

1962

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

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

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

vs.

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

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FILED

MAY 31 1962

RESPONDENTS BRIEF

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

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Nance and Thomas B.
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TABLE OF CONTENTS

	Page
Statement of the Facts of the Case..	1
Argument:	
Point I. The Remittitur must be construed in the light of the Supreme Court's Opinion.	9
Point II. The Supreme Court did not reverse that part of the judgment which declared that Plaintiffs were expelled.	11
Point III. Even if the Remittitur could be construed as reversing the original judgment in its entirety, the Trial Court committed no error in entering the judgment appealed from.	14
Conclusion.	16

TABLE OF AUTHORITIES

	Page
First National Bank v. Cavin 28 N.M.468, 214 P.325.	10
Gaines v. Rugg, 148 U.S.228, 13 S.Ct. 611, 37 L.ed 432.	10
Georgia Railway & Electric Co. v. Decatur. 297 U.S. 266, 56 S.Ct.606, 80 L.ed 925.	13
Hartford Life Ins. Co. v. Blencoe, 255 U.S. 129, 41 S.Ct. 276.	12
Henderson and Johnson v. Hooper Sugar Co. 65 Utah 241, 236 P.239, 45 A,LR 63.11	
H.F.G. v. Pioneer Publishing Co. 7 F.R.D. 654.	12
Phebus v. Dunford, 114 Utah 292, 198 P.2d 973.	14
Warren v. Robinson, 21 Utah 323, 61 P. 28.	15
Wayne v. Kennecott, 94 U.S. 498, 24 L.ed 260.	10
Wolff Packing Co. v. Court of Industrial Relations, 267 U.S.552, 45 S.Ct: 441, 69 L.ed.	12

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No. 9631

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

RESPONDENTS BRIEF

STATEMENT OF THE FACTS OF THE CASE

In this cause Plaintiffs by their respective pleadings sought several types of relief: first, a judgment declaring that they had been wrongfully expelled from membership in the Defendant labor union; second, a writ of mandamus commanding the Defendant to reinstate them to membership and to all of the rights and privileges appertaining thereto; and third, a judgment for actual and exemplary damages as well as attorney's fees and costs. The Defendant not only answered but filed counter-claims against each of the Plaintiffs, praying for declaratory judgments declar-

ing that Plaintiffs had been lawfully expelled from membership in the Defendant. In other words, all of the parties prayed for declaratory judgments: The plaintiffs praying for a declaratory judgment declaring that they had been wrongfully expelled; and the Defendant praying for a declaratory judgment declaring that Plaintiffs had been lawfully expelled.

The action, pursuant to the stipulation of the parties and the order of the Trial Court, was tried in two phases, the first before the Court sitting without a jury, and the second, before a jury. The first related to the legality of the expulsion of the Plaintiffs and their right, if any, to recover exemplary damages and attorneys' fees as a result thereof. The second, that tried before the jury, related to the right of the Plaintiffs to recover compensatory damages and punitive damages because of the acts and conduct of the Defendant committed after their expulsion.

The issue as to the legality of the expulsion of the Plaintiffs was first tried. And, after a prolonged trial, the Court in an opinion dated December 30, 1958 (Record pages 347-353) held, on the basis of detailed findings of fact that the Plaintiffs had been wrongfully expelled from the Defendant, but reserved its decision as to whether the Plaintiffs

were entitled to exemplary damages until the issues to be determined by the jury had been decided.

Thereafter the following issues were tried before a jury (Record 367-369)

"(a) The issue as to whether the Plaintiffs suffered actual damages as a result of their expulsion from the Defendant, and if so, what amount of money will constitute just and reasonable compensation for such actual damages. "

"(b) Whether Defendant or its officers or agents were guilty of malice or had bad faith in preventing or hindering the Plaintiffs from obtaining employment subsequent to the date of the decision of the trial board declaring the expulsion, to wit June 29, 1954, and if so, whether the Plaintiffs were entitled to exemplary damages for the same, and if so, the amount of such damages. "

The jury found all of the issues submitted to it in favor of the Defendant.

The Trial Court, as manifested by its order denying a new trial (Record 619-620) disagreed with the verdict as

being against the weight of the evidence
but nevertheless refused to disturb it.

Thereafter in accordance with the Second Supplemental Memorandum of Decision dated May 2, 1959 (Record pages 600-614) the trial Court entered a judgment:

"(a) Declaring that Plaintiffs had been illegally and maliciously expelled from membership in Defendant; and

(b) Commanding the Defendant to re-instate the Plaintiffs to membership; and

(c) Awarding to each of the Plaintiffs nominal damages in the sum of \$1.00, exemplary damages in the sum of \$20,000.00, and attorney's fees in the sum of \$7,000.00 as well as costs."

As said before, the trial Court refused to disturb the verdict of the jury, and accordingly the judgment as entered by the trial Court, awarded Plaintiffs no actual damages because of their expulsion, and no exemplary damages for acts or conduct of the Defendant or its officers committed or occurring thereafter.

From the judgment so entered both sides appealed to this Court.

On September 31, 1961, this Court

rendered its opinion, which is reported in 12 Utah 2d 233,364 P2d, 1027. The opinion begins with the statement:

"Appeal from a judgment for \$1.00 nominal and \$40,000.00 punitive damages, \$14,000 attorney's fees and some costs, which judgment is reversed. Costs before the jury trial to Plaintiffs and those thereafter to Defendant."

The opinion concludes with the following paragraph:

"It would appear that mandamus may not be against a foreign unincorporated association, although we need not decide the point.

We have no problem before us with respect to a domestic association of any kind. We agree with our prior pronouncement that for us to act as requested, under the facts of this particular case would be futile."

The remittitur issued by the clerk of this Court remanding the case to trial Court simply states:

"---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 there-

after to appellant."

After receipt of the remittitur, the trial Court, in pursuance of the judgment and mandate of this Court entered the following judgment:

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

(Emphasis supplied)

From the judgment so entered, the Defendant has appealed contending

First, that the trial Court erred in entering it because the remittitur of this Court was a self-executing order reversing the original judgment below and no further order or judgment was necessary or proper; and

Second, that the trial Court erred in entering the amended judgment in that such amended judgment was not in conformity with and was contrary to the remittitur and the

opinion of this Court.

Neither of these contentions is well taken, for the following reasons:

1. The remittitur must be construed in the light of this Court's opinion.
2. When the opinion is so construed, it is obvious that this Court did not reverse, but in fact affirmed that portion of the original judgment which declared that Plaintiffs had been illegally expelled from membership in the Defendant union.
3. If the mandate can conceivably be construed as reversing the original judgment in its entirety, the trial Court properly entered a judgment declaring that Plaintiffs had been illegally expelled, particularly in view of the fact that all parties, including the Defendant, prayed for and sought a declaratory judgment as to the legality or illegality of Plaintiffs' expulsion.

I

The Remittitur Must Be Construed in The Light Of The Supreme Court's Opinion

We submit that it is too well settled to require an extensive citation of authority that the remittitur must be

construed in the light of the Supreme Court's opinion, particularly in view of the fact that the opinion was attached to and made a part of the remittitur. As said by the Supreme Court of New Mexico in *First National Bank v. Cavin*, 28 N.M. 468, 214 P. 325:

If, as the appellee's counsel contends, the only thing the lower court looks to is the judgment and mandate of this court, it is useless for this court to write an opinion, and in effect the rule of the "law of the case" is destroyed, for no one will contend that the court will look to the judgment or mandate, such as was rendered and issued in this case, but must necessarily look to the opinion of the court.

Gaines v. Rugg, 148 U.S. 228,
13 S Ct. 611, 37 L. ed. 432;

Wayne v. Kennecott, 94 U.S.
498, 24 L. ed. 260

Indeed, the Supreme Court of this State held as much in the early case Warren v. Robinson, 21 Utah 323, 61 P. 28, 29, when it said:

Therefore, to determine the question whether the Court below properly interpreted

the opinion and judgment of this Court, we feel entirely free to resort to that opinion, a copy of which was attached to, and formed a part of, the remittitur, to ascertain the nature of the decision and what it required.

II

The Supreme Court Did Not Reverse That Part Of the Judgment Which Declared That Plaintiffs Were Illegally Expelled.

When the judgment or remittitur of this Court is considered in the light of its opinion, we think it plain that this Court did not reverse the judgment in its entirety, but in fact affirmed that part thereof which declared that Plaintiffs had been illegally and maliciously expelled. This is made clear beyond peradventure by the fact this Court directed that Plaintiffs recover their costs before the jury trial. The only part of the case tried in advance of the jury trial was the issue whether Plaintiffs had been legally or illegally expelled from membership in Defendant union unless Plaintiffs prevailed on this issue, no costs could be awarded them. As this Court said in Henderson and Johnson v. Hooper Sugar Co., 65

Utah, 241, 236 P. 239, 45 A.L.R. 637.

Appellant, however, failed in this proceeding, and we know of no law in this jurisdiction by which we are authorized to make an allowance for costs and attorney's fees to a party who has failed in the action.

Furthermore, the rule is well and firmly established, that unlike the judgment of an appellate court affirming a judgment or order of a trial court,

"A judgment of reversal is not an adjudication by the Appellate court of any than the questions discussed and decided."

H.F.G. Co. v. Pioneer Publishing Co.
7 F.R.D. 654.

Mutual Life Insurance Co. v. Hill,
193 U.S.551,553, 24 S.Ct. 538,
539, 48 L. ed. 778.

Wolff Packing Co. v. Court of Industrial Relations, 267 U.S. 552,
563, 45 S.Ct. 441, 69 L. ed 485.

Hartford Life Ins. Co. v. Blencoe,
255 U.S. 129, 135, 41 S.Ct. 276,
65 L. ed 549.

Georgia Railway & Electric Co. v.

Decatur, 297 U.S. 620, 623, 624,
56 S.Ct. 606, 80 L. ed. 925.

The only parts of the original judgment which this Court expressly reversed were those which related to nominal and exemplary damages and attorneys' fees. And the only parts of the original judgment which this Court discussed were those which Plaintiffs' right to nominal damages, exemplary damages, attorneys' fees, costs and to a writ of mandamus. As to these matters, the trial Court followed this Court's opinion to the letter.

But nowhere in the Court's opinion can there be found any discussion of that part of the original judgment which declared that Plaintiffs had been illegally expelled from membership in the Defendant union.

In these circumstances, the trial Court was clearly correct in construing this Court's judgment and mandate as reversing the original judgment only in part -- that is as to those parts which related to damages and attorneys' fees, -- and leaving in force and, in effect, affirming that part of the judgment which declared that Plaintiffs had been illegally expelled. This is particularly true in view of the fact that Defendant itself had by its counterclaims prayed for declaratory judgments de-

claring that Plaintiffs had been lawfully expelled.

The Court, therefore, committed no error in entering the order appealed from.

The authorities cited by Defendant in its brief are clearly not in point. All of them relate to cases where the judgment was reversed in its entirety.

III.

Even If The Remittitur Could
Be Construed As Reversing The
Original Judgment In Its Entirety,
The Trial Court Committed No Error
In Entering The Judgment
Appealed From.

Even if the remittitur could be construed reversing the original judgment in its entirety, the trial Court properly entered the judgment appealed from. As said by Mr. Justice Pratt in 114 Utah 292, 198 P 2d 973 (case on which the Defendant so heavily relies):

The lower court's former decision, in its entirety, having been set aside, that court should proceed to a determination of the case the same as if no such previous decision by it had been rendered. The only restriction imposed upon

it in accomplishing a final determination of the case lies in the issues decided upon the appeal to this Supreme Court. Those issues may not be acted upon or decided contrary to the way they were decided by this Court. Other than that restriction, the lower court may act in this case as it may act in any case at a time prior to its final determination of the facts and law of the case.

There would be no need or necessity for the Trial Court to grant a new trial or to take additional evidence, unless the Defendant desired to adduce further evidence. See

Warren v. Robinson, 21 Utah 429,
61 P. 28

On the basis of the evidence already before the court, there was but one judgment that could have been entered - a declaratory judgment that Plaintiffs were illegally, wrongfully, and maliciously expelled from membership in Defendant union. The trial Court entered such a judgment. It conflicts with the decision of this Court and is indeed responsive to the claim for relief which Defendant itself asserted in its counterclaims.

CONCLUSION

The judgment appealed from should
be affirmed.

Respectfully submitted

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