

1962

Troy O. Nance and Thomas B. Hanley v. Sheet Metal Workers International Association : Order on Motions for Taxing Costs and for Discharge of Bonds

Utah Supreme Court

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Legal Brief, *Nance v. Sheet Metal Workers*, No. 9631 (Utah Supreme Court, 1962).
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IN THE FIFTH DISTRICT COURT OF UTAH IN AND FOR JUAB COUNTY

TROY O. NANCE,)	
<i>Petitioner,</i>)	
THOMAS B. HANLEY,)	
<i>Intervener,</i>	)	ORDER ON MOTIONS
vs	)	FOR TAXING COSTS
	)	AND FOR
SHEET METAL WORKERS	)	DISCHARGE OF
INTERNATIONAL ASSOCI-	)	BONDS
ATION, an unincorporated)	
association,)	
<i>Respondent.</i>)	

In this case the petitioner and intervener complained that the respondent had wrongfully and maliciously expelled them from membership in the respondent union, and that they had suffered damages thereby. They prayed for judgment declaring the expulsion wrongful and malicious and for an order requiring the respondent to reinstate them to membership in the union, also for judgment for damages. The case was tried in two phases. The issue as to wrongful expulsion was tried to the court without a jury and the court found that the expulsion was wrongful and malicious. The issue as to damages caused by the expulsion was then tried before a jury and the jury held that neither the petitioner nor the intervener had suffered any actual damages by reason of the expulsion from the union. The court did not agree with this finding of the jury but assumed that it was bound by the verdict insofar as the issue of actual damages was concerned. The court however held that

the petitioner and intervener were each entitled to judgment declaring the expulsion wrongful, unlawful and malicious and to an order requiring respondent to reinstate them as members of the union; also that they were entitled to nominal damages of one dollar by reason of the wrongful expulsion. The court further concluded that by reason of its finding that the expulsion was malicious the petitioner and intervener were each entitled to exemplary damages and attorney fees. Judgment was entered in accordance with these conclusions of the trial court. Respondent appealed from that part of the judgment adverse to it and the petitioner and intervener cross-appealed from the verdict of the jury as to no actual damages. The decision of the Supreme Court has now been rendered and remittitur filed with this court. The remittitur recites that the judgment of the District Court is reversed, with costs before the jury trial to respondents and those thereafter to appellant. Each of the parties has now filed a memorandum of costs and a motion for the court to tax costs. The petitioner and intervener had also on July 6, 1959, filed in this court their memorandum of trial costs, which memorandum includes expense of their witnesses appearing at the trial of the jury phase of the case as well as those appearing at the phase of the case previously presented before the court without a jury. Respondent contends that, under the terms of the decision and remittitur from the Supreme Court, none of the expense of petitioner's and intervener's witnesses appearing at the jury trial can be allowed. Respondent also contends that no allowance can be made for copies of depositions of petitioner and intervener referred to in their memorandum of costs and that no costs should be allowed on account of expense of petitioner and intervener in connection with Case No. 3784, which was consoli-

dated for trial with No. 3783. The motions to have costs taxed having been duly submitted and considered by the court in connection with the opinion and remittitur from the Supreme Court, the court now concludes as follows:

1. That by reason of the mandate of the Supreme Court the following items of costs claimed by petitioner and intervener in their Memorandum of Costs filed July 6, 1959, (Record page 660) should be and are disallowed, to-wit:

C. E. Vaughn, Las Vegas, Nevada	
2 days attendance, 2-10-59 and 2-11-59	\$ 12.00
260 miles travel from Utah State line	52.00
Charles C. Williams, Las Vegas, Nevada	
3 days attendance, 2-11-59, 2-12-59 and 2-13-59	18.00
260 miles travel from Utah State line	52.00
Jack Berry, Las Vegas, Nevada	
1 day attendance, 2-13-59	6.00
260 miles travel from Utah State line	52.00
George Mitchell, Las Vegas, Nevada	
1 day attendance, 2-13-59	6.00
260 miles travel from Utah State line	52.00
Aubry Long, Las Vegas, Nevada	
1 day attendance, 3-9-59	6.00
260 miles travel from Utah State line	52.00
Alfred Long, Las Vegas, Nevada	
1 day attendance, 3-10-59	6.00
260 miles travel from Utah State line	52.00
W. J. Horn, Las Vegas, Nevada	
1 day attendance, 3-10-59	6.00
260 miles travel from Utah State line	52.00
Joseph Hanley, Las Vegas, Nevada	
1 day attendance, 3-10-59	6.00
260 miles travel from Utah State line	52.00

Joe Long, Las Vegas, Nevada	
1 day attendance, 3-11-59	6.00
260 miles travel from Utah State line	52.00
Robert L. McElvany, Las Vegas, Nevada	
1 day attendance, 3-12-59	6.00
260 miles travel from Utah State line	52.00
L. Eugene Beck, Nephi, Utah	
1 day attendance, 4-27-59	6.00
1 mile travel	.20

2. That the remaining items of costs set forth in said memorandum should be and are allowed. Copies of depositions of Hanley and Nance are proper charges since it appears that depositions of these parties were taken pursuant to demand of the respondent and that copies of such depositions were reasonably required by petitioner and intervenor in connection with the trial of issues tried to the court.

3. That the items of costs set forth in the Memorandum of Costs and Disbursements filed by petitioner and intervenor under date of December 16, 1961, being for printing costs on appeal should be and are disallowed.

4. That by reason of the mandate of the Supreme Court the items of costs claimed in respondent's Memorandum of Costs filed December 11, 1961, should be and are allowed excepting however the following:

- (a) The item of \$30.00 claimed for premium of cost bond on appeal is allowed for \$24.00 only.
- (b) That by reason of the rule announced by the Supreme Court in the case of *Nalder vs. Kellogg Sales Company* 334 Pac. 2d 350, the item of costs claimed for premium paid on supersedeas bond, to-wit \$1622.00 should be disallowed.

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.

6. It is further ordered, however, that the bond for costs on appeal and supersedeas bond heretofore filed by respondent are each hereby discharged.

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.

Done this 16 day of January 1962.

/s/ Will L. Hoyt
Judge

Copies of above order mailed 16 January 1962 to:

James P. McCune, Attorney, Nephi, Utah

A. W. Sandack, Attorney, Salt Lake City, Utah

[Conclusions of Law and Judgment Proposed
by Defendant-Appellant]

IN THE DISTRICT COURT OF THE
FIFTH JUDICIAL DISTRICT IN AND
FOR JUAB COUNTY, STATE OF UTAH

————— oOo —————

TROY O. NANCE,)	
<i>Petitioner,</i>)	
THOMAS B. HANLEY,)	
<i>Intervenor,</i>	)	Civil No. 3783
vs.)	
	)	CONCLUSIONS OF
SHEET METAL WORKERS	)	LAW AND
INTERNATIONAL ASSOCI-	)	JUDGMENT
ATION, an unincorporated)	
association,)	
<i>Respondent.</i>)	

The court on June 29, 1959, having entered a judgment and decree in the cause in favor of the plaintiffs providing:

“IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows, to-wit:

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

“2. That respondent, be, and it is hereby commanded to forthwith reinstate petitioner and intervenor to membership in respondent association and to do all things necessary to restore to each of them all rights, benefits and privileges appertaining to such membership.

“3. That the petitioner, Troy O. Nance, be, and he is hereby given judgment against the respondent in the sum of \$1.00 as actual damages, the sum of \$20,000.00 as exemplary damages, and the sum of \$7,000.00 for services of his attorney in the trial of the issues as to wrongful expulsion up to the date of judgment, making a total judgment of \$27,001.00.

“4. That the intervenor, Thomas B. Hanley, be, and he is hereby given judgment against the respondent in the sum of \$1.00 as actual damages, the sum of \$20,000.00 as exemplary damages, and the sum of \$7,000.00 for services of his attorney in the trial of the issues as to wrongful expulsion up to the date of judgment, making a total judgment of \$27,001.00.

“5. That petitioner and intervenor, be, and they are hereby given judgment against respondent for their costs herein in the sum of \$.....

“6. That the court shall retain jurisdiction of this cause for the purpose of enforcing this judgment and decree.

“7. That this judgment shall not constitute any adjudication of the truth or falsity of the charges preferred against the petitioner or intervenor and shall not operate as a bar to trial of the charges preferred against the petitioner or 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.

“8. That the issues tried and determined in this case dispose of the issues raised in Civil Case No. 3784 in this court, entitled Troy O. Nance, Plaintiff, vs. Sheet Metal Workers International Association, De-

fendant, and upon entry of judgment in this case said case No. 3784 should be dismissed.

“DATED this 29th day of June, 1959.”
from which judgment the defendant appealed, and the said judgment upon appeal to the Supreme Court of Utah having been reversed and the remittitur of the Supreme Court having been issued and recorded in the register of actions of the court, and the said remittitur having directed:

“... , 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.”

and the court having received and considered the motions of the respective parties to have costs taxed by the court and having in its Order of January 16, 1962, taxed costs of \$2,464.74 against the plaintiffs and costs of \$746.35 against the defendant.

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.

Dated this day of January, 1962.

Judge

IN THE FIFTH DISTRICT COURT OF UTAH IN AND FOR JUAB COUNTY

TROY O. NANCE,)	
<i>Petitioner</i>)	
and)	
THOMAS B. HANLEY,)	
<i>Intervener</i>	)	AMENDED
—vs.—	)	CONCLUSIONS
	)	OF LAW
SHEET METAL WORKERS)	
INTERNATIONAL ASSOCI-)	
ATION,)	
<i>Respondent.</i>)	

In this case the petitioner and intervener complained that the respondent had wrongfully and maliciously expelled them from membership in the respondent union, and that they had suffered damages thereby. They prayed for judgment declaring the expulsion wrongful and malicious and for an order requiring the respondent to reinstate them to membership in the union, also for judgment for damages. The case was tried in two phases. The issue as to wrongful expulsion was tried to the court without a jury and the court found that the expulsion was wrongful and malicious. The issue as to damages caused by the expulsion was then tried before a jury and the jury held that neither the petitioner nor the intervener had suffered any actual damages by reason of the expulsion from the union. The court did not agree with this finding of the jury but assumed that it was bound by the verdict insofar as the issue of actual damages was concerned. The court however held

that the petitioner and intervener were each entitled to judgment declaring the expulsion wrongful, unlawful and malicious and to an order requiring respondent to reinstate them as members of the union; also that they were entitled to nominal damages of one dollar by reason of the wrongful expulsion. The court further concluded that, by reason of its finding that the expulsion was malicious, the petitioner and intervener were each entitled to exemplary damages and attorney fees. Judgment was entered in accordance with these conclusions of the trial court. Respondent appealed from that part of the judgment adverse to it and the petitioner and intervener cross-appealed from the verdict of the jury as to no actual damages. The decision of the Supreme Court has now been rendered and remittitur filed with this court. The remittitur recites that the judgment of the District Court is reversed, with costs before the jury trial to respondents and those thereafter to appellant.

This court having considered the opinion and decision of the Supreme Court now makes the following Amended Conclusions of Law, to-wit:

1. That said opinion and decision does not order or require any change or modification of the findings of fact heretofore made and entered herein by this court, and the same should stand.

2. That the action of the Trial Committee in hearing and receiving evidence in the absence of the petitioner and intervener and without giving them an opportunity to confront and cross-examine witnesses against them was a violation of their rights under the Constitution and Ritual of the respondent association and a violation of their rights under the law forbidding deprivation of property without due process of law.

3. That the remedy of appeal provided for under the constitution and ritual of the respondent association was insufficient as a remedy for the violations referred to since it did not provide for opportunity to the petitioner or respondent to confront or cross-examine witnesses testifying against them.

4. That the actions and proceedings of the Grievances and Appeals Committee and of the General Convention of the respondent association in connection with appeals taken by the petitioner and intervener did not cure the defects in proceedings of the trial committee in conducting trials in the absence of petitioner and intervener.

5. That the expulsion of the petitioner and intervener from membership in the respondent association was a violation of their rights under the constitution and ritual of the respondent association and under the law forbidding deprivation of property without due process of law.

6. That neither the petitioner nor the intervener is barred from bringing this action by any applicable statute of limitation.

7. That the action of the respondent association in expelling petitioner and intervener, under the circumstances shown by the findings of fact herein was in each case unreasonable, arbitrary and malicious, and judgment should be entered herein declaring that such expulsion was wrongful, malicious, null and void.

8. That by reason of the opinion of the Supreme Court it is futile for this court to issue an order or writ of mandate requiring the respondent to reinstate the petitioner

and intervener to membership in the respondent union. That such opinion appears to be based upon the conclusion of the Supreme Court that the respondent is a foreign unincorporated association and that it is not doing business within the State of Utah.

9. That the judgment to be entered herein should not constitute any adjudication of the truth or falsity of the charges preferred against the petitioner and intervener and shall not operate as a bar to trial of the charges preferred against the petitioner or intervener 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.

10. That by reason of the opinion of the Supreme Court neither the petitioner nor the intervener is entitled to recover nominal damages, exemplary damages or attorney fees herein.

11. That pursuant to the opinion of the Supreme Court the petitioner and respondent are entitled to their costs before the jury trial and the respondent is entitled to its costs thereafter. That costs of petitioner and respondent before the jury trial should be taxed in the amount of \$746.35 and the costs of respondent thereafter should be taxed in the amount of \$2464.74. That respondent is therefore entitled to a net judgment for costs in the sum of \$1718.39.

12. That judgment should be entered in accordance with these amended conclusions of laws.

Dated this 5 day of February 1962.

/s/ Will L. Hoyt
District Judge

Copies of the Above Amended Conclusions of Law mailed
5 February 1962 to:

James P. McCune, Attorney, Nephi, Utah.

A. W. Sandack, Attorney, 405 Executive Bldg., Salt Lake
City, Utah.

IN THE FIFTH DISTRICT COURT OF UTAH IN AND FOR JUAB COUNTY

TROY O. NANCE,)	
<i>Petitioner</i>)	
and)	
THOMAS B. HANLEY,)	
<i>Intervener</i>	)	AMENDED
-vs-	)	JUDGMENT
	)	AND DECREE
SHEET METAL WORKERS)	
INTERNATIONAL)	
ASSOCIATION,)	
<i>Respondent.</i>)	

In this case the petitioner and intervener complained that the respondent had wrongfully and maliciously expelled them from membership in the respondent union, and that they had suffered damages thereby. They prayed for judgment declaring the expulsion wrongful and malicious and for an order requiring the respondent to reinstate them to membership in the union, also for judgment for damages. The case was tried in two phases. The issue as to wrongful expulsion was tried to the court without a jury and the court found that the expulsion was wrongful and malicious. The issue as to damages caused by the expulsion was then tried before a jury and the jury held that neither the petitioner nor the intervener had suffered any actual damages by reason of the expulsion from the union. The court did not agree with this finding of the jury but assumed that it was bound by the verdict insofar as the issue of actual damages was concerned. The court however held

that the petitioner and intervener were each entitled to judgment declaring the expulsion wrongful, unlawful and malicious and to an order requiring respondent to reinstate them as members of the union; also that they were entitled to nominal damages of one dollar by reason of the wrongful expulsion. The court further concluded that, by reason of its finding that the expulsion was malicious, the petitioner and intervener were each entitled to exemplary damages and attorney fees. Judgment was entered in accordance with these conclusions of the trial court. Respondent appealed from that part of the judgment adverse to it and the petitioner and intervener cross-appealed from the verdict of the jury as to no actual damages. The decision of the Supreme Court has now been rendered and remittitur filed with this court. The remittitur recites that the judgment of the District Court is reversed, with costs before the jury trial to respondents and those thereafter to appellant.

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 the 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 intervener from membership in the respondent association was and is wrongful, malicious, null and void as to each of said parties.

2. That, by reason of the decision of the Supreme Court, it is futile for this court to issue an order or writ of mandate requiring the respondent to reinstate the petitioner or intervener to membership in the respondent association.

3. That by reason of the answers of the jury to special interrogatories, no judgment for actual damages should be awarded to the petitioner or intervener.

4. That, by reason of the decision of the Supreme Court, no judgment for nominal damages, exemplary damages or attorney fees should be awarded to the petitioner or intervener.

5. That this judgment shall not constitute any adjudication of the truth or falsity of the charges preferred against the petitioner or intervener and shall not operate as a bar to trial of the charges preferred against the petitioner or intervener 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.

6. That pursuant to the opinion of the Supreme Court the petitioner and intervener are entitled to their costs before the jury trial and the respondent is entitled to its costs thereafter. That costs of petitioner and intervener before the jury trial are hereby taxed in the amount of \$746.35 and

costs of respondent thereafter are hereby taxed in the amount of \$2464.74. That respondent is therefore entitled to and is given judgment for costs in the net amount of \$1718.39.

Done this 5 day of February, 1962.

/s/ Will L. Hoyt
District Judge

Copies of above order mailed 5 February 1962 to:

James P. McCune, Attorney, Nephi, Utah.

A. W. Sandack, Attorney, 405 Executive Bldg., Salt Lake City, Utah.