS  
INTERNATIONAL ASSOCIATION,  
an unincorporated association,  
Defendant-Appellant

---

## APPELLANT'S BRIEF

---

### STATEMENT OF THE KIND OF CASE

This is an action for reinstatement to membership in defendant labor union and for actual and punitive damages for alleged wrongful expulsion of Plaintiffs from union membership.

### DISPOSITION IN LOWER COURT

The case has previously been appealed to the Supreme Court where a judgment in favor of the Plaintiffs, was reversed. The trial court thereafter refused to give effect to the reversal and instead entered an Amended Judgment and Decree that partially affirmed its original judgment. From such Amended Judgment and Decree, defendant appeals.

## RELIEF SOUGHT ON APPEAL

Defendant seeks a reversal of the Amended Judgment and Decree and entry of judgment in its favor in accordance with the prior decision upon appeal.

## STATEMENT OF FACTS

This is not an appeal on the merits since the case on the merits has already been appealed, submitted and decided. The present appeal raises the narrow issue whether the trial court, after the case had been heard on appeal and reversed, entered a judgment consistent with the decision of this court. As we shall point out, it clearly did not.

The appellate decision in the case (which was then assigned as No. 9111) was handed down on September 21, 1961, at which time the judgment in favor of the Plaintiffs<sup>1</sup> was reversed. (R. 7-a). The trial court has refused to give effect to the reversal of its prior decision, however, and, in an order dated February 5, 1962, entitled Amended Judgment and Decree (R. 12-a to 14-a), it reinstated part of the judgment which had been reversed. The Supreme Court reversal has thus been recast by the trial court as a partial affirmance.

The Plaintiffs in October of 1961, in their Petition for Rehearing, asked the Supreme Court to reconsider its September 21, 1961, decision and grant them the same type of partial affirmance that the trial court entered on February 5, 1962. Their Petition for Rehearing after being considered by the Court was denied on December 6, 1961. The

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<sup>1</sup> Refers to Plaintiffs-Respondents, Troy O. Nance and Thomas B. Hanley.

Court thereafter issued its remittitur plainly directing that the judgment below was reversed. The remittitur was worded as follows:

“This cause having been heretofore argued and submitted and the Court being sufficiently advised in the premises, it is now ordered, adjudged and decreed that the Judgment of the District Court herein be, and the same is, reversed. Costs before the jury trial to respondents, and those thereafter to appellant.”  
(R. 6-a).

The first intimation that the trial court did not intend to carry out the decision of the Supreme Court was given on January 9, 1962, when counsel for Defendant<sup>2</sup> appeared before Judge Hoyt in Nephi for a hearing on the motions of both parties to have costs taxed. Counsel for Plaintiffs did not attend the hearing, although they had been duly notified thereof. At this hearing the respective costs bills were discussed, but, in addition, Judge Hoyt made the following observations:

“THE COURT: Do you contend that the Supreme Court ruled upon the holding of the trial court, that the expulsion was wrongful, or did they avoid ruling on that?

“MR. SANDACK: Well, I think all you can read into the Supreme Court’s decision is what they have said in the remittitur which is ‘that it is ordered, adjudged and decreed that the judgment of the District Court herein be, and the same is, reversed.’

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<sup>2</sup> Refers to Defendant-Appellant, Sheet Metal Workers International Association, AFL-CIO.

"Now, the judgment filed by your Honor included a finding, conclusion, and decree that the expulsion was illegal. The Supreme Court has reversed that finding and judgment.

\* \* \* \*

"THE COURT: . . . I do not read anything in their opinion in which they held that on the facts that the trial court erred in holding expulsion was wrongful." (R. 25-a to 28-a).

A later intimation that the decision of the Supreme Court would not be followed and that the trial court would not acknowledge the appellate decision as a reversal of the prior judgment was given on January 16, 1962. At that time Judge Hoyt in an "Order on Motions for Taxing Costs and for Discharge of Bonds"<sup>3</sup> taxed costs against the respective parties but refused to enter a judgment for costs. In that Order he said:

"5. The court further concludes that since no judgment has been entered or submitted to this court for carrying into effect the decision of the Supreme Court it is premature to enter a judgment for costs at this time, and that no execution should issue until final judgment is entered.

\* \* \* \*

"7. Counsel for either party may submit conclusions of law and form of final judgment in conformity with the opinion and mandate of the Supreme Court." (Appendix, p. 5).

Counsel for Defendant thereafter submitted a memorandum to Judge Hoyt in which they pointed out that the remittitur of the Supreme Court was itself a self-executing

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<sup>3</sup> This document was through inadvertence not designated as part of the record on the appeal. It is reproduced in full in the appendix following the brief, for the convenience of the court.



final order and that no further order was necessary or proper, except, of course, a judgment for costs. At the same time, they tendered to the court a form of "Conclusions of Law and Judgment,"<sup>4</sup> (R. 9-a to 11-a) inasmuch as Judge Hoyt virtually required them to do so.

The pertinent portions of the Conclusions of Law and Judgment proposed by Defendant, read as follows:

"Now, therefore, the court makes the following conclusions of law:

"1. That the judgment of the trial court in the cause, above quoted, has been reversed in entirety by the Supreme Court of Utah.

"2. That pursuant to the remittitur of the Supreme Court of Utah this court is without power to do other than enter a judgment of reversal of the judgment heretofore entered by this court and to tax costs and enter a judgment therefor.

"3. That judgment should be entered for the defendant in the amount of the difference between the costs taxed against the plaintiff and the costs taxed against the defendants.

**"WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED**

"1. That the judgment in this cause heretofore entered by the court on the 29th day of June, 1959, should be, and hereby is, reversed in entirety.

"2. That Defendant Sheet Metal Workers International Association be, and it is hereby, given judgment against the plaintiffs in the sum of \$1,718.39, for court costs."

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<sup>4</sup> The text of Defendant-Appellant's proposed Conclusions of Law and Final Judgment is reproduced in full in the appendix to the brief.

No draft of Amended Conclusions of Law and Judgment was proposed or submitted by counsel for Plaintiffs.

Judge Hoyt took final action on February 5, 1962. On that date he filed his Amended Conclusions of Law<sup>5</sup> and Amended Judgment and Decree<sup>6</sup> (R. 12-a to 14-a), in which he reinstated a portion of the original judgment of June 29, 1959.

The "Amended Judgment and Decree" provides in part:

"This court having duly considered the opinion and decision of the Supreme Court, and pursuant to said decision, having made and caused to be entered herein its Amended Conclusions of Law, now based upon Findings of Fact heretofore made and entered herein and upon said Amended Conclusions of Law and the decision and opinion of the Supreme Court, it is now

"ORDERED, ADJUDGED and DECREED as follows, to-wit:

"1. That the purported expulsion of the petitioner and intervenor from membership in the respondent association was and is wrongful, malicious, null and void as to each of said parties.

\* \* \* \*

"5. That this judgment shall not constitute any adjudication of the truth or falsity of the charges preferred against the petitioner or intervenor and shall

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<sup>5</sup> The Amended Conclusions of Law was also inadvertently omitted in our designation of the record and therefore is reproduced in full in the appendix.

<sup>6</sup> The complete text of the Amended Judgment and Decree is reproduced in the appendix.

not operate as a bar to trial of the charges preferred against the petitioner and intervenor before a union tribunal provided such trial is conducted in accordance with the respondent's constitution and the requirements of law relating to due notice and specification of charges, reasonable time and opportunity to prepare for trial, trial before a disinterested and impartial tribunal, and reasonable opportunity to present evidence and to confront and cross-examine opposing witnesses."

Defendant respectfully submits that the Amended Judgment and Decree insofar as it grants affirmative relief to the Plaintiffs, is not only inconsistent with, but squarely in opposition to, the decision of the Supreme Court.

## **ARGUMENT**

POINT 1. THE TRIAL COURT BELOW ERRED IN ENTERING THE AMENDED JUDGMENT IN THAT THE REMITTITUR OF THE SUPREME COURT WAS A SELF-EXECUTING ORDER REVERSING THE ORIGINAL JUDGMENT BELOW, AND NO FURTHER ORDER TO JUDGMENT OF THE TRIAL COURT WAS NECESSARY OR PROPER.

The Statement of Facts hereinabove establishes the error of the trial court so convincingly that the argument on the law can be made in reasonably short form.

The original judgment of the trial court, entered on June 29, 1959, was predicated upon an adjudication that

the expulsions of Plaintiffs from membership in Defendant labor union were wrongful, null, void, and malicious. This was not a mere declaration in the abstract; it was the basic adjudication in the case, from which, or upon the basis of which, the trial court granted injunctive relief and amerced the Defendant with punitive damages and an award of fees to opposing counsel. When the case was reversed on appeal, the trial court's former judgment was vacated and set aside.

The trial court, however, refused to acknowledge the consequences of a reversal and insisted upon granting Plaintiffs a judgment upon the merits, specifically a judgment as to the validity of the union expulsion proceedings. It became apparent after several attempts at persuasion that further efforts on the part of Defendant to convince Judge Hoyt that such action was erroneous would be futile, even though the law on the subject is well settled.

The effect of a reversal of a judgment by an appellate court is described in 3 American Jurisprudence 690 as follows:

“To reverse is to vacate or set aside, but it does not include any other affirmative action unless specifically directed by the appellate court.”

In *Cowdery v. London & San Francisco Bank*, 139 Cal. 298, 303-304, 73 Pac. 196 (1903), the California Supreme Court said:

“The legal effect of the order of the Supreme Court was to reverse and vacate judgment, and not merely to modify it. Upon a decision of the Supreme Court that there was material error in the action of the court below, that court may direct the character of

the subsequent proceedings in the lower court, and its mandate will vary according to its views as to the proper course to be pursued. . . . To reverse is 'to overthrow; set aside; make void; annul; repeal; revoke; as to reverse a judgment, sentence, or decree' (Century Dictionary), or 'to change to the contrary, or to a former condition' (Standard Dictionary). . . . The distinction between a reversal of a judgment and an affirmance with a modification is too marked and radical to justify us in disregarding it."

This matter has also been considered by the Supreme Court of Utah, in *Utah Copper Co. v. District Court of Third Judicial District*, 91 Utah 377, 64 P. 2d 241, 250 (1937), where this court held:

"The lower court upon remand of a case from a higher court, must obey the mandate or remittitur and render judgment in conformity thereto and has no authority to enter any judgment not in conformity with the order. Whatever comes before and is decided and disposed of by the reviewing court is considered as finally settled, and the inferior court to which a mandate issues is bound by the decree as the law of the case and must carry it into execution according to the mandate, and after the reviewing court has determined the case before it and remanded it to the lower court, the latter is without power to modify, alter, amend, set aside or in any manner disturb or depart from the judgment of the reviewing court, that the judgment of the higher court is not reviewable in any way by the court below and the lower court cannot vary or examine the decree of the higher court for any other purpose than execution, or give any other or further relief or review it even for apparent error upon any matter decided on appeal, or meddle with it further than to settle so much as has been remanded."

The most recent case in point in Utah is *Phebus v. Dunford*, 114 Utah 292, 198 P. 2d 973 (1948). In *Phebus*, a trial court judgment had been reversed in the Supreme Court of Utah and subsequently the trial court, upon motion, set aside its former judgment as to some, but not all, of the original defendants. The Defendant against whom the judgment was not set aside brought a writ of mandate in the Supreme Court to require the trial court to set its entire decision aside. The court there said:

“[2] The lower court should not have entertained the motion to set aside the former decision. *The decision of this court when filed in the lower court automatically set the lower court’s decision aside without further action by that court.* Our decision did not direct the lower court to take action to vacate its former decision. It acted directly upon the lower court’s decision and effectually vacated and set aside that decision. *Our decision was without limitation as to how much of the lower court’s decision was set aside. It set it all aside.* After the filing of the remittitur from this court in the lower court, there was nothing upon which such a motion could properly have been predicated.” (Emphasis ours.)

These Utah cases not only state the current law of Utah on the issue but also are in accord with general authority on the effect of the reversal of a judgment by an appellate court. Under the Utah rule, the remittitur of the Supreme Court in the present case, once it was filed, acted directly upon the judgment of the trial court, reversing it in toto. From and after December 8, 1961, the date on which the remittitur in this case was filed with the Clerk of the District Court, there was no judgment on the merits of the case for the trial court to amend or modify. The only

authority vested in the trial court after that date was to enter a judgment for costs, in accordance with the directions of the remittitur.

Judge Hoyt plainly erred when he entered the Amended Judgment and Decree granting affirmative relief to Plaintiffs. Such action subverted the effect of the Supreme Court's previous reversal, and constitutes an attempt at usurpation of appellate power by the trial court.

POINT 2. THE TRIAL COURT BELOW  
ERRED IN ENTERING THE AMENDED  
JUDGMENT IN THAT SUCH AMENDED  
JUDGMENT WAS NOT IN CONFORMITY  
WITH AND WAS CONTRARY TO THE RE-  
MITTITUR AND THE OPINION OF THE  
SUPREME COURT ENTERED IN THE CASE  
ON THE INITIAL APPEAL.

As we have shown in the argument under Point 1, the trial court should not have entered any Amended Judgment and Decree on the merits of the case. However, the Supreme Court in the *Phebus* case, supra, seems to indicate that, while appellate judgments of unqualified reversal are self-executing orders upon which no further trial court action should be based, entry of judgment upon the remittitur may constitute, at most, harmless error if the subsequent lower court judgment is in conformity with the appellate decision. Thus, in *Phebus*, the Court said:

“Assuming it were proper for that court [the District Court] to act, it should have set its entire decision aside for the reasons indicated above, and not limited its order to a part only of its former decision.

“Merely for the sake of clearing the record, the lower court should enter an order setting its entire decision aside without limitation.”

The form of Conclusions of Law and Judgment proposed by Defendant (R. 9-a to 11-a) would have been consistent with the Supreme Court’s opinion and remittitur, and should have been entered if a further order respecting the merits of the case was to be made.

The Amended Conclusions of Law and Amended Judgment and Decree entered by Judge Hoyt granted substantial affirmative relief to the Plaintiffs. This was wholly inconsistent with and opposed to the judgment on appeal and the remittitur. The resulting final order is erroneous and highly prejudicial to the Defendant, the prevailing party.

## CONCLUSION

For the reasons given, the Amended Judgment and Decree entered by Judge Hoyt on February 5, 1962, should be reversed and set aside, except for paragraph 6 thereof where judgment for costs is granted. Defendant prays that this court will direct the trial court to vacate and set aside its Amended Judgment and Decree except to the extent that the same grants judgment to Defendant in the sum of One Thousand Seven Hundred and Eighteen Dollars and Thirty-Nine Cents (\$1,718.39), or, in the alternative, that the Supreme Court enter the appropriate final judgment in the case and incorporate the same in its remittitur.



Respectfully submitted,

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Dated: April 20, 1962

# APPENDIX