

1963

# Wilfred Wheatly v. Teamsters Local Union 222 et al : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

LAWYER

FILED

WILFRED WHEATLEY,

JUL 23 1968

Plaintiff and Appellant

Clerk, Supreme Court, Utah

VS.

#9908

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF  
AMERICA, LOCAL #222 AND WILLIAM H. FACKRELL,

Defendants and Respondents

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BRIEF OF APPELLANT

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**IN THE SUPREME COURT  
OF THE STATE OF UTAH**

**WILFRED WHEATLEY,**

**Plaintiff and Appellant**

**VS.**

**CASE  
NO. 9908**

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF  
AMERICA, LOCAL #222 AND WILLIAM H. PACKRELL,**

**Defendants and Respondents**

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**BRIEF OF APPELLANT**

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## STATEMENT OF THE KIND OF CASE

Plaintiff brought this action against Defendants to recover damages for their negligence in failing to represent him properly in a grievance procedure hearing of the Plaintiff's discharge by his employer.

## DISPOSITION IN LOWER COURT

The case was tried to a jury and during the presentation of Plaintiff's case the trial court dismissed the complaint of Plaintiff with prejudice, no cause of action.

## RELIEF SOUGHT ON APPEAL

Plaintiff seeks reversal of the judgment of the trial court, a finding that his complaint states a cause of action and a new trial.

## STATEMENT OF FACTS

In 1949 Plaintiff joined the Teamsters Union Local No. 222 by paying an initiation fee of \$25.00. (T-9) During the time Plaintiff was an active member of the

members he paid dues in the approximate sum of \$800.00.  
(T-9) Plaintiff went to work for the Union Pacific Motor Freight Company in 1953 and for six and one half years had no trouble on the job and was a good employee. (T 9, 10).

On May 27, 1960 Plaintiff was discharged by the Union Pacific Motor Freight Company (T 9, 13), and contacted Defendant Packrell to discuss his discharge (T-13). After several conversations with Defendant Packrell and a meeting with Mr. Holeapple of the Union Pacific Motor Freight Company Plaintiff was offered reinstatement with three weeks less of pay and he refused to accept this offer. (T 14-18, 19, 20) By this time steps 1 and 2 of the grievance procedure had been exhausted. (P-2)

Plaintiff wanted to continue with the additional steps in the grievance procedure (P-2) and was informed by Defendant Packrell and Mr. latter, Secretary and Treasure of Local No. 222, that his grievance would be further processed. This occurred on or about July 13, 1960. Step 3 of the grievance procedure was held and Plaintiff was represented by Defendant Packrell. After

a brief informal hearing the employer refused to re-instate Plaintiff at all. (T 24).

The case was then scheduled for a formal hearing before the Joint Area Committee as provided by step 4 of the grievance procedure. (P-2, T 24, 25) On several occasions during the processing of the grievance Plaintiff had asked Defendant Packrell to produce at either step 3 or 4 the employment records of other employees at Union Pacific Motor Freight to show that he had been discriminated against by the employer. (T 21, 24, 26, 27, 28, 30, 31) Under the rules of procedure of the Joint Area Committee these records could have been produced at step.4.

On or about September 20, 1960 the formal hearing was held with the Plaintiff being represented by Defendant Packrell. (T-25) Defendant Packrell did not produce the records requested by Plaintiff to support the defense that he had been discriminated against and thus discharged without just cause. (T-30) At the conclusion of the hearing Plaintiff's discharge was upheld by the Joint Area Committee. (T-30) Step 5 is provided

for under the collective bargaining agreement but Plaintiff could not have availed himself of this additional step as there was agreement of the Joint Area Committee at step 4. (P-2)

Plaintiff thereupon commenced action against Defendant Packrell and Defendant Teamsters Local No. 282 in the District Court of Salt Lake County for their negligence in processing his grievance. (P-1, 2) The case was tried to a jury on March 10, 1963 and before Plaintiff completed presenting his case the trial court dismissed the complaint of Plaintiff with prejudice, no cause of action. (P-152)

## STATEMENT OF POINTS

### POINT I

PLAINTIFF'S COMPLAINT STATES A CAUSE OF ACTION AGAINST DEFENDANTS AND THE TRIAL COURT ERRED AS A MATTER OF LAW IN DISMISSING SAID COMPLAINT.

The liability of Defendants to Plaintiff are predicated on simple rule of the duty of the agent to his principal. Over the past several years many cases have arisen wherein a union member sued his union for negligence either in processing or failure to process a grievance under a collective bargaining agreement. The law has become fairly well settled in these situations and the following cases reflect the main current of judicial opinion.

The case of Marchitto vs Central Ry. Co. of New Jersey, 88 A2d 851 (1952) states the duty of the union representative to the employee during the processing of a grievance.

"Did the complaint state a cause of action against these defendants? It is universally recognized that an agent stands in a fiduciary relationship to his principal and is under a duty to be careful, skilful, diligent and loyal in the performance of his principal's business and that for a failure so to act he subjects himself to liability." Since the complaint

here charged these defendants with negligence, carelessness, fraud and breach of trust and made appropriate allegations of fact in support thereof, it necessarily follows that a good cause of action was pleaded, if these defendants were in fact and in law his agents."

In the case of Fletcher vs. Colorado & Wyoming Railway Co., 347 P2d 156 (1960) the Plaintiff brought an action against his union for its failure to present his claim for lost wages in a hearing before the National Railway Adjustment Board. The trial court dismissed the complaint of Plaintiff and an appeal to the Colorado Supreme Court held as follows at 347 P2d 160:

"In sustaining these actions the trial court was in error. The complaint, though containing a minimum of facts and an abundance of legal conclusions, does state that the defendants, because of plaintiff's membership and payment of dues in the union, owed him a duty to present his claim, both for reinstatement and for lost wages; that they tardily undertook to perform this duty, but presented only his claim for reinstatement, and through fraud, conspiracy, lack of due diligence, good faith and honesty failed to present his claim for pay for lost time to his damage. The facts so pleaded state a claim upon which, if proved, the plaintiff would be entitled to recover, hence the complaint is not subject to a motion to dismiss."

In Fray vs. Amalgamated Meat Cutters, Etc., 101 P2d 782 (1940) the Plaintiff brought an action against his union for negligently failing to represent him in a grievance against his employer. The trial court dismissed the complaint of Plaintiff and on appeal the

Supreme Court of Wisconsin held as follows at 101 N. W.

2d 787.

"We held only upon this appeal that the Brown case doctrine does not exclude all possibility of an action by an injured member of a union against the union, virtually as an entity, arising out of the negligence of union officers or agents in the representation of the injured member in a grievance against his employer."

The case of Zote vs. Lancaster Optical Corp., 180 N.Y.S. 2d 348 (1958 ) involved the union's refusal to allow certain employees to appear at an arbitration proceeding by their own counsel. The award made in the arbitration proceeding was vacated and the court stated as follows at 180 N.Y.S. 2d 382:

"But while the individual employee may have no direct rights under a collective agreement, and the union has control over grievance procedures, there must be implied a duty of fair representation. Where collusion or unfair representation is shown, courts should permit the individual employee to take independent action....Whether petitioners be viewed in the nature of third party beneficiaries of a contract or in the position of beneficiaries of a trust, in which the union as a trustee owes them a fiduciary obligation of fair representation (the label is not important), they had cognizable standing to seek a vacatur of the award."

One of the leading scholars in the field of labor law, Professor Archibald Cox, had the following comment in the article Rights Under a Labor Agreement, 69 Harvard Law Review, 601, 638 (1956).

"The relationship between law and industrial relations will be improved, and collective bargaining will work better, in my opinion, without any sacrifice of the interests of individual employees, if contracts which contemplate active administration through a grievance and arbitration procedure controlled by the union are held to vest the power to settle grievances in the collective bargaining representative, subject to its fiduciary duty to fair representation."

In view of the fact that Plaintiff's complaint was dismissed in the instant case all well pleaded facts must be taken as being true. Portions of Plaintiff's complaint read as follows:

"On or about the 20th day of September, 1960, Plaintiff had a hearing before the Joint Area Committee as provided for in the Collective Bargaining Agreement... Defendant Packrell made the allegation that the Plaintiff's discharge was without just cause and discriminatory but did not make any effort to obtain or introduce any evidence to support his allegations when, in fact, evidence was readily available in the form of witnesses and the records of other employees of the Union Pacific Motor Freight Company..."

"If Defendant Packrell had obtained the evidence readily available and introduced it in support of the allegations he made, then the outcome would have been to order Plaintiff reinstated without loss of pay. Defendant Packrell's failure to obtain and introduce evidence in support of Plaintiff's case constitutes negligence and is imputed to Defendant Teamsters Local No. 222."

Evidence was introduced during the course of the trial to support these allegations. (121, 25, 28, 30, 31)

The question of Defendant Packrell's negligence in

representing Plaintiff at step 4 of the grievance procedure was clearly one for the jury.

Even though Plaintiff was offered reinstatement with three weeks less of pay he was not obligated to accept this offer and elected to continue with the grievance procedure. After he refused this offer it was discretionary with the union whether or not to process his grievance further. In Fray vs. Amalgamated Meat Cutters, Etc., 101 N.E. 2d at page 787 the court stated as follows:

"The union has great discretion in processing the claims of its members, and only in extreme cases of abuse of discretion will courts interfere with the unions decision not to present an employee's grievance."

When the Defendants undertook to represent Plaintiff at steps 3 and 4 they waived any right to rely on the offer of reinstatement as a defense to this action.

## **CONCLUSION**

The trial court erred as a matter of law in dismissing Plaintiff's complaint with prejudice, no cause of action and this court should hold that it does state a cause of action against the Defendants and award Plaintiff a new trial.

Respectfully Submitted,

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and Appellant