1971

Merwyn L. Wilkinson v. The Industrial Commission of Utah; Garrett Freight Lines, Inc. and Truck Insurance Exchange : Brief of Plaintiff

IN THE SUPREME COURT
OF THE STATE OF UTAH

YN L. WILKINSON,

Plaintiff,

vs.

INDUSTRIAL COMMISSION
UTAH; GARRETT GREIGHT-
S, INC., and TRUCK
URANCE EXCHANGE,

Defendants.

BRIEF OF PLAI

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of the Industrial Co

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MERWYN L. WILKINSON,

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THE INDUSTRIAL COMMISSION OF UTAH; GARRETT FREIGHT-LINES, INC. and TRUCK INSURANCE EXCHANGE,

Defendants.

Case No. 11814

BRIEF OF PLAINTIFF

STATEMENT OF THE KIND OF CASE

This is a proceeding to review a decision by the Industrial Commission of Utah denying plaintiff's claim to workmen's compensation benefits.

DISPOSITION BELOW

On or about December 12, 1967, plaintiff filed an application for hearing to settle an industrial accident claim. A hearing was held on April 29, 1969,

before Robert J. Shaughnessey, Hearing Examiner for the Industrial Commission. On May 22, 1969, plaintiff's claim to compensation was denied in its entirety by the Industrial Commission. Thereafter, on June 4, 1969, plaintiff filed with said Commission a Motion for Extension of Time to file a Motion for Review of the Commission's Findings of Fact, Conclusions of Law and Order, and the Commission granted a 30 days' extension of time from June 9, 1969, in which to file Petitioner's Motion for Review. On June 26, 1969, plaintiff filed his Motion for Review of the Commission's Findings of Fact, Conclusions of Law and Order, and said Motion for Review was denied by the Commission on August 1, 1969.

RELIEF SOUGHT IN THIS PROCEEDING

Plaintiff seeks reversal of the Commission's decision below.

STATEMENT OF FACTS

Plaintiff was employed as a truck driver at Garrett Freightlines, Inc. He was severely injured

in an automobile accident which occurred on September 7, 1967, at about 4:15 p.m. at 50 South Redwood Road in Salt Lake City, Utah, directly in front of the place of business of plaintiff's employer. Plaintiff was attempting to egress from his employer's place of business by making a left turn on to Redwood Road. The collision occurred on the inside south-bound lane of Redwood Road.

Plaintiff was a driver on the "extra board" at Garrett Freightlines. The "extra board" drivers are drivers that have no definite driving times or regular assignments, but who are called to take extra runs when the need arises. When an "extra board" driver completes a driving assignment, he signs his name at the bottom of the extra board list and is called when all the other drivers above him in their turn have been called to drive. The record is quite clear that although most of the extra drivers receive their assignments in the early evening hours and are on call thereafter, the extra board drivers are also subject to call between the hours of 7:00 a.m. and

4:00 p.m. If a driver is not available when his call comes, his name is dropped to the bottom of the list and he then is required to wait one complete rotation until his name appears again. The record indicates as follows:

> Q. Item number 7 on Defendant's exhibit No. 3 states the following: "Drivers who have not been alerted for dispatch shall remain in their position on the board, and subject to call for dispatch at 7:00 a.m. Drivers not available between the hours of 7:00 a.m. and 4:00 p.m. shall be dropped to the bottom of the board." Does this mean, Mr. Stoddard, that although the normal course of events, as far as the drivers to go out in the evening, that there are some men that go out during the day?
>
> A. Yes, Sir.
>
> Q. And have to be on call?
>
> A. Yes, Sir.

Record at 46.

Plaintiff's sole purpose in being at his employer's place of business before the accident was to let his employer know that he was available to go to work and to ascertain his probable departure time that evening.

Plaintiff testified that he remembers calling in to Garrett Freightlines sometime on the day of the accident, September 7, 1967. He was told that he would likely drive a truck sometime that evening for his employer. He testified that since he would not be home to receive their call, he would check in with Garrett later on in the afternoon, no later than 5:30 p.m. Record at 56-57. Mr. Christensen, the terminal manager, made a notation on the extra board sheet to the effect that plaintiff would call in at 17:30 hours. In accordance with plaintiff's intentions, he did report before 5:30 p.m. and talked to the dispatcher personally at or around 4:00 p.m. on the afternoon of September 7, 1967:

> Q. Now, if you can reflect back on the day of September 7, 1967, can you recall having called Garrett Freightlines sometime during the day to ascertain your relative position on the board, or your probable departure time?
>
> A. Yes, I can remember.
>
> Q. What can you remember about that?
>
> A. Well, I can remember they told they'd be going out that evening and that

I--and I was [not] going to be home so I told them that I would check back later in the afternoon.

Q. Did you make any arrangements--first of all, can you remember whether you made any arrangements to report to Garrett Freightlines?

A. Well, I can't remember any. I knew it would be before 5:30 because that was usually the time they would call you, but I can't remember, no.

. . . .

Q. Can you remember with whom you spoke earlier in the day by telephone?

A. No, I can't remember exactly who it was.

Q. You mentioned that there was an understanding that you report there in person later in the afternoon.

A. Well, I told them I wasn't home and I would probably stop in in the afternoon, yes.

Q. Do you recollect whether anyone there expressed any disapproval with your intention to report personally?

A. No. Nobody gave me any disapproval. No, sir.

Q. At what time did you actually report at Garrett's? Can you remember the time?

A. I can remember it was around 4:00 or after. That's about it. It

would be shortly after.

Q. And, what was your reason for coming in at that particular time?

A. Well, I just told him I'd be there before 5:30 and I just figured it was close enough that they would have a pretty good idea what I'd be doing that night. I can't remember how far down the board I was. But, of course, like I say, I learned that it would be eaten up pretty fast sometimes, and I knew that it was important that I keep in touch.

Q. Were you in the vicinity at the time and feeling you'd just drop in?

A. Well, it depends on what you'd call "vicinity." I was down there on 13th South and Second West and I believe down in there. I just figured it would be a good time to, that I should either call or, you know, either go back there.

Q. Was it your feeling that they anticipated your reporting sometime around the time that you came in?

A. Yes. Well, yes. I knew that they'd be calling me if I didn't let them know where I was.

Q. Mr. Wilkinson, what was the sole purpose of your being at Garrett's between 4:00 and 4:30 on September 7, 1967?

A. My sole purpose was to let them know that I was available to go to work and to find out exactly how much time I had, free time, before I had to go to work.

Record at 56-57, 60, 63-64.

ARGUMENT

I. THE UTAH WORKMEN'S COMPENSATION STATUTE SHOULD BE LIBERALLY CONSTRUED.

Section 35-1-45, Utah Code Annotated (Repl. vol. 1966), states:

> Every employee . . . who is injured . . . by accident arising out of or in the course of his employment, wheresoever such injury occurred, provided the same was not purposely self-inflicted, shall be entitled to receive, and shall be paid, such compensation for loss sustained on account of such injury or death, and such amount for medical, nurse and hospital services and medicines, and, in case of death, such amount of funeral expenses, as is herein provided. (Emphasis added.)

The terms "arising out of" and "in the course of" are not synonymous. "[T]he words 'arising out of' are construed to refer to the origin or cause of the injury, and the words 'in the course of' refer to the time, place, and circumstances under which it occurred." Utah Apex Mining Company v. Industrial Comm'n, 67 Utah 537, 545, 248 P. 490, 493 (1926). In most workmen's compensation cases both conditions will exist; nevertheless, "many accidents may occur

in the course of employment which do not arise out of it." Id. Thus, an injury will not "arise out of employment" unless the employee was injured when doing the specific job for which he was hired; but the same injury could be "in the course of employment" if, for instance, the employee was attempting to leave the premises of his employer after his duties of employment had ended. See id. at 551, 248 P. at 495. See also Vitagraph, Inc. v. Industrial Comm'n, 96 Utah 190, 194, 85 P.2d 601, 607 (1938).

Unlike most jurisdictions, the Utah statute allows compensation "when the accident arises in the course of employment, whether it arises out of employment or not." Id. at 545, 248 P. at 492. The Utah Supreme Court has stated:

> [T]he Legislature amended that feature of the Act by substituting the word "or" for the word "and" thereby providing for compensation whenever either condition was established. No doubt after two years' experience in operating the Act the Legislature arrived at the conclusion that justice to employes and their dependents demanded a more liberal provision than was afforded by the statute in 1917. In any event, the Legislature

> recognized that there was a substantial difference between the terms "arising out of" and "in the course of" and amended the statute accordingly. It is the duty of the court to give due effect to the evident purpose of the amendment.

Id. at 550-51, 248 P. at 494-95. The statute was also amended in 1919 by adding the words "wheresoever such injury occurred." See id. at 553, 248 P. at 495. Accordingly, the Utah Supreme Court has continually construed the Workmen's Compensation Act liberally to protect a claimant upon any legitimate claim. E.g., Vause v. Industrial Comm'n, 17 Utah 2d 217, 407 P.2d 1006 (1965); Chandler v. Industrial Comm'n, 55 Utah 213, 184 P. 1020 (1919).

II. PLAINTIFF WAS INJURED BY AN ACCIDENT THAT OCCURRED IN THE COURSE OF EMPLOYMENT

A. In Utah, Injuries Occurring at the Entrance of Employer's Premises are Compensable.

Plaintiff contends that it was contemplated as a part of his employment that he report to make himself available for his employer's call. It was accepted practice to report either personally or by telephone. His actions in thus reporting were beneficial to his employer. By reason of his

employment and the requirement to be available for call, plaintiff was subjected to the hazardous and dangerous highway conditions surrounding the entrance to his employer's place of business to a degree greater than the general public. The hazards peculiar to this entrance thus became the hazards of plaintiff's employment, and there exists a direct causal relationship between the accident and the employment. Consequently, the injury occasioned when plaintiff was attempting to egress from his employer's place of business was an injury "arising out of or in the course of employment" within the meaning of the Utah Workmen's Compensation Act, Utah Code Annotated, Section 35-1-45 (Repl. vol. 1966), and plaintiff is entitled to compensation under that Act.

In Utah it appears definitely settled that if an employee is injured in the normal course of things, in going to or from his work or place of employment, his injury is the result of normal hazards that everyone encounters and is therefore not in the course of employment. Vitagraph, Inc.

v. Industrial Comm'n, 96 Utah 190, 194, 85 P.2d 601, 607 (1938); Denver & R.G.W.R.R. v. Industrial Comm'n, 72 Utah 199, 269 P. 512 (1928). Nevertheless, there is at least one exception to this rule, recognized by the Utah courts, which allows recovery for injuries received away from the employer's plant or the employee's work sites.

It is well settled in Utah that if an employee, by reason of his employment, is exposed to a peril at the entranceway to his employer's premises which is common to all, but by virtue of his employment is peculiarly and abnormally exposed to this common peril, the exposure becomes an incident to the employment and sustains the causal relationship between employment and the accident. In Cudahy Packing Company v. Industrial Comm'n, 60 Utah 161, 207 P. 148 (1922), aff'd, Cudahy Packing Company v. Parramore, 263 U.S. 418, 44 S.Ct. 153 (1923), an employee was killed when the car in which he was riding was struck by a train at a crossing on a county road leading to his employer's plant. The road was the only means of access to the plant, and

it was necessary for the employees going to work to pass over these railroad tracks on the public road where the accident happened. At the time the accident occurred, the deceased was not on the premises of the plaintiff, and was not engaged in any actual work connected with his employment. The train which collided with the deceased's automobile was in no way under control of the employer, nor was it engaged in any work for or in behalf of the employer. The employer did not control nor in any way attempt to control the method or manner of travel to or from work by its employees. The court held that the dependents of the deceased could recover under the Utah Workmen's Compensation Act because the danger incident to crossing the railroad track, by reason of its location and proximity to the employer's plant, must have been within the contemplation of the parties at the date of employment and that the accident would, therefore, arise both out of and occur in the course of employment. The court noted the 1919 amendment to the Act which substituted the word "or" for the word "and" in the phrase

"arising out of or in the course of employment" and upheld the phrase "wheresoever such injury has occurred" against any constitutional attack.

The United States Supreme Court in affirming the Utah decision stated:

> [I]t is enough if there be a causal connection between the injury and the business in which [the employer] employs the [claimant]--a connection substantially contributory though it need not be the sole proximate cause.
>
> The fact that the accident happens upon a public road or at a railroad crossing and that the danger is one to which the general public is likewise exposed, is not conclusive against the existence of such causal relationship, if the danger be one to which the employee, by reason of and in connection with his employment, is subjected peculiarly or to an abnormal degree.

263 U.S. at 423-24, 44 S.Ct. at 154. The decision of the Utah court was also attacked because the accident occurred a few minutes before work was to begin. The Court indicated that "the employment contemplated [the employee's] entry upon and departure from the premises as much as it contemplated his working there, and must include a reasonable

interval of time for that purpose." 263 U.S. at 426, 44 S.Ct. at 155.

In the subsequent case of Bountiful Brick Company v. Industrial Comm'n, 68 Utah 600, 251 P. 555 (1926), aff'd, Bountiful Brick Company v. Giles, 276 U.S. 154, 48 S.Ct. 221 (1928), the Cudahy case, supra, was relied on in granting recovery under the Workmen's Compensation Act to the dependents of a deceased who was struck and killed by a train while he was crossing a railroad track adjacent to the place of the employer's business. The court allowed recovery although there was a safer route to the plant approximately one-half mile greater in distance. The court held that a reasonable person would not expect the employee to have used the longer route and that the shorter route was a fair and necessary means for proceeding to or coming from his work. The court stated:

> The employee, in crossing the track at any time, was exposed to a peril which is common to all, but by virtue of his employment he was required to cross the track regularly and continuously, thus being peculiarly and abnormally exposed to a common peril.

> It is the greater degree of exposure to the peril which arises as an incident to the employment which sustains the causal relation between the employment and the accident.

68 Utah at 604, 251 P. at 556.

The rule in the Cudahy case, supra, has been extended to include compensation for injuries received on a public highway when the peculiar risks of a railroad crossing were not present. In Park Utah Consolidated Mines Company v. Industrial Comm'n, 103 Utah 64, 133 P.2d 314 (1943), the injured employee was leaving work on foot when he slipped and broke his ankle on a public highway approximately four feet removed from the premises of the employer. The court stated:

> We believe the decision of this case must be controlled by the case of Cudahy Packing Company v. Industrial Comm'n, supra. We do not think the principle upon which the case was ruled justifies limiting the hazard to a railroad crossing or a right-of-way adjacent to the premises of the employer. The facts of this case come within the exception to the rule that there can be no Workmen's Compensation for an accident sustained going to or from work. The general rule is predicated upon the fact that the employee selects the particular way, means, and conveyance for

> going to and from work. When the employee arrives at the threshhold of his employment and the means for entrance are limited so that he has no choice as to the mode of entrance, all of the hazards which are peculiar to such entrance attach to his employment. The converse is equally true as to leaving the employment.

103 Utah at 71, 133 P.2d at 317 (emphasis added). Also, the court reiterated the fact that Utah has a more liberal rule regarding employment compensation than most states and that the results reached in decisions of other states are distinguishable.

Consequently, the foregoing cases establish the principle that an employee may recover for injuries sustained at the entrance to the employer's premises when the use of such entrance is contemplated from the employee's employment and when the use of the entrance constitutes a hazard to which the employee by reason of his employment is subjected to a degree greater than the general public. It appears to be immaterial that the deceased was not on the premises of the employer at the time of the accident, was not engaged in any actual work connected with his employment, and was in no way

injured through an instrumentality under the control of the employer.

B. Utah's Case Law is in Harmony with Other Jurisdictions.

Authorities in other jurisdictions likewise support the plaintiff's recovery in this case. In 1 Larsen, Workmen's Compensation, Section 15.13, at 199-202 (1966), it is stated:

> The commonest ground of extension [extension of the rule limiting recovery for travel to and from work to the actual premises of the employer] is that the off-premises point at which the injury occurred lies on the only route, or at least on the normal route, which employees must traverse to reach the plant, and that therefore the special hazards of that route become the hazards of the employment. This general idea seems to have been accepted by the majority of jurisdictions in some degree.

According to Larsen, the underlying theory for the above exception is not respondeat superior, since in these cases there is no control over the employee by the employer, no wages are usually being paid at the time of the accident, and the interests of the employer are not usually being advanced. "It is simply that, when a court has satisfied itself that

there is a causal connection between the conditions under which claimant must approach and leave the premises and the occurrence of the injury, it may hold that the course of employment extends as far as those conditions extend." Id. at 211. The majority ruled thus recited by Larsen exists even though the majority of jurisdictions have a statute dissimilar with Utah's inasmuch as most jurisdictions require that the injury arise out of and be in the course of the employment.

For instance, in Greydanus v. Industrial Accident Commission, 47 Cal. Rpt. 384, 407 P.2d 296 (1965), the California Supreme Court under such a statute upheld an employee's claim for injuries sustained when he was making a left-hand turn into his employer's premises from a public highway. The court affirmed the Commission's finding that the applicant had entered the necessary means of access to the employer's premises and, thus, had come within the field of special risk created by the employment. The court cited with approval Pacific Indemnity

Company v. Industrial Accident Commission, 28 Cal.2d 329, 170 P.2d 18 (1946). In that case the claimant was making a left turn into the place of business of his employer and was hit by another car. The front wheels came to rest on the parking lot of the employer. The court held that the accident arose out of and in the course of employment and that it was immaterial that the accident occurred some three-and-a-half blocks from the claimant's actual place of employment on the employer's plant, that the accident occurred some minutes before work was to begin, and that the accident occurred on a public highway. Nor was the fact that the entrance was not the only one detrimental to the claimant's cause. The court stated:

> In compensation law the general rule is well established that injuries received by an employee while going to or coming from his place of work are not compensible . . . However, in applying this general rule to border-line cases, the term "employment" has been held to include "not only the doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where work

> is to be done." . . . In further clarification of the general rule, it has been held that injuries sustained by an employee while going to or from his place of work upon premises owned or controlled by his employer are generally deemed to have arisen out of and in the course of employment. . . . Also, it is well settled that if the employment creates a special risk, an employee is entitled to compensation for injuries sustained within that field of risk. The employee may be subject to such risk as soon as he enters the employer's premises or the necessary means of access thereto, even when the latter is not under employer's control or management.

228 Cal.2d at 335-36, 170 P.2d at 22-23.

Similarly, in Freire v. Matson Navigation Company, 21 Cal.2d 751, 118 P.2d 809 (1941), the California Supreme Court affirmed compensation for a janitor who worked upon a steam ship. He reported to work where the ship was moored every day at 8:00. One morning, he took a taxi to work and as he was getting out of the taxi he was struck by an automobile driven by one of the employees and owned by the employer. The court held that the accident occurred within the scope of employment. It made no

difference to the court that the accident occurred on a public road since the danger was one to which the employee, by reason of and in connection with his employment, was subjected peculiarly or to an abnormal degree.

Other courts have likewise extended the rule, have adopted the Utah rule and have expanded it to include dangers which are peculiar to public highways. In Montgomery v. State Industrial Accident Commission, 224 Ore. 380, 356 P.2d 524 (1960), the employee was granted recovery resulting from an accident when he was struck by an automobile as he undertook to cross the thorough-fare in front of the employer's premises. The court adopted the Utah rule expressed in the Cudahy case and in the Bountiful Brick case and stated:

> The essential facts in the Parramore case are not materially different from those of the case at bar. In the Parramore case /Cudahy Packing Co. v. Parramore, 263 U.S. 418, 44 S.Ct. 153 (1923), aff'g, Cudahy Packing Co. v. Industrial Commission, 60 Utah 161,

> 207 P. 148 (1922)/, as in this one the accident occurred upon a public thorough-fare in front of the plant where the men worked. It is true that in the Parramore case the source of danger was the trains which operated across the road which the workmen were required to travel upon in going to and from the place of their employment. In the case at bar the source of danger was the vehicles which ran up and down the street the plaintiff was required to cross. The trains in the Parramore case ran upon a fixed rail, but motor vehicles in their movement are not restrained by rails. We do not believe that it would be reasonable to rule that, although a railroad train is a source of hazard to those who must cross its tracks, a motor truck, although it not infrequently runs in a squadron-like formation with other vehicles, is not a source of hazard.

356 P.2d at 530.

For other cases allowing recovery for injuries received entering or leaving the premises of the employer see Barnett v. Brittling Cafeteria Company, 225 Ala. 462, 143 So. 813 (1932); State Compensation Insurance Fund v. Industrial Accident Commission, 192 Cal. 28, 227 P. 168 (1924); Chandler

v. General Accident Fire and Life Insurance Corporation, 10 Ga. App. 597, 114 S.E.2d 438 (1960); DeHoyos v. Industrial Commission, 26 Ill.2d 110, 185 N.E.2d 885 (1962); McField v. Lincoln Hotel, 35 Ill. App.2d 340, 182 N.E.2d 905 (1962); Nelson v. City of St. Paul, 249 Minn. 53, 81 N.W.2d 272 (1957); Nevada Industrial Commission v. Leonard, 50 Nev. 16, 68 P.2d 576 (1937). Cf. Seabreeze Industries, Inc. v. Phily, 118 So.2d 54 (Dis.Ct.App.Fla. 1960).

C. Plaintiff's Injury was Causally Related to his Employment.

In the instant case, there exists a sufficient causal relation between plaintiff's employment and his presence at the entranceway of his employer's premises to bring into play the "hazardous entranceway" line of cases mentioned above, even though plaintiff was not actually leaving the premises directly after he had completed his driving duties. While it is true that the "hazardous entranceway" line of cases involved employees coming to and leaving from work, it is also true that most

employees have definite hours, are not expected to report periodically, and generally use the entrance to their employer's premises only when they are going to or leaving work. The peculiar fact situation surrounding the terms of employment in this case has not been presented to this Court before, but the record in this case substantiates the fact that plaintiff's presence at the employer's entranceway was encouraged and in fact, contemplated in his employment duties.

First, it is established that the drivers at Garrett Freightlines who are on the extra board are subject to a twenty-four-hour call. Record at 12-13, 46, 51; see paragraph 7 of defendant's Exhibit 3. Second, the record indicates that if a driver on the extra board is not available when he receives an alert call from Garrett's, he is dropped to the bottom of the extra board list, foregoes employment until his name again reaches the top of the list, and is subject to disciplinary

action from the company. Record at 16-17, 55, 79-80, 113-14. Third, both Mr. Stoddard, a driver for defendant who has served on the extra board, and the plaintiff testified that in order to avoid the consequences of not being available when Garrett Freightlines called, they periodically kept in touch with Garrett Freightlines to determine their probable departure time. Record at 12-13, 16-17, 52-53. Fourth, according to the witnesses for the plaintiff and for Garrett, it was standard procedure at Garrett Freightlines to expect these periodic reports or calls from the men on the extra board in order that they could determine their probable departure time and thereby make themselves available for call. Record at 12-13, 17, 43, 52-53. Although it was usual procedure for the drivers on the extra board to telephone Garrett's to determine their status on the board, Record at 120, both the plaintiff's witnesses and witnesses for Garrett testified that Garrett had no objection to the drivers coming in personally to find out that information;

this practice was never discouraged. Record at 15, 52-53, 54, 110, 113-14, 120. In fact, Mr. Christensen, manager of Garrett's terminal, indicated that during the week of the hearing, drivers had reported in personally to check on their position on the board. Record at 112. Fifth, the drivers at Garrett could expect a call to work at anytime, including when they called in to make themselves available. Record at 19, 55-56, 76-77. Sixth, Garrett discouraged telephone calls by the extra board drivers between the hours of 4:00 p.m. and 6:00 p.m. Record at 18. Therefore, if drivers were in the vicinity of Garrett's during those hours, they would appear in person in order to comply with Garrett's policy of not calling in during those hours, and yet still making themselves available for work. This would be true especially if, like plaintiff, a driver was living alone and would be away from his telephone during the normal calling hours. See record at 52-54. Seventh, although the extra

board sheet indicated that plaintiff would report in at 5:30 p.m., it was contrary to the labor contract between Garrett and the Teamster's Union to retain a man's position on the extra board if an assignment to drive came up before any indicated time of reporting. Record at 110-12. Also, plaintiff had been passed over once before by Garrett and had been dropped to the bottom of the extra board rotation list because he could not be reached for an assignment which came up before his indicated check-in time. Record at 55. Therefore, plaintiff was justified from his past experience with Garrett and because of the Union contract to report prior to the 5:30 p.m. hour.

Consequently, plaintiff's presence at Garrett's entranceway at the time of his accident was sufficiently employment related to bring him within the exception to the "going and coming" rule. An accident arises in the course of employment "if it occurs while the employee is rendering service to his

employer which he was hired to do or doing something incidental thereto, at the time when and the place where he was authorized to render such service." M & K Corp. v. Industrial Comm'n, 112 Utah 488, 493, 189 P.2d 132 (1948). An employee can recover under workmen's compensation if he is engaged in some employment-related activity. The Utah court has stated:

> On the other hand, in order for an employee to be covered by workmen's compensation, it is not necessary that he be doing the particular task which constitutes his main duties, but there are many employment-related activities which employees are expected to participate in and in which they are covered. The essential thing is that there be some substantial relationship between the activity engaged in and the carrying on of the employer's business.

Askren v. Industrial Comm'n, 15 Utah 2d 275, 277, 391 P.2d 302, 304 (1964).

CONCLUSION

Based on the foregoing authorities and argument, plaintiff respectfully submits the Order of

the Industrial Commission of Utah dated May 22, 1969, is contrary to law and that said Commission should be ordered and directed by this Court to award plaintiff compensation as provided for by the Industrial Act of the State of Utah.

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