

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

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Decision No.: UI-73-1696

Date: August 14, 1972

LABOR DISPUTE: 125.15

Determination of existence -
Continuance of employer-employee
relationship.

ISSUE

- (1) Did the claimant's unemployment result from a labor dispute in active progress?
- (2) Was the claimant discharged for misconduct in connection with her work?
- (3) Did the claimant voluntarily leave her last employment without good cause?
- (4) Has the claimant been available for work during the week or weeks for which she claimed benefits?

FINDINGS OF FACT

The claim filed by the above-named claimant, along with those of several other claimants, was referred to the Appeals Examiner for a decision pursuant to the provisions of § 60.1-61 of the Code of Virginia, inasmuch as it appeared that her unemployment had resulted from a labor dispute in active progress.

M. W. Manufacturers, Rocky Mount, Virginia, was the claimant's last employer where she had worked as a production line assembler. On Thursday, June 8, 1972, thirty-two of the employer's workers walked out of the plant and set up picket lines at approximately 8:30 a. m. By Friday afternoon, June 9, 1972, the number of strikers had increased to forty-nine. The claimant was one of the striking employees. The employees were not affiliated with any union and no union has been certified by the National Labor Relations Board as the bargaining agent for the employer's workers. The striking employees submitted a written list of grievances to the employer demanding improvement in pay procedures, working conditions, and treatment by supervisors. As each employee joined the picket line, the employer mailed a letter to her advising that beginning on Monday, June 12, 1972, permanent replacements would be hired for those persons who had not returned to work. The claimant did not return and, on Tuesday, June 13, 1973, the employer informed her by letter that her job had been filled by a permanent replacement.

The strike ended at 1:45 p. m., June 14, 1972. At that time a group of individuals who had been involved in the strike met with the employer and demanded that they be returned to work as a group. The employer indicated to them that the replaced employees no longer had a job, that they could fill out applications for work, and that they would be considered as job vacancies occurred. The claimant did not complete a work application at that time or later, and the employer did not offer her any employment.

The claimant filed a claim for unemployment compensation effective June 18, 1972, and continued her claim series through July 29, 1972. During this period she applied to employers each week for work. Through these efforts she found a job and started to work on July 25, 1972. During the claim week ending July 29, 1972, her earnings exceeded her weekly benefit amount of unemployment compensation.

OPINION

§ 60.1-52 (b) of the Virginia Unemployment Compensation Act provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that her total or partial unemployment was not due to a labor dispute in active progress.

There is no question that the claimant initially became unemployed as a result of a labor dispute in which she was involved. The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relationship of employer and employee. It is apparent that this claimant was involved in a dispute, which had been in active progress until June 14, 1972. The issue before the Appeals Examiner, however, is the claimant's status with regard to her unemployment during the weeks for which she claimed benefits. The claimant initiated her claim after her employer filled her job with a permanent replacement. When this happened, there was no job over which there could be a dispute, and nothing was left to negotiate. The employer by his actions had intervened and ended the dispute, as far as the claimant was concerned, by separating her from her job. (Underscoring Supplied) The question then arises as to whether the claimant should be disqualified from receiving benefits under the provisions of § 60.1-58 (b) of the Virginia Unemployment Compensation Act. This Section provides a disqualification if it is found a claimant was discharged for misconduct in connection with her work.

The only action perpetrated by the claimant which resulted in her work separation was to strike in concert with co-workers against her employer. To do this is a right guaranteed to her by the National Labor Relations Act. This claimant's action, therefore, in and of itself cannot be classified as misconduct.

The claimant's refusal to return to work by June 12, 1972, as instructed by the employer or suffer the loss of her job by replacement causes consideration to be given to whether or not she should be disqualified under the provisions of § 60.1-58 (a) of the Act. This Section provides a disqualification if it is found a claimant left work voluntarily without good cause.

The general concept of a strike is that employees who strike do not quit their employment, but that ordinarily the employer-employee relationship continues until one or the other of the parties acts to sever the relationship. A conclusion that an individual on strike left work voluntarily, when she refused to comply with her employer's instructions to return to work, would seriously impair the workers' right to strike. It is concluded that the claimant is not subject to a disqualification as a result of the separation from her job, when the employer permanently replaced her on June 13, 1972.

§ 60.1-52 (g) of the Virginia Unemployment Compensation Act provides in part that, in order to be eligible for benefits a claimant must be available for work.

Inasmuch as this claimant had been actively seeking employment and had found it through her own efforts, it is concluded that she was meeting the availability for work requirements of the Act. She, however, would not be eligible for benefits for the claim week ending July 29, 1972, since her earnings during that week exceeded her weekly benefit amount.

DECISION: It is held that the claimant had met the eligibility requirements of the Act from June 18, 1972, through July 22, 1972.

It also is held that the claimant had not met the eligibility requirements of the Act from July 23, 1972, through July 29, 1972, the claim weeks before the Appeals Examiner.

It further is held that no disqualification should be imposed in connection with the claimant's separation from her last employment.

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NOTE: Decision affirmed by the Commission in Decision No. 5791-C, dated October 12, 1972.