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Teamsters Local Union No. 222 v. W. S. Hatch Company, A Utah Corporation : Brief of Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

TEAMSTERS LOCAL UNION NO. 222,
Plaintiff-Appellant,

vs.

W. S. HATCH COMPANY, A UTAH CORPORATION,
Defendant-Respondent.

Case No. [illegible]

BRIEF OF APPELLANT

Appeal from District Court of Davis County,
Judge Parley E. Norseth, Presiding

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IN THE SUPREME COURT OF THE STATE OF UTAH

TEAMSTERS LOCAL UNION NO. 222, *Plaintiff-Appellant,*

vs.

W. S. HATCH COMPANY, A UTAH CORPORATION, *Defendant-Respondent.*

Case No. 10943

BRIEF OF APPELLANT TEAMSTERS LOCAL UNION NO. 222

Appeal from Judgment of District Court of Davis County Judge Parley E. Norseth, Presiding

STATEMENT OF CASE

This is an appeal from a money judgment in favor of defendant-respondent pursuant to its counterclaim against the plaintiff-appellant.

DISPOSITION OF CASE IN LOWER COURT

This case was initiated by Teamsters Local Union No. 222 for and on behalf of Kendel S. Twitchell and other employees of defendant, W. S. Hatch Company, for the payment to such employees by the defendant of certain health and welfare and vacation benefits.

Defendant counterclaimed against the Union seeking recovery of $1567.50 which it claimed it had paid the *Union* in error because of an alleged unlawful demand made to the Company by the Union.

By the time the matter came on for trial, all issues had been resolved between the parties except the Twitchell matter and defendant's counterclaim. The Trial Court entered judgment in favor of defendant Hatch on the Twitchell issue, and the plaintiff did not appeal that decision. The lower court also held in favor of the defendant and counterclaimant and against plaintiff on the issues raised in the counterclaim, and rendered judgment against plaintiff in the sum of $1567.50. As to this part of the judgment, plaintiff appeals, following a denial of its motion for a new trial.

STATEMENT OF FACTS

On or about October 16, 1961, the parties to this suit entered into a collective bargaining agreement which provided in Article XX, Section 2, that:

> "Effective October 1, 1961, the Company shall contribute to a jointly administered trust fund

the sum of $16.50 per month for each regular employee covered by this agreement who has worked eighty (80) hours or more in the preceding month and thereafter shall continue to pay $16.50 for each such employee who works eighty (80) hours or more during each preceding month for the duration of this agreement."

Article XXXI of the agreement reads:

"This agreement shall be effective October 16, 1961 to September 30, 1964 * * * *"

Prior to the agreement, the parties had entered into similar agreements, the last of which had terminated June 30, 1961, during which time Hatch had paid $11.88 per month for each employee. The particular Trust Fund to which the money was contributed was the Utah-Idaho Teamsters Security Fund, a Trust jointly and equally administered by Management and Labor representatives. Hatch had made health and welfare contributions to this Trust Fund pursuant to these prior agreements, and had also made payments into the Trust for the benefit of its employees during periods when there were no such agreements, for example, the period between June 30, 1961 and October 1, 1961. During this particular interim period between agreements, Hatch paid an amount required by the terms of the agreement then recently expired. The Trust accepted the contributions, and the employees were made eligible and enjoyed the benefits therefrom, even though there was no collective bargaining agreement to support such payments.

At the conclusion of each calendar month, Hatch determined which of its employees had worked the required number of hours and then sent the appropriate sum of money to the Trust Fund for each such eligible employee. The employees were then given proper eligibility and insurance coverage for the month immediately following the month that the employees worked. It was impossible, of course, to determine the hours worked during any given month until the end of that month.

Defendant's Exhibit 1 is a series of 36 checks, beginning with a check dated October 9, 1961, in the sum of $1152.36 and ending with a check dated September 14, 1964, in the sum of $1584.00. The fourth check in this series of 36 checks is dated January 15, 1962, in the sum of $1094.94. This check was an adjustment check which supplemented payments for the previous months. Prior to the October 16, 1961 agreement Hatch had been paying under the old rate of $11.88 per employee per month. Under the new contract, the rate was $16.50 per month. This fourth check was an adjustment payment that paid up the difference between the old and the new rates. (Tr. 70-72). When defendant introduced Exhibit 1, it failed to include in the exhibit the January payment for December, 1961 hours, and, by mistake, substituted the said adjustment check. The check that should have been included as the fourth payment was in the sum of $807.64. (Tr. 72).

wing is a list of checks contributed by Trust Fund for hours worked since Sep-61. This list includes all the checks in Exhibit 1 plus the $807.64 check above eck 4 below), and adds the check marked Exhibit 4 (see check 37 below).

Date of Check	Amount of Check	Month of Eligibility and Benefits
10-9-61	$1152.36	Oct. 61
11-15-61	997.92	Nov. 61
12-12-61	795.96	Dec. 61
Jan. 62	807.84	Jan. 62

ient check dated Jan. 15, 1962 in sum of

2-26-62	1469.16	Feb. 62
3-15-62	1204.50	March 62
4-16-62	1254.00	April 62
5-17-62	1452.00	May 62
6-14-62	1468.50	June 62
7-25-62	1600.50	July 62
8-17-62	1534.50	Aug. 62
9-17-62	1534.50	Sept. 62
10-12-62	1452.00	Oct. 62
11-14-62	1369.50	Nov. 62
12-13-62	1254.00	Dec. 62
1-10-63	1089.00	Jan. 63
2-13-63	1105.50	Feb. 63
3-13-63	1188.00	March 63
4-11-63	1287.00	April 63
5-15-63	1402.50	May 63
6-13-63	1534.50	June 63
7-16-63	1534.50	July 63
8-12-63	1485.00	Aug. 63
9-13-63	1353.00	Sept. 63

Month of Hours Worked	Date of Check	Amount of Check	Month of Eligibility and Benefits
25. Sept. 63	10-11-63	1287.00	Oct. 63
26. Oct. 63	11-9-63	1221.00	Nov. 63
27. Nov. 63	11-29-63	1171.50	Dec. 63
28. Dec. 63	1-1-64	1171.50	Jan. 64
29. Jan. 64	2-3-64	1270.50	Feb. 64
30. Feb. 64	3-27-64	1105.50	Mar. 64
31. Mar. 64	4-23-64	1301.85	Apr. 64
32. Apr. 64	5-27-64	1965.15	May 64
33. May 64	7-10-64	1452.00	June 64
34. June 64	8-10-64	1617.00	July 64
35. July 64	8-14-64	1567.50	Aug. 64
36. Aug. 64	9-14-64	1584.00	Sept. 64
37. Sept. 64	12-19-64	1567.50	Oct. 64

The payment by Hatch of the 37th check above in the sum of $1567.50 was not paid to appellant, Local No. 222, but was paid to the Utah-Idaho Teamsters Security Fund, and such payment was the basis for Hatch's counterclaim against *appellant.* The counterclaim was filed on or about June 11, 1965, *a period of six months after it was paid to the Trust Fund, during which time the Trust Fund furnished health and welfare benefits to Hatch's employees for sickness they and their families suffered in October,* 1964. These October benefits were made available to them as a result of Hatch's making such payment. (Tr. 87-88, 90-91).

ARGUMENT

POINT I

THE PAYMENT OF $1567.50 BY RESPONDENT, HATCH CO., TO THE UTAH-IDAHO TEAMSTERS SECURITY FUND WAS A LAWFUL PAYMENT PURSUANT TO A WRITTEN AGREEMENT.

As support of the judgment herein, the trial court made a finding that "Teamsters Local Union No. 222 made an unlawful demand for contributions under the health and welfare provisions of said labor agreement covering payment for the month of October, 1963, a month not covered by said labor agreement," and that "on or about December 19, 1964, defendant made payment of $1567.50 to said plaintiff pursuant to said demand."

The court's finding that contributions of $1567.50 paid December 19, 1964, were for the month of October does not enlighten us as to whether it refers to hours worked in October or to benefits received in October. We submit that its finding that the contribution of $1567.50 was pursuant to an unlawful demand is a conclusion of law rather than a finding of fact because it is based on the court's interpretation of the language of Article XX, Section 2 of the agreement. If it is a finding of fact it is not supported by any evidence, because the evidence is that this payment was for hours worked by the employees in *September* 1964. (Tr. 92).

Both parties to this law suit appear to agree that the Agreement meant that the new rate of $16.50 per month (the previous rate had been $11.88 per month) was to apply to hours worked in September, 1961. Thus, after the hours worked in September, 1961 were counted, the company then determined how many men had worked eighty (80) hours in September, 1961, and under the new Agreement "effective October 1, 1961", paid $16.50 for each such employee covered by the Agreement, and such employees were then eligible for benefits beginning October 1, 1961.

The question now arises whether the hours worked by the men in September, 1964, are included in the agreement or excluded. The Agreement is effective "through September 30, 1964".

According to the interpretation of the language of the Agreement by the trial court, the employees were not entitled to health and welfare benefits for hours they worked in September, 1964, the theory being that health and welfare benefits under the Agreement are necessarily limited to a period of 36 months.

The Agreement, however, does not speak in terms of months, but in terms of dates. The previous Agreement between the parties had expired June 30, 1961, and the parties had been negotiating without a successful conclusion until October 16, 1961, a period of 3½ months.

It seems to us that the rules of construction and interpretation are violated to read into the dates set

forth in the Agreement a limit of 36 months when to do so deprives the employees of a most important fringe benefit for them and their families for hours that they worked in September, 1964, a month specifically included in the Agreement. Such a view holds that because the employees had health and welfare benefits in October, 1961, they were precluded from such benefits in October, 1964, for hours worked in September, 1964 simply because they would thus get benefits for 37 months under the agreement rather than 36 months. We believe that the Agreement does not so read, that the language that the "agreement shall be effective * * * through September 30, 1964", means that the men would receive all benefits under the contract, including full credit for hours worked toward health and welfare benefits during September, 1964.

There is nothing in the record or the language of the Agreement to justify the Trial Court's restrictive interpretation. On the contrary, during the interim period between contracts, a period of three and a half months, the Company continued, voluntarily, to pay health and welfare contributions into the Trust Fund. With this in mind, it is reasonable to conclude that the language of the Agreement fairly expresses the view that the new rate of contribution under the new Agreement would be applied back to October 1, 1961 for hours already worked in September 1961, even though the Agreement was not reached until October 16, 1961. And that having so provided, it was not thereby intended to deprive the employees of health

and welfare benefits for hours they would work in September, 1964 merely because the benefits and eligibility therefor would not be received until October, 1964. *The Agreement, in fact, refers to such a lag month when it speaks of payments for hours worked "in the preceding month".*

At the time the parties negotiated and executed the Agreement they, we may well believe, did not have it in mind to deprive the employees of an important "fringe" benefit for hours they would work during the last month of the Agreement. The Record reveals that the employees who were the recipients of these benefits went on strike against the Respondent early in October, 1964. (Tr. 65). In view of which, it is not unreasonable to conclude that the Respondent looked at the Agreement in a more restrictive light than theretofore, and then developed a theory that the benefits were necessarily limited to a period of 36 months. "A contract, being construed, should be viewed prospectively as the parties viewed it at the time of its execution, and not from a retrospective point of view". 17 Am. Jur. 2d 624 (para. 240).

Since the Agreement speaks in terms of dates rather than in terms of numbers of months, and in terms that are clear and unambiguous to the effect that the employees were to be given all contract benefits for hours worked by them in September, 1964, we submit that there was no legal basis for an interpretation of the language by the trial court contrary to its expressed meaning.

"As a general rule, where the terms of a writing are plain and unambiguous, there is no room for construction, since the only office of judicial construction is to remove doubt and uncertainty". (17 Am. Jur. 2d 625 (para. 241).

POINT II

EVEN IF THE PAYMENT REFERRED TO IN POINT I WAS NOT SUPPORTED BY AN AGREEMENT, IT WAS, NEVERTHELESS, A LAWFUL AND VOLUNTARY PAYMENT FOR WHICH FULL BENEFITS WERE RECEIVED.

If there had not been a written agreement to support the final payment of $1567.50 as the respondent contends, it was, nevertheless, a lawful and voluntary payment even though pursuant to a demand letter, not made under protest, and for which full eligibility and benefits were received by Hatch's employees. (Tr. 90-91).

A "termination of a contract is nullified by the subsequent acceptance of benefits growing out of the contract". 17 Am. Jur. 2d 961 (para. 489). Even if Hatch had paid the $1567.50 pursuant to a fraudulent inducement by Appellant, instead of a letter demanding it to honor its contract obligations as was the case here, Hatch would not be permitted to rescind the transaction without first restoring the benefit it had

received therefrom. See Brennan v. National Equitable Investment Co., 247 N.Y. 486, 160 N.E. 924; Neet v. Holmes, 25 Cal. 2d 447, 154 P2d 854, 860.

If Local Union 222 had been in error when it wrote the letter demanding that Hatch make its final payment to the Trust Fund for September, 1964 hours worked, such an error or miscalculation gives rise to no legal or equitable rule or doctrine that would permit Hatch to make such payment, get full benefit therefrom, then receive the payment back. Yet, this is precisely the ruling that Hatch has obtained from the Trial Court in this case, and from which appellant is now seeking relief.

POINT III

THE JUDGMENT AGAINST THE APPELLANT IS IN ERROR BECAUSE IT IS BASED ON THE ERRONEOUS FACTUAL PREMISE THAT THE RESPONDENT, W. S. HATCH COMPANY, PAID THE $1567.50 TO THE APPELLANT, WHEN, IN FACT, IT WAS PAID TO THE UTAH-IDAHO TEAMSTERS SECURITY FUND.

A material finding of fact upon which the judgment of appellant is based is that "on or about December 19, 1964, defendant made payment of $1567.50 to said plaintiff".

The only evidence as to whom the $1567.50 was paid is that it was paid by Hatch to the Utah-Idaho

ity Fund and not to the plaintiff-
ters Local Union No. 222. The said
Trust administered by Trustees equally
anagement and labor and is a legal
parated from Local Union 222. The
mployees of many employers in Utah
nom the employees of W. S. Hatch
nly a small part. Local 222 was not
the Trust. This Trust is a Trust set
the requirements of Section 302 of
s Labor Management Relations Act
es referred to as the Taft-Hartley
provides criminal penalties for em-
money to a representative of any of
Local 222 was such a representative
s precluded from receiving the $1,-
ointly managed trusts are authorized
o that it is lawful for an employer to
such trusts for certain beneficial uses
loyees and thereby not be in violation
law proscribing such payments to a

fact that the payment of the $1567.50
nployer Hatch directly to the Trust
enefit of its employees (defendant's
nd Tr. 64), and there is no evidence
nd in spite of the fact that had such
ade to appellant, Teamsters Local
ve placed Hatch in criminal violation
al Statute, the trial court, nevertheless,

made the material finding of fact that "on or about December 19, 1964, defendant made payment to plaintiff [Teamsters Local 222] * * * *".

Since the Union was a party to the collective bargaining agreement that provided that Hatch make contributions into the Trust Fund for the benefit of Hatch's employees, the Trial Court may have misunderstood the Union's role as an advocate for Hatch's employees when it wrote the letter demanding final payment by Hatch to the Trust, and when it defended the counterclaim of Hatch against the Union on the issue of the validity of the final payment to the Trust. If Hatch wanted a judgment for the return of the money it paid to the Trust, it was essential that Hatch bring the Trust into court as a third party defendant when it counterclaimed. During the trial it was suggested by Hatch that it was appellant's obligation to bring the Trust in as a party. But appellant wasn't seeking anything from the Trust. Hatch was after money it had paid the Trust and it was therefore Hatch's responsibility to bring into court as parties whomever it needed to perfect its case, if it had one.

But the fact is that the Trust, not the union, received the payment in question, and the Trial Court's finding to the contrary is clearly a factual error without any evidentiary support whatsoever. Even if appellant were not fortified by its Points I and II herein, any judgment in favor of Hatch must necessarily be against the proper party, the one who received the

money. On this point alone the judgment against the appellant should be reversed.

CONCLUSION

The judgment against appellant is in error because the payment of $1567.50 to the Utah-Idaho Teamsters Security Fund was pursuant to the written collective bargaining agreement of October 16, 1961; it was a payment, whether paid under a written agreement or not, for which respondent obtained full value; and because even if respondent's counterclaim had any substantive merit, appellant did not receive the money, and it is not the party against whom such a claim should be made, nor a judgment rendered.

Respectfully submitted,

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