

1983

Melvin F. Jensen v. The Industrial Commission of the State of Utah, American Coal Company [Employer], The State Insurance Fund [Insurance Carrier For The Employer] and the Second Injury Fund of the State of Utah : Brief of the Plaintiff

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IN THE SUPREME COURT OF THE STATE OF UTAH

MELVIN F. JENSEN, :

Plaintiff, :

-vs- :

THE INDUSTRIAL COMMISSION OF THE :
STATE OF UTAH, AMERICAN COAL :
COMPANY [Employer], THE STATE :
INSURANCE FUND [Insurance Carrier :
for the Employer] and THE SECOND :
INJURY FUND OF THE STATE OF UTAH, :

Defendants. :

Case No. 19114

BRIEF OF THE PLAINTIFF

A WRIT OF REVIEW FROM THE FINAL ADMINISTRATIVE DECISION
OF THE INDUSTRIAL COMMISSION OF THE STATE OF UTAH

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STATEMENT OF THE KIND OF CASE

This case involves a Writ of Review which is being taken from a denial of a Motion for Review by the Industrial Commission arising out of an industrial accident where the Industrial Commission denied approval of a Compensation Agreement stipulated to by all of the parties to the claim.

DISPOSITION IN LOWER COURT

The Industrial Commission on March 8, 1983 denied approval of the parties' Compensation Agreement of December 7, 1982 which resolved between them complex questions of Second Injury Fund liability and reimbursement rights. The Petition for a Writ of Review dated April 7, 1983 of the Denial of a Motion for Review by the Industrial Commission was timely filed pursuant to Utah Code Annotated, §35-1-83 (1953, as amended), and Rule 72 et seq. of the Utah Rules of Civil Procedure, inter alia.

RELIEF SOUGHT ON APPEAL

The Employee seeks reversal of the final administrative decision of the Industrial Commission with a decision holding that the parties' Compensation Agreement is a legally enforceable contract between them.

STATEMENT OF FACTS

On August 17, 1979 an Administrative Law Judge entered an Order awarding permanent partial impairment benefits to the employee based upon the findings of a Medical Panel Report finding that he had experienced a 75% whole body impairment with 56.25% due to an industrial accident and 18.75% due to conditions

which pre-existed the accident. Record, p. 203. Although the Administrative Law Judge ordered the insurance carrier for the Employer to pay for its portion of the impairment, he did not award any additional benefits to the Employee from the Second Injury Fund for that portion of the impairment which pre-existed the industrial injury. Record p. 204. The insurance carrier filed a Motion for Review which was denied by the Commission. Record, pp. 206-7. No appeal from the denial was made.

On September 30, 1982 the Employee filed a new Application for hearing claiming permanent total disability benefits. Record, p. 210. Subsequently, on December 7, 1982, the Employee, the insurance carrier for the Employer and the Second Injury Fund -- all through legal counsel and notwithstanding the prior Order of the Commission -- entered into a Compensation Agreement whereby the Second Injury Fund agreed to pay the Employee 18.75% of the whole body permanent partial impairment and, further, agreed to reimburse the insurance carrier for 15% of the medical expenses and temporary total disability compensation it paid to the Employee as a result of the industrial injury. Record, pp. 223-25.

On January 4, 1983, legal counsel for the Commission declined to approve the Compensation Agreement which resulted in a Motion for Review and Request for Oral Argument dated January 6, 1983 being filed with the Commission on January 10, 1983. Record, pp. 220-22.

On March 8, 1983 the Commission denied the Motion for Review on the grounds of res judicata, with one Commissioner dissenting

on the basis that denial of the Employee's request for oral argument constituted a denial of due process. Record, p. 226-27.

STATEMENT OF POINTS

The sole issue presented in this case is whether the Industrial Commission may prevent the execution of a Compensation Agreement stipulated to by all of the parties on the exclusive basis that the underlying claim upon which the agreement is based could -- if brought to a hearing and an appropriate objection raised by one of the defending parties -- be barred by the doctrine of res judicata.

ARGUMENT

THE UTAH INDUSTRIAL COMMISSION ERRED BY INVOKING THE DOCTRINE OF RES JUDICATA IN REJECTING THE COMPENSATION AGREEMENT STIPULATED TO BY ALL PARTIES TO THE CLAIM

In 1966 the United States Supreme Court held that "... when an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose." United States v. Utah Construction & Mining Co., 384 U.S. 394, 421-22 (1966). However, this doctrine should not be transferred in every respect to administrative procedures. See, e. g., Oregon City, Etc. v. Oregon City Ed. Ass'n., 584 P.2d 303, 308 (Ore. 1978). The Supreme Court of Oregon in that case suggests that the doctrine of res judicata may require greater flexibility in an administrative law forum. In the present case there are

several reasons why the Industrial Commission's actions are reversible.

First, the doctrine of res judicata is an affirmative defense which is inapplicable to any proceeding unless the party against whom action is initiated chooses to raise it; in essence, if it is not raised, it is waived. Utah Rules of Civil Procedure 8(c). See Federal Rules of Civil Procedure 8(c). In the present case, the two Defendants chose not to raise it and, in addition, voluntarily entered into a stipulated Compensation Agreement with the Plaintiff to pay certain compensation to him notwithstanding that doctrine. The Industrial Commission lacks standing to raise the doctrine in this case since (1) it is not a party to the claim; (2) the claim has been informally resolved by all of the parties to the claim; and (3) the parties who had standing to raise it have chosen not to do so, and have, in effect, waived it.

Second, in a recent decision of this Court, Pacheco v. Industrial Commission, No. 18896, issued on July 18, 1983, where this Court held that Utah Code Annotated, §35-1-78 (1981) does not require that interest be included by the Commission in all settlements, stated that "[U]nlike an award, a settlement involves no factual determination by the Commission of liability or the amount of damages." (Emphasis added.) The Commission, therefore, clearly erred when it voided the Compensation Agreement because the doctrine of res judicata necessarily involves an analysis of the question of liability which such inquiry the Commission is precluded from examining in a situation where all

of the parties have agreed to settle their differences. The doctrine of res judicata simply does not apply because the Compensation Agreement does not require relitigation of any previously litigated claim.

And third, the Employee is merely seeking that which the Utah Legislature guaranteed to him in enacting Utah Code Annotated §35-1-69 (1981), namely, the Second Injury Fund beneficent concept. See, e. g., Intermountain Smelting Corp. v. Capitano, 610 P.2d 334, 337 (Utah 1980). In addition, in denying the Compensation Agreement, the Commission is also ignoring the legislative intent of that section by not giving the Employer the benefit he bargained for when the Employee was hired, i.e., limiting the Employer's liability to the damages sustained by an employee in an industrial accident.

CONCLUSION

In conclusion, the Employee respectfully requests that the final administrative decision of the Industrial Commission be reversed as capricious, arbitrary and contrary to law, and that the parties be permitted to resolve their differences along the lines agreed to in the stipulated Compensation Agreement of December 7, 1982.

DATED this 19th day of August, 1983.

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CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing document, postage prepaid, on this the 19th day of August, 1983, to the following:

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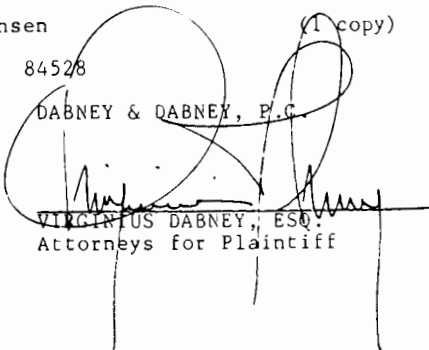
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