

1967

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

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IN THE SUPREME COURT OF THE STATE OF UTAH

TEAMSTERS LOCAL UNION
NO. 222,

Plaintiff-Appellant,

vs.

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

Case No.

10943

BRIEF OF DEFENDANT-RESPONDENT

Appeal from District Court of Davis County

Judge Parley E. Norseth, Presiding

FILED

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Clerk, Supreme Court, Utah

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THE SUPREME COURT OF THE STATE OF UTAH

LOCAL UNION

Plaintiff-Appellant,

vs.

IRON COMPANY,
INCORPORATED,

Defendant-Respondent.

Case No.

10943

OF DEFENDANT-RESPONDENT

W. S. HATCH CO.

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

STATEMENT OF FACTS

The statement of facts is accurate in some
places but contains several conclusions of law, argu-
ments wholly immaterial to the issues involved.

The full paragraph on page 3 of appellant's
transcript contains transactions between the parties prior to

the agreement dated October 1, 1961, all of which are outside the issues between the parties.

The last paragraph of appellant's statement of facts on page 6 is a conclusion of law and one of the issues involved in this appeal and contains matters outside the record.

A R G U M E N T

POINT I

THE PAYMENT OF \$1,567.50 BY RESPONDENT TO THE UTAH-IDAHO SECURITY FUND WAS NOT COVERED BY THE AGREEMENT BETWEEN THE PARTIES AND WAS MADE PURSUANT TO APPELLANT'S UNLAWFUL DEMAND.

On the 16th of October, 1961, appellant and respondent entered into a collective bargaining agreement (plaintiff's Exhibit A). Article XX, Section 2, provides:

"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.*" (emphasis added)

Article XXXI, provides:

"This agreement shall be effective October 16, 1961, through September 30, 1964. . . ."

The contract by its own terms covers a period of 36 months. It was effective October 1, 1961, and expired September 30, 1964. The contract was not renewed. (Tr. 57)

Appellant has admitted in its statement of facts that respondent made 36 payments beginning on October 9, 1961, through September 14, 1964, pursuant to the terms of the agreement. (See Exhibit 1.)

Appellant's witness, Dean F. Corbett, admitted that the first payment dated October 9, 1961, covered eligibility for benefits for the month of October 1961; that the 37th payment which is in dispute (defendant's Exhibit 4) covered eligibility for benefits for the month of October 1964, a month not covered by the agreement. (Tr. 90, 91)

There is no ambiguity in the agreement. By its own terms it is effective October 1, 1961, and expires September 30, 1964, a period of 36 months.

The only reason that it is necessary to consider a month prior to the effective date of the contract (to-wit, September 1961) is to determine the eligibility of employees for coverage during the month of October 1961. Accordingly, the month of August 1964 covers the eligibility requirements for insurance coverage in September 1964, the last month covered by the contract.

As stated, on September 14, 1964, respondent made payment of \$1,584.00 based on hours worked in August 1964 for eligibility and benefits in September of 1964. This was the 36th and final payment under the agreement.

In October 1964, the appellant Teamsters Union went on strike. (Tr. 65)

On December 17, 1964, Mr. Fulmer H. Latter, the Secretary-Treasurer of appellant Teamsters Local Union No. 222, made demand *on behalf of appellant* that respondent make an additional payment representing insurance coverage for the month of October 1964. (See defendant's Exhibit 3.)

Respondent made payment (Exhibit 4) pursuant to this demand. It was made under duress because of the strike and the difficulties then existing between the parties. (Tr. 64-67)

POINT II

RESPONDENT RECEIVED NO BENEFIT FROM SUCH PAYMENT.

Appellant contends that even if it is in error in its contention that the payment was covered by the contract, that it nonetheless was a voluntary payment for which Hatch received full benefits.

As indicated, the payment was not voluntary but was made under duress.

Certainly, respondent Hatch Co. received no benefit from this payment. The employees were on strike. There is no evidence of record that any benefits were paid, even to the striking employees. Under no circumstances did any benefits accrue to respondent Hatch Co.

POINT III

APPELLANT HAS WAIVED THE DEFENSE
RAISED IN ITS POINT NO. III.

In its Point III the appellant contends that the judgment is in error because the payment was in fact made to the Utah-Idaho Teamsters Security Fund and not to the appellant.

Appellant's complaint was filed in May of 1965 (R. 5). Paragraph 4 of respondent's counterclaim alleges:

"On, or about December 17, 1964, plaintiff, Teamsters Local Union No. 222, made an unlawful demand upon defendant for payment of \$1,567.50 purportedly covering payments required under Article XX of the aforementioned agreement. Said demand indicated that the payment was to cover the month of September 1964." (R. 7)

In its reply, respondent admitted the allegations contained in paragraph 4 except that it denied that the demand made upon plaintiff was unlawful. (R. 9)

Paragraph 5 of respondent's counterclaim alleges:

"Pursuant to said demand, defendant paid *plaintiff, Teamsters Local Union No. 222*, the sum of \$1,567.50 relying upon said plaintiff's representation that the payment was to cover the month of September 1964." (R. 7)

In its reply, respondent stated:

"Answering paragraph 5 of the counterclaim, *admit that pursuant to said demand defendant paid plaintiff Teamsters Local 222*, the sum of \$1,567.-

50, but alleges that it does not have information sufficient to form a belief as to the balance of the allegations therein contained and therefore deny the same." (R. 9)

Thus, by the pleadings themselves, appellant has admitted that the payment made by respondent was made to plaintiff, Teamsters Local No. 222.

Furthermore, the pretrial order resolved the issues between the parties. The pretrial order (R. 14) sets forth only four issues. Issues Nos. 1, 2 and 4 involves the plaintiff's complaint and are not the subject of this appeal. The only issue reserved covering the counterclaim is contained in paragraph 3 which is as follows:

"3. Is the final payment made by defendant to the Fund for all of Hatch's employees for the month of September or October 1964."

Rule 16 of the Utah Rules of Civil Procedure procedure provides in part:

"The Court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice."

"Where the pretrial order or report purports to state the issue to be tried, the trial should be confined to such issues, and other issues should be eliminated from consideration." (See Annotation 22 ALR 2d, 599, 603.)

In *McCarthy vs. Lerner Stores Corporation* (1949), U. S. District Court - District of Columbia, 9 FRD 31, the Court stated:

“One of the chief purposes of pretrial procedure, and the principal usefulness of the pretrial order, is to formulate the issues to be litigated at the trial. The parties are bound by the pretrial order. They may not later inject an issue not raised at the pre-trial conference. Otherwise, the primary objective of the pretrial procedure would be defeated.” See also *Fowler, et al, vs. Crown-Zellerbach Corporation* CCA 9th Circuit (1947) 163 Fed. 2d, 772.

Not only did appellant fail to raise this issue until the morning of trial, but it affirmatively admitted that payment was made to *it*. The issue was of course, omitted from the pretrial order.

The check in question was made payable to the “Teamsters Pension Trust Fund.” It was deposited to the account of Utah-Idaho Teamsters Security Fund. (Tr. 64) It was, however, paid to appellant’s nominee pursuant to appellant’s demand.

That this is factually so is apparent by reference to defendant’s Exhibit No. 3, the demand letter made by *appellant* and not by the Utah-Idaho Teamsters Security Fund.

The last paragraph of that letter states:

“Referring to Section 5 of Article XX in *our* labor agreement *we* hereby notify you that these delinquent health and welfare contributions must be

received by the *Utah-Idaho Teamsters Security Fund* on or before December 22, 1964. Your failure to comply with this request will require us to take appropriate legal action to collect these contributions and the W. S. Hatch Co. will also be sued for court costs and reasonable attorney's fees as set forth in the labor agreement." (emphasis added)

Section 5 of Article XX (plaintiff's Exhibit A) merely provides that delinquencies in health and welfare payments entitle the *Union* and employees to the same rights as specified in Section 4 of Article XXI covering pension fund delinquencies. Section 4 of Article XXI specifically gives the *Union* the right to take any legal action it sees fit to collect such delinquencies after first giving seven days' written proper notice to the Company. It is apparent, therefore, that the demand for the additional health and welfare payment which is the subject of defendant's counterclaim was made by the *Union* and not by the Trust Fund, pursuant to specific authority contained in the labor agreement giving them the right to take legal action and collect such delinquency along with attorney's fees. Certainly, this right cannot be exercised without a concomitant obligation in the event it is abused, as it was here by making an unlawful demand pursuant to the authority contained in the agreement.

CONCLUSION

The payment of \$1,567.50 was paid pursuant to appellant's unlawful demand; it was for a period not cov-

cred by the agreement and was paid to appellant's nominee, Utah-Idaho Teamsters Security Fund, in accordance with the collection machinery set up in the agreement.

The judgment is fully supported by the evidence and should be affirmed.

Respectfully submitted,

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