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United States Smelting Refining and Mining Company v. Paul D. Nielsen and The Industrial Oommission of Utah : Brief of Defendants

In The Supreme Co
of the State of Ut

UNITED STATES SMELTING, REF
ING AND MINING COMPANY,
Plaintiff,

- vs -

PAUL D. NIELSEN and the INDUSTRIAL
COMMISSION OF UTAH,
Defendants.

BRIEF OF DEF

On Review from
Industrial Comm

MARR, WILKINS & CANNON
RICHARD H. NEBEKER
400 Kennecott Building
Salt Lake City, Utah
Attorneys for Plaintiff

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In The Supreme Court of the State of Utah

UNITED STATES SMELTING, REFINING AND MINING COMPANY,
Plaintiff,
- vs -
PAUL D. NIELSEN and the INDUSTRIAL COMMISSION OF UTAH,
Defendants.

Case No. 10703

BRIEF OF DEFENDANT

STATEMENT OF THE NATURE OF THE CASE

The plaintiff seeks review of an order of the Industrial Commission of Utah (herein after called Commission) awarding defendant temporary total compensation and permanent partial disability for physical injuries and loss of wages arising from an accident which occured on September 16, 1952.

DISPOSITION BEFORE THE INDUSTRIAL COMMISSION OF UTAH

Upon petition by the defendant for compensation benefits arising from an accident in 1952, the

Commission awarded benefits in 1954. Subsequently, in 1965, the defendant was compelled to undergo surgery because of the 1952 injury and the Commission awarded the defendant temporary total compensation and permanent partial disability compensation.

RELIEF SOUGHT ON REVIEW

The defendant submits the award of the Commission should be sustained.

STATEMENT OF FACTS

The respondent submits the following Statement of Facts:

On September 16, 1952, at approximately 2:15 p.m. the respondent, then age 29, and an employee of United States Smelting, Refining and Mining Company in Lark, Utah, was injured by a mine cave-in (R. 1). He received a fracture of the pelvis and left femur (R. 1). On January 30, 1954, the Medical Advisory Board determined that the respondent's condition had stabilized and found about a ¾ inch shortening of the lower left leg with limited flexion of the knee joint. He was given a permanent partial disability rating of thirty percent (R. 19). He accepted a lump sum payment of $1,633.50. On March 17, 1965, respondent filed an application for additional benefits with the Commission (R. 25). The claim was filed due to complications arising out of an operation re-

quired by his original injury in which the knee cap was removed (R. 28-29). Subsequent to the operation the respondent experienced atrophy of both hands (R. 31). A hearing was held before the Commission and the respondent testified that he sold his business which he had been operating as the result of his previous lump sum award (R. 35), and had an operation for the removal of his knee cap. Subsequent to the operation he noticed a loss of feeling in his arms and a general deterioration of the muscle (R. 44-46). The report of Dr. Chester B. Powell indicated that although the nature of the respondent's impediment to his arms was unusual as a result of the operation of the knee cap it was not unknown and apparently could result from complications during surgery (R. 56-60). Dr. Powell testified at a hearing before the Commission that the respondent's problem apparently resulted from lying on his back during the post-operative period with his arms in a slightly flexed manner which impaired the blood supply of the ulnar nerves (R. 84). The Commission on July 13, 1966, entered an order granting the respondent temporary total compensation in the amount of $1,011.21 and permanent partial compensation in the amount of $725.00 as well as requiring reimbursement for medical expenses (R. 90-91).

The sole contention of the appellant in this case was that the six year limitations period precluded respondent from seeking compensation for his subsequent disability. The Commission in its order noted that they have long construed the limitations

period to mean casualty years, not calendar years, and over-ruled appellant's contention.

ARGUMENT

POINT I

POINT I. THE COMMISSION PROPERLY CONCLUDED THAT TEMPORARY COMPENSATION AND PERMANENT PARTIAL COMPENSATION IS LIMITED TO SIX CASUALTY YEARS FROM THE DATE OF INJURY.

The Appellant contends the Commission should have imposed a six year statute of limitations from the time of the defendant's original accident in 1952 and denied payments of temporary total disability and permanent partial disability. The defendant submits the position of the Commission in rejecting the plaintiff's position is correct.

The plaintiff contends that Utah Code Ann. §§ 42-1-61, -62 (1943) are the applicable statutes governing this case. Whether the plaintiff's assertion that the statute in force at the time of the injury means the time of the original act giving rise to the claim, as distinct from the statute in force when the disability occurs is open to question. Plaintiff, before the Commission, did not contend for the application of the 1943 Code but referred to the 1953 codification of Utah law (R. 50). Therefore, the plaintiff's argument on the question of which version of the statute is applicable here is of no concern since it was not properly raised below. Plaintiff contends that since

the relevant portion of the 1943 Code is the same as the 1953 version there is no real issue. However, the defendant (especially the Commission) is unwilling to concede the position even though it appears innocuous to this case since, (1) the Legislature could well have intended the applicable statute referring to "injury" to mean not the accident giving rise to the ultimate injury, but the time of disability which is the "injury", and, (2) the Legislature could well intend a new statute adopting old language to be operative to the occurance of the need for compensation, depending on legislative intent, and finally, (3) the fact of re-enactment may evidence an intention of the Legislature to have words used in the statutes construed in harmony with a subsequent administrative interpretation thus characterizing the original legislative intent.

Silver King Coalition Mines Co. v. Industrial Comm'n, 2 Utah 2d 1, 268 P.2d 689 (1954) in a dicta pronouncement merely noted the general rule as cited in 58 Am. Jur **Workmen's Compensation** § 78 that with respect to the right to compensation the time runs from the date of injury. But even so this would not mean the claim herein involved would not be governed by Utah Code Ann. §§ 35-1-65, -66 (1953), since the injury occuring to defendant was the atrophy of his arms. Injury and accident are not necessarily synonymous.

For several reasons the defendant contends the Commission's position below should be sustained.

That is, that the six year period referred to in Utah Code Ann. §§ 35-1-65, -66 (1953) or Utah Code Ann. §§ 42-1-61, -62, (1943) if deemed applicable, should apply to years of disability or casualty and not calendar years (R. 90).

In the first instance the Workmen's Compensation Act is aimed at alleviating the hardships resulting from industrial accidents, and a construction of any provision of the act should keep in mind the remedial purposes of the act. Thus, any construction given should support the social benevolence behind the legislation if the context will allow it. **Baker v. Industrial Comm'n,** 17 Utah 2d 141, 405 P.2d 613 (1965); **Askren v. Industrial Comm'n,** 15 Utah 2d 275 391 P.2d 302 (1964); **Barber Asphalt Corp. v. Industrial Comm'n,** 103 Utah 371, 135 P.2d 266 (1943); **Ogden Iron Works v. Industrial Comm'n,** 102 Utah 492, 132 P.2d 376 (1942); **North Beck Mining Co. v. Industrial Comm'n,** 58 Utah 486, 200 Pac. 111 (1921). Accepting the above cannon of construction it is apparent the Industrial Commission was correct and the six year period referred to in both compilations of the Utah Code should be construed to mean casualty years or years of disability, and not six years from the time of the accident.

Second, it is submitted that since the Commission has for a long time construed the six year limitation period to mean casualt yyears and the Legislature has taken no action to correct or clarify this application of the statute, the long administrative interpretation can be taken as evidencing a com-

parable legislative intent. The plaintiff acknowledges that the pertinent language of the applicable statutes has been the same as it is now since 1939. Numerous sessions of the Legislature have been held and no action has been taken to change the Commission's practice of interpreting the six year period as was done here. In the instant case the Commissioner's order observed: "The Commission has always interpreted said sectio nto mean casualty years and not calendar years." (R. 90).

The Legislature has amended both sections of law on numerous occasions, the last being at the last regular session in 1965. Utah Laws Ch. 68, § 1 (1965). However, no effort to override the Commission's interpretation of the six year period was ever made.

It is a well settled rule of statutory construction that the Legislature is presumed to know the administrative application being given statutes and the reenactment of a statute without change is deemed legislative approval of the administrative construction. **State v. Hatch,** 9 Utah 2d 288, 342 P.2d 1103 (1959). Applying the rule to this case it seems inescapable that the six year period in the subject statutes must be construed to mean casualty years.

A third reason for the Commission's construction also exists. Judicial interpretation by this Court supports the construction in favor of the six year period being construed as casualty years. Utah Code Ann. § 35-1-65 (1953), has since its enactment referred

to a period "six years from date of injury," the same as it now reads. In **Utah Apex Mining Co. v. Industrial Comm'n,** 116 Utah 305, 309, 209 P.2d 571, 574 (1949), this Court construed the six year period language contrary to the plaintiff's contention and did so referring to **Hardy v. Industrial Comm'n,** 89 Utah 561, 58 P.2d 15 (1936):

> **We there held that the provision that payment of compensation should not continue for more than six years from the date of the injury was only meant to fix the period during which payment is to extend, that is, the disability period, and that it was not in conflict with 42-1-72, supra, which provides that the jurisdiction of the Commission shall be continuing.**

Thus there is a judicial construction of a section under consideration in this case which is directly contrary to plaintiff's contentions.

Utah Code Ann. § 35-1-66 (1953) has also been construed contrary to the position now urged by plaintiff. **Hardy v. Industrial Comm'n,** 89 Utah 561, 58 P.2d 15 (1936). As to this case the plaintiff contends the 1939 amendment changed the statute. The statute as written when Hardy was decided merely provided the six year period would run from "the fourth day of disability". In 1939 this was changed to provide that it should run "from the date of injury". Utah Laws ch. 51, § 1 (1939). It is submitted that this change merely did away with the four day disability period and allowed the injured workman to recover from the inception of the disability. The

change can hardly be read as evidencing a legislative intent to change the construction from six casualty years to six calendar years. If the Legislature had so intended it could have expressly so stated. Further, the **Utah Apex Mining** case was decided after the amendment and referred to **Hardy** with approval. The court apparently felt the statutes were to be construed in harmony, and there was nothing inappropriate in the construction of either statute as referring to casualty years. Plaintiff contends the **Utah Apex Mining** case failed to observe the change in the provisions of the statute which occured in 1939. It is submitted the change was not of concern since it merely removed the four day waiting period and did not purport to otherwise change the construction given the statute in the **Hardy** decision.

In addition it is submitted the plaintiff's position assumes that the world injury in the statutes is equivalent t oth eoccuring of the accident in 1951. It is submitted this is not a proper construction of the statute. Injury, it is submitted, means the time of the detriment, hurt or loss, **Johnson v. Commonwealth,** 184 Va. 409, 35 S.E. 594, (1948), and not necessarily the sudden, fortuitous event that is an accident. In this case, the injury occured when the defendants arms atrophied. This was in 1965 and the compensation is well within the six year period even assuming the period relates to "time" rather than casualty. The courts have recognized in several cases that the term injury as it is used in Workmen's Compensation statutes may have a much broader application than

an accident. Many courts have recognized that accident and injury are not synonymous under Workmen's Compensation Acts. **In re soran Smith v. Mercy Hosp.,** 60 Idaho 674, 95 P.2d 580 (1939);**In re Soran,** 57 Idaho 483, 67 P.2d 906 (1937); **Cooke v. Holland Furnace Co.** 200 Mich. 192, 166 N.W. 1013 (1918). The injury may result from the accident and it may occur at a time far removed from the time of accident. **Donaldson v. Calvert-McBride Printing Co.,** 217 Ark. 625, 232 S.W. 2d 651 (1950); **Flippin v. First Nat'l Bank,** 372 S.W.2d 273 (Mo. App. 1963); **Indemnity Ins. Co. of No. America v. Williams,** 69 S.W.2d 519 (Tex. Civ. App. 1934); **Jarrett v. Travelers' Ins. Co.,** 66 S.W.2d 415 (Tex. Civ. App. 1933); **Sheafor v. Standard Acc. Ins. Co.,** 166 Wis. 498, 166 N.W. 4 (1918). Therefore, even assuming the construction of the relevant statutes should be in terms of calendar rather than casualty years, the injury in this case did not occur at the time of the accident but rather later at the time of loss of function to defendant's arms, and the compensation period of six years has not run.

CONCLUSION

It is submitted that plaintiff seeks a reconstruction of the relevant statutes contrary to accepted principles of statutory construction and contrary to long accepted judicial precedent from this court.

It is submitted that even if the plaintiff's contention for a calendar year construction should be

accepted that its position on review must fail because of the erroneous assumption that accident and injury are synonymous.

This Court should affirm the award of the Industrial Commission of Utah.

Respectfully submitted,

PHIL L. HANSEN
Attorney General

Attorney for Defendant
Industrial Commission
of Utah