

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



TOTAL & PARTIAL UNEMPLOYMENT: 105
Contract Obligation.

DECISION OF COMMISSION

In the Matter of

Jay Zeh, Claimant
[REDACTED]

Hercules, Inc.
Hopewell, Virginia

Date of Appeal

To Commission: Septemehr 26, 1984

Date of Hearing: November 9, 1984

Place: RICHMOND, VIRGINIA

Decision No.: 24776-C

Date of Decision: February 1, 1985

Date of Mailing: February 15, 1985

Final Date to File Appeal

with Circuit Court: March 7, 1985

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This matter comes before the Commission on appeal by the employer from the Decision of Appeals Examiner (No. UI-84-6228), mailed August 28, 1984. Oral argument was heard on November 9, 1984 by Edwin R. Richards, Special Examiner. Thereafter, with his consent, the case was referred to M. Coleman Walsh, Jr., Special Examiner, for review and decision.

APPEARANCES

Employer Representative, Attorney for Employer

ISSUES

Was the claimant able to work, available for work, and actively seeking but unable to obtain suitable work as provided in Section 60.1-52 (g) of the Code of Virginia (1950), as amended?

Was the claimant on a bona fide paid vacation as provided in Section 60.1-52 (d) of the Code of Virginia (1950), as amended?

Did the claimant leave work voluntarily without good cause as provided in Section 60.1-58 (a) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On September 26, 1984, the employer filed an appeal from a Decision of Appeals Examiner which held that the claimant satisfied the eligibility requirements of the Act for the period of July 8, 1984 through July 14, 1984.

The claimant was employed by Hercules, Incorporated of Hopewell, Virginia. The claimant worked for this employer from October, 1975 through the present time.

The employer has entered into a collective bargaining agreement with the union that represents the claimant and other members of the work force. One section of that agreement deals with vacations. Under the collective bargaining agreement, the claimant was entitled to three weeks of vacation during the 1984 calendar year. Employees are requested to take their vacation during the company's annual maintenance shutdown which normally occurs during the first two calendar weeks in July. However, employees may request that they be permitted to take earned vacation during periods other than the maintenance shutdown and they may do so if permission is granted by the plant manager. Under the terms of the agreement, the plant manager has the final authority concerning approval of any requested vacation.

In addition to the collective bargaining agreement, the company and the union had entered into an agreement on July 18, 1973 which was still in effect at the time the claimant filed his claim for benefits. This agreement provides as follows:

"Employees (sic) not scheduled to work during departmental or plant maintenance shutdowns of no more than two weeks duration, on signing a waiver, will be allowed to take earned vacations at periods other than the maintenance shutdown period. Such shutdowns will not be considered to be a reduction of force and employees (sic) who choose this option will be considered AWP* (Absent With Permission) for the shutdown period. Every effort will be made to find work for qualified employees (sic) without vacation eligibility at the time of the shutdown."

Under this agreement, as applied by the employer, any employees who have used all of their earned vacation prior to the maintenance shutdown are considered to be absent with permission and are not eligible to work during the shutdown period. The company's efforts to provide work for employees without vacation eligibility is limited to those new employees who have not acquired sufficient seniority to be eligible for a vacation.

During 1984, the claimant had taken vacation days on January 22, February 26, February 27, April 13, and May 21 through May 27. He had also requested and been granted vacation for the period of June 25, 1984 through July 1, 1984 and for the day of July 2, 1984. In approving the claimant's request for vacation for the period of June 25 through July 1, 1984, the claimant signed a statement which provided as follows:

"I understand that the area in which I work may be shut down for a week or more during the remainder of the year and employes (sic) in my area are expected to take these periods as part or all of their vacation.

In electing to take all of my vacation at times other than these periods, I understand that I will receive no earnings, including disability pay during the shutdown."

The employer shut down the plant for annual maintenance during the weeks of July 2, 1984 through July 15, 1984. During the claim week of July 8, 1984 through July 14, 1984, the claimant was ready, willing and available for work. However, as a result of the maintenance shutdown, the employer did not have any work available for the claimant. During this claim week, the claimant performed no services for the employer and received no remuneration whatsoever. At the conclusion of the maintenance shutdown, the claimant returned to work on July 16, 1984 as scheduled.

OPINION

In the instant case, the Commission is confronted with a fairly unique factual situation. Furthermore, the issues raised by the employer on appeal transcend the limited eligibility issue under which this case first arose. Relying upon a case cited by the Supreme Court of Kansas, the Goodyear Tire & Rubber Company v. Employment Security Board of Review, et al, 205 Kan. 279; 469 P.2d 263 (1970), the employer has argued that the claimant was voluntarily unemployed when, pursuant to a collective bargaining agreement, he elected to take his authorized vacation at a time other than the shutdown provided for vacation purposes. In reaching this conclusion, the Kansas Court held that while the claimants were technically "unemployed", as that term was defined under the Kansas Employment Security Act, their exercise of the right under the collective bargaining agreement to take their vacation at a time other than the plant shutdown rendered their unemployment voluntary and the payment of benefits to them under such circumstances would contravene declared public policy. As a practical matter, the employer is arguing that

this claimant, in essence, voluntarily left his job and should not be entitled to unemployment insurance benefits. The issues raised by the employer's appeal require the Commission to address the fundamental question. Specifically, the Commission must determine what effect collective bargaining agreements have on the administration of the provisions of the Virginia Unemployment Compensation Act, particularly with reference to the adjudication of contested claims for unemployment insurance benefits. To answer this question, we must first look to the fundamental purpose of the Act as well as the nature and extent of the authority vested in the Virginia Employment Commission.

As stated by our Supreme Court, the primary purpose of the Act is to provide temporary financial assistance to workmen who become unemployed through no fault of their own. The Act as a whole should be so interpreted as to effectuate that remedial purpose implicit in its enactment. Ford Motor Co. v. Unemployment Compensation Commission, 191 Va. 812, 63 S.E.2d 28 (1951). Accordingly, the Commission should not deny the payment of benefits unless it is clear that a claimant has failed to satisfy some requirement prescribed by the legislature.

Section 60.1-34 of the Code of Virginia sets forth the duties and powers of the Commission. That provision, in broad language, states that:

"It shall be the duty of the Commission to administer this title. It shall have power and authority to adopt, amend or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end."

Under the provisions of Chapter 4 of Title 60.1 of the Code of Virginia, it is even more apparent from the specific language what role the General Assembly intended the Commission to take in administering the Act. For example, Section 60.1-61 of the Code of Virginia provides, in part, that a representative designated by the Commission shall promptly examine an initial claim for benefits and decide on the basis of the facts whether or not the claim is valid. Section 60.1-63 of the Code of Virginia directs the Commission to establish one or more impartial appeal tribunals to hear and decide disputed claims for benefits. Section 60.1-64 of the Code of Virginia provides that the Commission may, on its own motion, affirm, modify or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional testimony, or permit any of the parties to such decision to initiate further appeals before it (emphasis added).

It is clear to the Commission that when the Virginia Unemployment Compensation Act was passed by the Virginia General Assembly, the legislature intended for the Commission to exercise complete authority in the adjudication of contested claims for benefits. Unemployment insurance benefits are conferred by the legislature. They are not conferred by collective bargaining agreements. Unemployment insurance benefits cannot be made the subject of collective bargaining. (See, Dahman v. Commercial Shearing and Stamping Company, et al, 13 O.O. 2d 368, 170 N.E.2d 302). Accordingly, notwithstanding the analysis in Goodyear, supra, the Commission is of the opinion that the better reasoned approach and the public policy of the Commonwealth of Virginia requires that claims for benefits be adjudicated on the basis of a thorough evaluation of all relevant facts and applicable principles of law and the Commission should not be bound by the terms of a collective bargaining agreement in carrying out its duties and responsibilities mandated by the General Assembly. Furthermore, were the Commission to adopt the position advocated by the employer, it would not only constitute an abrogation of the authority vested in the Commission by legislative mandate, but could result in an interpretation of the collective bargaining agreement which would be tantamount to a waiver of benefit rights contrary to the express provisions of Section 60.1-123 of the Code of Virginia. (Underscoring supplied)

The employer also argued that the claimant was unemployed as a result of the exercise of his own choice or volition. The employer urges that since the claimant was aware of the maintenance shutdown and knew he could avoid unemployment by taking his vacation at that time, his choice not to do so was a result of his own volition. However, this argument is unpersuasive and unacceptable. The Commission acknowledges that the claimant acted on his own volition. However, the only action which he took in this manner was that which he had a perfect right to do under the terms of the collective bargaining agreement. In other words, the claimant was within his right to choose to take his vacation at times other than the two week company maintenance shutdown. The claimant's unemployment did not result from his failure to take his vacation during the maintenance shutdown. Rather, it was the action of the employer in closing down the plant for those two weeks for its own benefit. Were it not for the company's maintenance shutdown, the claimant would have worked during the claim week in question. (See, Bussmann Mfg. Co. v. Industrial Commission, Division of Employment Security, Mo. App., 335 S.W.2d 456; Combustion Engineering, Inc. v. G. P. O'Connor, et al, 395 S.W.2d 528. Therefore, for the reasons stated above, the Commission concludes that the claimant's unemployment during the claim week in question was attributable to the lack of work at the company's plant which resulted from the maintenance shutdown and not from the claimant's decision to exercise his rights under the terms of the collective bargaining agreement. (Underscoring supplied)

The initial determination made by the Deputy in this case rose under the provisions of Section 60.1-52 (g) of the Code of Virginia. That section provides that an unemployed individual, to be eligible to receive benefits with respect to any week, must be able to work, available for work, and actively seeking but unable to obtain suitable work. As pointed out by the Appeals Examiner in her decision, the Commission has consistently held that where, as here, a claimant is unemployed due to a short-term layoff with a definite date of recall, he is not obligated to look for temporary employment during the time prior to his recall. A careful examination of the evidence in the record fails to reflect any true issue concerning the claimant's availability for work under the provisions of this section.

Another matter which the Commission needs to address arises from the issues raised by the employer on appeal. Particularly, it must be determined whether or not the claimant, during the claim week in question, was on a bona fide paid vacation within the meaning of Section 60.1-52 (d) of the Code of Virginia. In this regard, the Commission relies upon the analysis provided by the Circuit Court of the City of Lynchburg when it decided the case of Russell Coleman, et al v. Virginia Employment Commission and Lynchburg Foundry (August 31, 1979). In that case, the employer had a contract provision in the collective bargaining agreement which provided for the payment of vacation pay to eligible employees. The company had an annual maintenance shutdown which normally occurred during the week of the Fourth of July. Also, the collective bargaining agreement for "early vacation", addressed the situation of employees who took all or part of their vacation prior to the maintenance shutdown. In that case, the Court held:

" . . . the Court is of the opinion that the claimants, petitioners in this proceeding, who did not take advantage of the contract provision providing for early vacation were on a bona fide vacation within the meaning of Section 60.1-52 (d) of the Code of Virginia during this period and were, therefore, not eligible for unemployment compensation. On the other hand, the shutdown period was not a bona fide paid vacation within the meaning of Section 60.1-52 (d) for those employees who have taken full advantage of the early vacation provision, or who had been arbitrarily denied." (See also, Samuel H. Penn v. Lynchburg Foundry Company, Decision No. 23487-C, July 16, 1984).

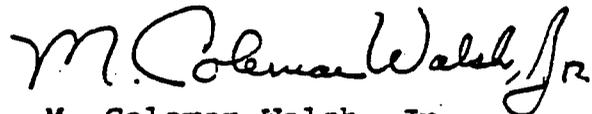
In accordance with the Court analysis in the Coleman case, the claimant here cannot be deemed to be on a bona fide paid vacation during the claim week ending July 14, 1984. At that point in time,

the claimant had taken all of the vacation to which he was entitled to receive during the 1984 calendar year. Therefore, since he had already taken his vacation and received vacation pay for those vacation periods, the Commission can only conclude that he was not on a bona fide paid vacation during the claim week in question.

DECISION

The Decision of Appeals Examiner is hereby affirmed. It is held that the claimant has complied with the provisions of Section 60.1-52. (g) of the Code of Virginia for the claim week ending July 14, 1984.

It is also held that the claimant was not on a bona fide paid vacation during the claim week ending July 14, 1984. It is further held that the claimant was involuntarily unemployed as a result of the employer's maintenance shutdown and the payment of benefits to him does not contravene this state's articulated public policy of paying benefits to workmen who are unemployed due to no fault of their own.



M. Coleman Walsh, Jr.
Special Examiner