1971

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

IN THE SUPREME CO
OF THE
STATE OF UT

MERWYN L. WILKINSON,

Plaintiff and Appe

vs.

THE INDUSTRIAL CO
OF UTAH; GARRETT
LINES, INC., and TRU
ANCE EXCHANGE,

Defendants and Re

BRIEF OF

VAN COTT, BAGLEY,
CORNWALL & McCARTHY
Roger H. Thompson
141 East First South
Salt Lake City, Utah 84111
Attorneys for Plaintiff

TABLE OF CONTENTS

Page

Cases Cited

IN THE SUPREME COURT
OF THE
STATE OF UTAH

MERWYN L. WILKINSON,
Plaintiff and Appellant,

vs.

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

Case No. 11814

STATEMENT OF THE KIND OF CASE

The Plaintiff has appealed from the Order of the Industrial Commission of Utah denying the Plaintiff's application for benefits under the Workmen's Compensation Act of the State of Utah. The Order of the Commission found that the applicant was not in the course of his employment at the time of the accident complained of by the Plaintiff and therefore was not entitled to recover compensation under the Workmen's Compensation Act of the State of Utah.

DISPOSITION BY THE INDUSTRIAL COMMISSION

The Industrial Commission held that the applicant was not acting in the course of his employment at the time the accident occurred and therefore his application was denied.

RELIEF SOUGHT BY DEFENDANTS

Defendants submit that the decision of the Industrial Commission should be affirmed.

STATEMENT OF FACTS

The Plaintiff was injured as he was driving his motorcycle on Redwood Road in Salt Lake City, Salt Lake County, after leaving the premises of his employer, the Defendant Garrett Freightlines, Inc., whose place of business is located on the west side of Redwood Road at about 50 South. The accident occurred on September 7, 1967, at about 4:15 p.m. The Plaintiff was struck by an automobile which was southbound on Redwood Road (R. 167-169). The Plaintiff was attempting to make a left turn to go north on Redwood Road. Redwood Road, otherwise known as 16th West, runs north and south in Salt Lake City.

The Plaintiff was employed by Garrett Freightlines, Inc. as a driver on the "extra board." A driver

who is on the extra board, when he comes in from a run, places his name at the bottom of the extra board list and he is called for work when needed. Being on the extra board, he had no regular run but went any place in the area serviced by the Defendant Garrett Freightlines, Inc. when called up for work by his employer. The extra board drivers are called up in rotation.

Garrett Freightlines, Inc. had an agreement with the Teamsters Local Union that required Garrett's to give its drivers on the extra board an alert call between the hours of 5:00 p.m. and 7:00 p.m., following which a firm call to report for work was given two hours prior to departure time (R. 172). Garrett Freightlines, Inc. neither requested nor encouraged the Plaintiff to personally call at their dispatch office on the day of the accident or at any other time (R. 111-112).

On the day of the accident the Plaintiff called Garrett Freightlines, Inc. and talked with Jack Christensen, the terminal manager, and told Mr. Christensen that he would call in at 5:30 p.m. (R. 109 and R. 46-48). This was done to protect his position on the extra board.

The Plaintiff was not being paid at the time the accident occurred and his pay would not have commenced until some six hours later when he should have reported for duty.

ARGUMENT

POINT I

PLAINTIFF WAS NOT INJURED IN THE COURSE OF HIS EMPLOYMENT.

A. THE PLAINTIFF WAS ON HIS OWN AT THE TIME HE WAS INJURED.

The evidence is clear that the Plaintiff at the time he met with his accident was on his way home. He was not coming to or going from work at the time. The occasion of his being where the accident occurred was of his own volition and did not in any way further or aid his employer's work. Garrett Freightlines, Inc. gave no directions or instructions to the Plaintiff to report to their place of business or to do what he did, but on the contrary had made specific arrangements with the union as to how and when the drivers, including the Plaintiff herein, were to be notified as to whether they would be used and when to report to work.

Jack Stanley Christensen, terminal manager for Garrett Freightlines, Inc., testified as follows:

> "Q. Now, was Mr. Wilkinson requested by you, or anyone in your company, to report in person earlier that day?
>
> A. No, sir.
>
> Q. Do you require your employees to report in person?
>
> A. No, sir.

Q. What is the procedure, quickly, as to the calling of men who are on the extra board?

A. Well, beginning at any particular point?

Q. Yes. Just so that the record is clear as to how this works.

THE REFEREE: Well, let's put it this way, to save time: Is there any substantial variation in the way Mr. Wilkinson and the previous witness Mr. Stoddard, have testified regarding the operation of the extra board? Is that in substance the way it operates?

THE WITNESS: Well, I could only add one thing, Mr. Examiner. There was quite an emphasis made on the fact that they were required to be on call all the time. And this is the very purpose of the rules that we have, so that they aren't required to be on call all the time. But, in substance, they're correct.

THE REFEREE: I see." (R. 111-112).

B. THE PLAINTIFF HAD NO VALID REASON TO GO TO GARRETT'S AT 4:00 P.M. ON THE DAY OF THE ACCIDENT.

The plaintiff was employed as an extra board driver. He could, after signing in on the extra board upon completing his last run, ascertain how many drivers were ahead of him and when he might again be used by his employer. He would have been on alert after receiving a call from the dispatcher, and being advised that he would be used.

The usual time for extra board drivers to leave the employer's place of business on a "run" is late

in the evening. Wilkinson was not required to report in person to his employer to make himself available for work. The normal procedure was for the dispatcher to call the drivers on the telephone. The union contract required the dispatcher to place an alert call between the hours of five and seven in the evening, or if the employee knows that he will not be available during those hours then it is to the advantage of the employee to call and give the dispatcher information as to whether he will be available and where he would be at a certain hour. In this respect see the testimony of Milton R. Stoddard, a driver employee of Garrett Freightlines, Inc. called by the Plaintiff (R. 26).

> "Q. Would you please describe for the record what the extra board is?
>
> A. Well, it's a rotating board that takes care of anyone that's on vacation or cancels out. They're called to pull extra runs, extra divisions, or extra sleepers.
>
> Q. Are the men called according to the business needs of Garrett Freightlines?
>
> A. Yes, sir.
>
> Q. When a driver on extra board finishes a run, what does he usually do with respect to the board?
>
> A. You just sign the bottom of the board, and as it rotates to the top he's called.
>
> Q. During what hours of the day can an extra board driver be called?
>
> A. Anytime.

Q. He can be called anytime, anytime during the 24-hour period.

A. Yes, sir.

Q. How much notice is he given?

A. Two hours.

Q. Now, if you're subject to a 24-hour call, as an extra board driver, how does a driver know approximately when he will have to drive again?

A. Well, after you've been on the board a little while, you can tell fairly close. Like you get up at seven or eight in the morning, and you want to know whether you got the day off, you usually call in, and the dispatcher will tell you approximately what time to call back or check with him. Or he'll tell you that you're far enough down the board, they won't need you, and not to bother with them and they'll call you during the regular dispatch hours, five to seven at night. And, therefore, you have a day off, in other words." (R. 26-27).

Mr. Christensen, the manager of Garrett Freightlines, testified as to the procedure followed as a result of an agreement with the union in respect to calling men on the extra board for work.

"Q. And then the dispatcher has the responsibility of making the telephone calls to alert these people; is that correct?

A. Yes, sir.

Q. After they have made an alert call, what then does the dispatcher do. Presuming that he made an alert call for this 10:00 o'clock trip, what other calls would he make?

A. Well, he would call at 8:00 o'clock and give the driver a firm call to report at 10:00 o'clock.

Q. So there are two calls; is that right?

A. There could be two calls.

Q. And one is called an alert call, and that's between six and eight, I mean — yes, between six and eight; is that right?

A. Well, the call between four and six —

Q. I see.

A. — is an alert call.

Q. That's to do what.

A. That notifies or alerts all drivers that are going to be used between that time and 7:00 o'clock the following morning.

Q. That merely tells them that they're going to be called sometime that evening; is that right?

A. Uh huh.

Q. And then the next call is made when?

A. Two hours prior to the departure time. Now, I'm speaking of the time between 7:00 o'clock at night, or 6:00 o'clock at night and 7:00 o'clock in the morning.

Q. Then they're given the two hours' notification, and time to get ready to come; is that right?

A. Right.

MR. WELCH: Does that clear that up, Mr. Shaughnessy?

THE REFEREE: Just one question in this area: Would Mr. Wilkinson have received a call between four and six?

THE WITNESS: He would have. You mean had he not —

THE REFEREE: Had he not been injured?

THE WITNESS: Yes, uh huh.

THE REFEREE: And this would have advised him that sometime after 7:00 o'clock p.m. he would receive an alert call; or, that is, a call for work.

THE WITNESS: Yes, sir, uh huh.

THE REFEREE: And then he normally would have been called at 8:00 o'clock, then, to report for work by ten.

THE WITNESS: This is correct." (R. 116-118).

See also the agreement with the union (R. 172). Milton R. Stoddard, called on behalf of the Plaintiff, testified as follows regarding the procedure followed by drivers on the "extra board."

"Q. Now, there is no requirement that you men on the extra board, or men on the extra board, come in personally to report to the Garrett Freightlines depot there, is there?

A. No, sir.

Q. No requirement, at all.

A. (Witness shakes head in the negative.)

Q. Now, the normal procedure is through the telephone call; is that right?

A. That's what everybody usually uses, yes.

Q. And isn't it normal procedure also for those on the extra board to, if they're not going to be available by the telephone two hours before they're about to go out, or be-

tween the hours of — what is it, four to six when they make their call?

When do they make their call, the dispatchers make their call?

A. They call your sleepers between four and six, and the extra board between five and seven.

Q. All right.

Now, if you are on the extra board, then, and if you are not going to be available at your home or residence, or wherever, between five and seven, what is your general practice?

A. Usually to call them.

Q. Call them on the phone and let them know when you'll call in?

A. Yes.

Q. And you leave the message that you'll call in, or you'll be at a certain place at a certain hour; is that right?

A. Yes.

Q. And if you call in and leave that message, and is that written on this extra board sheet?

A. Not to my knowledge.

Q. And then that message gets to whom?

A. Just a second. I'll take that back. It is. Usually if you call the regular dispatcher, and leave a number, it's written on there, to where they can get ahold of you.

Q. Where they can get in touch with you on what you are going to do.

A. Yes, sir.

Q. Whether you're going to call in or whether they're going to call you; is that right?

A. Yes, sir.

Q. And so then if that is done, then there'd be no reason for anyone to come in, because that call would be made at that point; is that right?

A. Yes, sir, that's right." (R. 46-48).

The Plaintiff made a telephone call to the terminal manager, Mr. Christensen, earlier in the day of the accident and in substance advised that he would not be available until "1730" when he would again call. His testimony as to the call and as to not being required to report in person was as follows:

"Q. And did you tell them that you would call back at 1730?

A. I well could have.

Q. And what does "1730" mean?

A. 5:30 in the evening.

Q. 5:30 in the evening?

A. Yes, sir.

Q. Now, then you did notify them that you would call at that time; is that right?

A. That or before. At least no later than that, yes.

Q. Now, you were not asked to come in personally, were you?

A. Never asked to come in personally, no.

Q. Or you were never told to come in personally, were you?

A. Only to pull my trips.

Q. All right.

But I mean you were not told to come in personally, and report in —

A. No.

Q. — or to check out your position on the extra board.

A. No. I was never told to report, and I was never told I couldn't. So I did both.

Q And on that day, the same thing is true on that particular day.

A. Yes. (R. 87-88).

The Referee questioned the Plaintiff relative to the telephone call he made and he asked in conclusion the following question and received the following answer:

"THE REFEREE: Then it's fair to assume that somebody wrote that on there pursuant to your telephone call that you would check back at 1730?

THE WITNESS: I would say that's what it's from, yes." (R.96-97).

The record is clear that the Plaintiff did call in and had protected his place on the extra board; nevertheless, on his own volition, he entered Garrett's at 4:00 p.m.

Mr. Larry Donald Hollis, dispatcher, who was on duty at the time the accident occurred, testified on direct and cross-examination that at 4:00 or 4:15 p.m., which was just after he reported for duty, that he would not know for sure whether Mr. Wilkinson would be called because he first had to call out all sleeper drivers between the hours of 4:00 p.m. and 6:00 p.m. and that he would not know how many extra board men the company was going to use until all the sleeper drivers had been called. The sleeper drivers are men on bid trucks. After that the extra board men are called (R. 131-132).

The substance of Mr. Hollis' testimony is that at 4:00 p.m. when Wilkinson came into his dispatch office all he could have told him was that he would probably be used that evening. The dispatcher did not know at the time Mr. Wilkinson went to the dispatcher's office for certain when or how Mr. Wilkinson would be used. It was too early for the dispatcher to determine these facts. Therefore, no useful purpose was served by Wilkinson making a personal call at the dispatcher's office at the time he made the call. This is especially in view of the fact that he had earlier called Mr. Jack Christensen and had indicated to him that he would call in at 5:30 p.m. because by that time the dispatcher would have known whether for certain Mr. Wilkinson would be used and where he would be going.

The record is clear that Mr. Wilkinson went to Garrett's on his own volition. No advantage was gained thereby either to himself or to his employer. Nothing was gained or could have been gained by the Plaintiff's appearance at his employer's place of business.

C. NEITHER THE PLAINTIFF NOR THE DEFENDANT BENEFITTED FROM THE VISIT MADE BY THE PLAINTIFF.

Garrett's business was not aided by Wilkinson driving his motorcycle into his employer's place of business at 4:00 in the afternoon. At that time the dispatcher would not know what drivers might be needed.

In this connection Jack Stanley Christensen, on cross-examination, was asked the following questions:

> "Q. Could it have been possible that a dispatcher would have considered Mr. Wilkinson's visit the equal of an alert call?
>
> A. No.
>
> Q. Why it that?
>
> A. Because he wouldn't know at 4:15 or 4:30 what the man was going to do or what even the dispatcher was going to do. (R. 122-123).

Further questioning of Mr. Christensen by Plaintiff's attorney revealed that no drivers had gone out by 4:00 o'clock, that Keith Beale left at 7:00 o'clock in the evening; that Mr. Thiel left at 9:00 o'clock and the next one left at 10:00 o'clock (R. 124).

At that time in the afternoon Wilkinson was not benefitted as he could not have found out when he was going to go out, but he could only possibly have been advised by the dispatcher that he would go out that evening. However, this problem had already been met. The Plaintiff had called in earlier and had talked with Mr. Christensen on the telephone advising that he would be available and that he would call in at 1730 or 5:30 in the afternoon.

On direct examination Mr. Christensen testified as follows:

"Q. (By Mr. Welch) Now, Mr. Christensen, in whose handwriting is that notation?

A. That is mine.

Q. And what was the occasion for you making that notation on that sheet?

A. Well, Mr. Wilkinson called in and said that he would be available for work, and would not be available for work until 1730.

Q. And was anything else said in that conversation?

A. I don't remember the conversation.

Q. And you made that notation at that time?

MR. THOMPSON: Objection.

A. Yes, I did.

THE REFEREE: I think he can answer.

This is a conversation you had with Mr. Wilkinson, I take it. Is that correct, Mr. Christensen?

A. Yes, sir." (R. 110).

The Plaintiff testified that it was the responsibility of his employer through the dispatcher to call and give him an alert call between the hours of five and seven in the evening.

"Mr. Welch: I am asking Mr. Wilkinson whether it is not true that the employer, through their dispatcher, is not required to give them a two-hour alert call between the hours of five and seven.

Q. Is that right?

A. Only if you are going out that evening.

Q. That's right.

A. If they think —

Q. If you are going out that evening.

A. If they think they want you. They still don't know, you understand.

Q. And they're the ones that should make the call to you; is that right?

A. That's correct.

Q. And then if they know where you are, you have no responsibility for calling in to them, have you?

A. If they know where you are?

Q. Yes. So they can get in touch with you.

A. That's right.

Mr. Welch: That's all." (R. 101-102).

The employer's business was not aided or enhanced by the Plaintiff going to Garrett's place of business at about 4:00 o'clock in the afternoon. Neither was it necessary or helpful for Mr. Wilkinson, as he had previously telephoned and advised that he would call in at about 5:30 p.m. Garrett's, therefore, knew that the Plaintiff would be available for work that evening.

POINT II.

GOING TO AND COMING FROM WORK IS NOT COVERED BY THE WORKMEN'S COMPENSATION ACT.

Defendants take the position that in this case the Plaintiff was neither going to work nor coming from work; however, the general rule in this state is that under normal circumstances coming to and

going from work are not within the course of employment in the absence of a special mission.

The rule was stated in *Vitagraph, Inc., vs. Industrial Commission*, 85 P. 2d 601, 96 Utah 190, at 603 P. 2d., the Court said:

> "It seems definitely settled that if a workman is injured in the normal course of things, in going to or from his work or place of employment, that is the result of the general hazards which all must meet and assume and is not in the course of his employment. *Denver & Rio Grande Western R. Co. v. Industrial Commission*, 72 Utah 199, 269 P. 512, 62 A.L.R. 1436; *Fidelity & Casualty Co. v. Industrial Commission*, 79 Utah 189, 8 P. 2d. 617; *Greer v. Industrial Commission*, 74 Utah 379, 279 P. 900. Such is what may be called the plant rule, where the employee does not attach himself to his employment until he arrives at the plant or locus of his work, and he is not in the employment after he leaves the plant or situs of his work."

It is claimed by the Plaintiff that the circumstances under which he was injured were unusual and that he was subject to greater danger than was the general public. This we cannot agree to, because Redwood Road where the accident occurred is a street regularly traveled by the citizens of Salt Lake City. The dangers that he encountered as he entered Redwood Road on his motorbike were no more than the dangers encountered by any person using the said street. There was nothing to hinder the Plain-

tiff's vision as he left the Garrett Freightlines yard, and the hazard which was his as he left the yard was common to all persons using Redwood Road. There was nothing in the risk which he took that was peculiar to the Plaintff's employment and was not common to all persons using Redwood Road.

In the case of *Greer vs. State Industrial Commission of Utah*, 74 Utah 379, 279 P. 900, a carpenter foreman was injured shortly before 8:00 a.m. as he was on his way to work. This Court said at 279 P. 901:

> "In this case the deceased was not injured while sharpening the saw at his home. The accident did not occur while he was actually engaged in the performance of a duty for the employer. *The dangers of the street between his home and the stockyards were not incident to his employment, but were dangers common to all.*" (Emphasis ours.)

Redwood Road is not inherently dangerous. Mr. Stoddard, the Plaintiff's witness, testified that he had parked in Garrett's parking lot for years; that there were three entrances to Garrett's place of business wide enough to accommodate two vehicles; that he had never had any problem getting in or out; and that the only person he had known who had had trouble was Mr. Wilkinson.

Mr. Stoddard was asked the following questions:

> "Q. Now, Garrett's is on the west side of the street, is that right?

A. Yes, sir.

Q. West side of Redwood Road.

Aren't there, in fact, three entrances in and out of Garrett Freightlines' place of business there?

A. Yes, sir.

Q. And these are gateways through the fence.

A. There is no fence against the street.

Q. No fence?

A. No.

Q. I see.

They're actually entranceways, then, into Garrett's?

A. Yes, sir.

Q. And each one of these entranceways are wide enough to accommodate two vehicles?

A. Yes. The middle one is a wide, used for your trucks. And the two end ones are — the one on the south end is usually just used by the men coming to work, and parking in the south part. But the main entrance is where most of the people turn in there.

Q. And when you go in, as well as the other employees go in, you drive cars in there, do you?

A. Yes, sir.

Q. And do you park inside the Garrett lot?

A. Yes, sir.

Q. And you've done this for years?

A. Yes, sir.

Q. You've never had any problem coming in or out?

A. No, sir.

Q. Have you known of anybody that ever has had any problem coming in and out?

A. Just one.

Q. And this is Mr. Wilkinson?

A. Yes, sir.

Q. Other than that, the employees have been able to drive in or out whether they make a left-hand turn or right-hand turn; is that right?

A. Yes, sir." (R. 50-51).

The evidence is clear that there was no special problem or special danger involved in connection with one entering or leaving Garrett's place of business. Redwood Road is a road which presents no special problems to one entering the premises of Garrett Freightlines, Inc. or to the motoring public.

The Plaintiff relies on two Utah cases, *Cudahy Packing Company vs. Industrial Commission*, 60 Utah 161, 207 P. 148 (1922), *aff'd, Cudahy Packing Company vs. Parramore*, 263 U.S. 418, 44 S.Ct. 153 (1923) and the case of *Bountiful Brick Company vs. Industrial Commission*, 68 Utah 600, 251 P. 555 (1926), *aff'd, Bountiful Brick Company vs. Giles*, 276 U.S. 154, 48 S.Ct. 221 (1928). These cases, however, can be distinguished from the case before the Court.

In the *Parramore* case, the employee was struck 100 feet from his employer's plant as he crossed a railroad track. He was on a county road which was the only means of access to the plant and which was kept under repair for persons traveling to and from the employer's plant. This is an entirely different factual situation from the present case in that the

employee was on his way to work when the accident occurred and the county road was maintained for the benefit of Parramore's employer. The Plaintiff herein came to the employer's premises voluntarily and on his own initiative approximately four hours before he would normally be called to work.

In the *Bountiful Brick* case the injured employee likewise was on his way to work, which is not true in the instant case, and likewise the injury occurred while the employee was crossing the railroad track adjacent to the employer's place of business.

Plantiff's brief contains numerous references to cases from various parts of the United States which have held the employer liable for injury to employees when they were at or near the employer's place of business. However, a careful reading of all of these cases reveals that they involve employees going to or coming from work, which is not true in the instant case, and that the accidents most generally occurred upon or within property controlled or owned by the injured man's employer. None of these circumstances apply to the case before this Court.

There is good reason for the rule that injuries received while coming to and going from work are not covered. Otherwise there would be no line of demarcation. If an employee should be covered for an accident occurring on a public street while he is either going to or coming from work it would be

just as logical to conclude that he should be covered for an injury received just as he left his home.

Our discussion of the law relative to coming to and going from work should not be construed to be our belief that the case before the Court falls in that category. We take the position that the Plaintiff was neither coming to nor going from work, that what he did was entirely voluntary on his part, not necessary or required because of his employment.

POINT III.

THE FINDINGS AND ORDER OF THE INDUSTRIAL COMMISSION BASED UPON SUFFICIENT EVIDENCE SHOULD NOT BE OVERRULED.

It has been said by the Supreme Court in numerous decisions that pursuant to Section 35-1-84, U.C.A., 1953, that only if the Industrial Commission arbitrarily disregards competent, uncontradicted evidence will the decision of the Commission be reversed.

In *Kent vs. Industrial Commission*, 89 U. 381, 57 P. 2d. 724 at 385 U. the Court said:

> "In the case of denial of compensation, the record must disclose that there is material, substantial, competent, uncontradicted evidence sufficient to make a disregard of it justify the conclusion, as a matter of law that the Industrial Commission arbitrarily and capriciously disregarded the evidence or unreasonably refused to believe such evidence."

The Supreme Court held in *Sutton, etal. vs. Industrial Commission*, 9 U. 2d. 339, 344 P. 2d 538, that there was no basis on which the Commission's action could be regarded as capricious, arbitrary or unreasonable when there was substantial, credible evidence to sustain the findings of the Commission.

In *Burton vs. Industrial Commission*, 13 U. 2d. 353, 374 P. 2d. 439, this Court said at 354 U.:

> "In order to reverse the finding and order made Plaintiff must show that there is such credible uncontradicted evidence in her favor that the Commission's refusal to so find was capricious and arbitrary."

In the matter before this Court the Commission had substantial, uncontradicted testimony on which to make and enter its finding that the injuries sustained by the Plaintiff Merwyn L. Wilkinson did not arise out of or in the course of his employment with Garrett Freightlines, Inc. The facts are undisputed. The Plaintiff was not on an errand for his employer. He was neither going to or leaving work. He had no good reason to go to Garrett's on the afternoon the accident occurred.

CONCLUSION

In conclusion Defendants submit that the decision of the Industrial Commission should be affirmed for the following reasons:

1. That the accident sustained by the Plaintiff did not arise out of or in the course of his employment with the Defendant Garrett Freightlines, Inc.

2. That the Plaintiff at the time the accident occurred was not performing any duty that was beneficial to his employer or to himself inasmuch as his employer had already been contacted by the Plaintiff and was aware of the fact that he was available for work and that the Plaintiff would make a telephone call at 5:30 p.m.

3. That the law is clear that one going to or coming from work is not covered under the Workmen's Compensation Act of the State of Utah unless he is on a special mission for his employer at the time. The Plaintiff was not on a special mission for his employer at the time the accident occurred, but on his own volition went to his employer's place of business four hours prior to the time that he would have been called to report for work.

4. That there was substantial and competent evidence to support the findings of the Industrial Commission.

Respectfully submitted,

VERNON B. ROMNEY
Attorney General
326 State Capitol Building

CHARLES WELCH, JR.
922 Kearns Building
Salt Lake City, Utah 84101
Attorneys for Defendants