

UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

DECISION OF COMMISSIONER

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Decision No.: 320-C

LABOR DISPUTE - 125.1

Date: November 5, 1947

Determination of existence -
Closing of plant or lock-out

On August 13, 1947, the Commissioner issued an initial determination (No. 300-C) rejecting the claims of Elbert Caudill and 153 others who had filed claims for benefits. The claimants are employees of the Blackwood Fuel Company, Pardee Mine. The claims were rejected on initial determination on the ground that the Commissioner was of the opinion that the unemployment of the claimants was caused by a stoppage of work caused by a labor dispute existing between the employer and the claimants. From this initial determination all of the claimants appealed. The Commissioner removed the appeals to himself under the provisions of Section 6 (e) of the Act and fixed September 9, 1947, at the Town Hall, Norton, Virginia, as the time and place for hearing said appeals.

Prior to the time fixed for the hearing, Counsel for the employer and Counsel for the claimants notified the Commissioner that they had agreed upon a stipulation of facts which would be executed and forwarded to the Commissioner, which statement, duly signed by the respective counsel, has now been received.

FINDINGS OF FACT

Blackwood Fuel Company is a member of Virginia Coal Operators' Association and is a party to the agreement executed on July 9, 1947, (effective July 1, 1947) with the United Mine Workers of America covering the conditions of employment between the miners, members of said United Mine Workers of America, and the coal companies belonging to said association. This master agreement carried forward, in addition to certain other provisions, all the various District agreements executed between the United Mine Workers of America and the individual or separate coal companies as they existed on March 31, 1946. The Blackwood Fuel Company purchased its Pardee Mine from Gibson Fuel Company. On February 25, 1943, Gibson Fuel Company had entered into a supplementary agreement with Local Union No. 6354 U.M.W.A., as follows:

"

Pardee, Va.
February 25, 1943.

"The following agreement regarding seniority at Pardee is entered into between the United Mine Workers of America, Local Union No. 6354 and the Gibson Fuel Co.

1. The following rule shall apply regardless of the length of time employed.
2. When any man is given a job in any class of work and there is an older man that feels that he is entitled to the job he must make the kick within thirty (30) days.

SIGNED FOR LOCAL NO. 354

John Collins
J. H. Collins, Committeeman

Leonard Buckles
Leonard Buckles, Committeeman

Henry Williams
Henry Williams, Committeeman

SIGNED FOR THE GIBSON FUEL CO.

O. L. Gibson
O. L. Gibson - V. P.

G. L. Reed
G. L. Reed - Superintendent."

Blackwood Fuel Company, upon becoming the owner of Pardee Mine by purchase from Gibson Fuel Company, found itself bound by the terms of the supplementary agreement.

While negotiations were pending with the Virginia Coal Operators' Association, the Blackwood Fuel Company, by letter dated July 3, 1947, notified Mr. W. F. Minton, President of the Local District, as follows:

Mr. W. F. Minton, President
Southwest Virginia District
Norton, Virginia

Dear Sir:

We are members of the Virginia Operators' Association and no doubt a new contract will be made in the near future between them and your Organization.

"We are writing you and sending a copy to the Operators' Negotiating Committee because we feel that under the highly competitive market facing us that we are entitled to the same identical contract as the balance of the Virginia Operators, and we demand that the same contract apply to our operations.

"We refer specifically to the local Seniority Agreement which has been operating at Pardee.

"This Agreement has hurt our Company in that a man, even though not near as capable as the one holding the job, can kick the good man off. The turmoil and uncertainty of a man's security in his job also affects his work because there is always agitation going on to get a supposedly better job, and keeps him 'politicizing' around to keep someone from kicking him.

"The men have been hurt too, very materially, because some men who have spent their lives at the Pardee mine have lost their jobs, some of whom were the best men we had, and were entitled to their jobs by all means of fair play. Yet they are gone.

"In view of the above, and numerous other things that keep this local agreement from being workable, we are serving notice on our Negotiating Committee, that we do not expect to operate except under the Virginia Contract to which we feel that we are entitled.

"Thanking you for your consideration, we are,

"Yours very truly,
BLACKWOOD FUEL COMPANY

/s/ C. S. Guthrie
C. S. Guthrie
Vice-President

CSG:rm

cc: Virginia Coal Operators' Assn.
Norton, Virginia."

A copy of this letter was mailed to the Virginia Coal Operators' Association.

After the master contract was executed on July 9, 1947, all of the mines that were members of the Association resumed operations immediately (the mines having all been shut down since shortly before June 30th when the Federal Government returned the mines to the original owners) except the Pardee Mine owned by Blackwood Fuel Company. This mine did not re-open until September 3, 1947.

It is stated in the stipulation of facts that "soon after the execution of the contract of July 9, 1947, there was a meeting between the Superintendent of the Pardee Mine and the Mine Committee of Local Union No. 6354. At this meeting the management of the mine was willing to resume operations of the mine under the agreement of July 9, 1947, minus the Local Seniority Agreement dated February 25, 1943. The Local Union was willing to go back to work if the management would recognize the Local Seniority Agreement of February 25, 1943, as a part of the contract of July 9, 1947. Under these circumstances the mine did not resume work and continued idle until September 3, 1947.

On August 13, 1947, Mr. W. F. Minton, District President, U.M.W.A., wrote a letter to Mr. C. S. Guthrie, Vice-President of Blackwood Fuel Company, as follows:

"

13 August 1947

"Mr. C. S. Guthrie, Vice-President
Blackwood Fuel Company, Inc.
Blackwood, Virginia

Dear Sir:

"I received a letter from you dated July 3, 1947, in

which you stated that your company was a member of the Virginia Coal Operators' Association. I was left under the impression from your letter that the negotiating committee would not sign the contract for your company. I have since been informed by Mr. George Esser, President of the Association, that he had signed the contract for the Blackwood Fuel Company, Inc., taking in both of your mines, Pardee and Calvin.

"To date the Pardee Mine has not seen fit to operate. The employees at this particular mine are ready to resume operations any time that your company desires to put the mine in operation. I am also informed by individual members of Local Union 6354 that they have talked with you and that you want the mine to operate with the understanding that they do away with their seniority which they have at the Pardee Mine.

"I am sure that you are familiar enough with the United Mine Workers organization to know that each local union elects its own mine committee to handle any grievances or differences that might arise between the management and the members of the local union. I think that you would get along better if you would take this question up with the mine committee directly and try to work out something satisfactory to both parties, if the present seniority is not satisfactory to the company. If you do not want to deal with the committee on this question, then I would suggest that if you want to operate the Pardee Mine notify your Superintendent, Mr. Sharpe, to put up a notice for the men to return to work, then if you have any grievance you cannot settle with the mine committee take it up with the Joint Arbitration Board.

"Trusting you will do this, I remain

"Very truly yours,

/s/ W. F. Minton
W. F. Minton, President

WFM:RG"

The Blackwood Fuel Company continued to refuse to operate under the supplementary agreement and the miners continued to insist that such agreement must remain in force until August 30, 1947, when the Blackwood Fuel Company and the Mine Committee of the Local Union No. 6354 executed a new supplementary agreement in lieu of the one theretofore in existence, and on September 3, 1947, the mine resumed operation and the claimants returned to work. It is not necessary to recite the terms of the new supplementary agreement in this decision.

OPINION

There was a stoppage of work at the Pardee Mine from shortly before June 30, 1947, through September 2, 1947, and, as a result, the claimants were unemployed during that time. The point to be decided here is whether or not the stoppage of work was caused by a labor dispute at the mine. A labor dispute is a disagreement between an employer and his employees concerning the terms and conditions of employment. In this particular

instance the facts show that the employer would not re-open its mines until a provision in the contract between Virginia Operators' Association and U.M.W.A., applicable only to Blackwood Fuel Company and the Local Union, was removed or changed. The Local refused to agree to any change in the provision until August 30th. Thus a controversy existed between the employer and the claimants concerning the conditions of employment. The stoppage of work continued until the controversy was settled. (Underscoring supplied)

The Commissioner will not attempt to determine whether there was a lockout by the employer or a strike by the employees, because the point is not important. Responsibility for the existence of a labor dispute is immaterial. The law does not differentiate between the various types of labor disputes, nor does it provide for the payment of benefits in cases where the workers are justified in the action which they take where a labor dispute exists. (Underscoring supplied)

The provision in the Virginia law - Section 5 (d) - is, without material difference, identical with the provision contained in the British Unemployment Insurance Act relating to disqualifications in connection with stoppage of work caused by a labor dispute. The British Umpire (the Court of last resort in British Unemployment Insurance cases (B.U. 450) has stated:

"The failure to resume work after 6th October was due partly to natural difficulties brought about by the stoppage of work, but mainly it was due to the fact that the employer was no longer willing to continue working without alteration of the conditions of employment to which the employees would not agree, and it was the dispute about the putters which brought this matter to a head. In my judgment there was a continuance of a stoppage of work which was due to a trade dispute and I have not to consider the merits of the points in dispute." (underscoring supplied.)

DECISION

For the reasons stated in the foregoing opinion the initial determination made by the Commissioner with respect to these claims is hereby sustained and affirmed. Benefits are denied.