

1969

Kennecott Copper Corporation v. The Industrial Commission of Utah, and Ina R. Johnson : Petition For Rehearing and Brief In Support Of Petition For Rehearing

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

KENNECOTT COPPER CORPORATION,

Plaintiff,

vs.

**THE INDUSTRIAL COMMISSION OF
UTAH and INA R. JOHNSON,**

Defendants.

Case No. 11-1000

**PETITION FOR REHEARING
AND
BRIEF IN SUPPORT OF PETITION FOR REHEARING**

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IN THE
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OF THE
STATE OF UTAH

KENNECOTT COPPER CORPORA-
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Plaintiff,

vs.

THE INDUSTRIAL COMMISSION OF
UTAH and INA R. JOHNSON,

Defendants.

Case No.

11645

PETITION FOR REHEARING

Pursuant to Rule 76 (e) (1), Utah Rules of Civil Procedure, the Plaintiff herewith petitions the Utah Supreme Court for a rehearing on the ground that the Court erred in its conclusion that there is credible evidence in the record to support the Industrial Commission's finding that Richard Herbert Johnson died as a result of exposure to paint or similar fumes while in the employ of Kennecott Copper Corporation.

BRIEF IN SUPPORT OF PETITION FOR REHEARING

ARGUMENT

POINT I. THERE IS NO EVIDENCE TO SUPPORT THE DECISION OF THE UTAH SUPREME COURT THAT RICHARD HERBERT

JOHNSON DIED AS A RESULT OF EXPOSURE TO PAINT OR SIMILAR FUMES WHILE IN THE EMPLOY OF KENNECOTT CORPORATION.

Plaintiff respectfully submits that at no place in the record is there any evidence that Richard Johnson was ever exposed to epoxy paints or similar paints and fumes in the course of his employment at Kennecott. The Medical Panel found the cause of death to be exposure to *epoxy compounds* (R. 186).

Dr. Kilpatrick, Chairman of the Medical Panel, stated:

“. . . we don't know what the specific allergen was. And we have to assume from our experience and what is known generally about these things, that the likely *probability* (emphasis added) would be that this was in some connection with the (things) he was exposed to in his environment to lead to his death” (R. 230). The members of the Panel relied on what they believed was the “likely probability”; but this is not evidence that the environment included working conditions *at Kennecott*. As Dr. Kilpatrick then said, “. . . outside things by way of irritants — like car exhaust fumes, paints, dusts, many things including frying bacon fumes — will set off a trigger to produce difficulty in breathing” (R. 231).

It is true that two epoxy paints which had caused some allergic difficulties at Kennecott had been in use before December 2, 1965 (R. 278). *But Johnson was never exposed to these!* He was a carpenter — not a painter —; and when his allergy developed, Kennecott was not using epoxy paints at all! His facial swelling did not start until

two weeks before his death on December 28, 1965. He had never been exposed to epoxy paints at Kennecott at the time swelling commenced, or during the period just prior to his death while he was at work.

If there is any such evidence, (which we simply cannot find) of course there would be support for both the decision and for the award of the Commission, since there would be a basis for the "likely probability" of the Medical Panel. But *Johnson was never so exposed* at Kennecott. The epoxy paint fumes, if the cause, might well have come from his own garage or from any number of sources included in his environment other than in the course of his employment by Kennecott. If there had been any such exposure, Kennecott would not have contested the claim.

This Court stated in *Tintic Standard Mining Co. v. Industrial Commission*, 100 Utah 96, 98, 110 P. 2d 367,

"This calls upon us to examine the record to see if there is any competent evidence tending to sustain the findings of the commission. If not, the award must be annulled . . ."

By failing to point out the evidence which supports the commission's findings, the Supreme Court has confirmed plaintiff's position that there is no evidence to support the commission's decision.

Respectfully submitted,

PARSONS, BEHLE & LATIMER

By

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