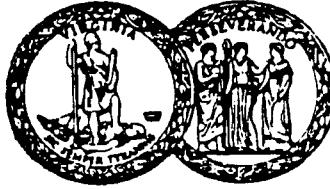


COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION



LABOR DISPUTE - 130  
Directly interested in

DECISION OF COMMISSION

In the Matter of

Robert A. Branch, Claimant  
[REDACTED]

Old Dominion Transit Manage-  
ment Company  
Richmond, Virginia

Employer

Date of Appeal

To Commission: November 22, 1976

Date of Hearing: March 10, 1977

Decision No.: 9069-C

Date of Decision: March 23, 1977

Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the claimant from the decision of the Appeals Examiner (No. UI-76-7058), dated November 16, 1976.

ISSUE

Was the claimant unemployed due to a labor dispute in active progress and did he come within the exceptions as set forth in Sections (1) and (2) as provided in § 60.1-52 (b) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT AND OPINION

The claimant appealed from a decision of the Appeals Examiner which held him ineligible for benefits because his unemployment during the weeks claimed was the result of a labor dispute in active progress.

The claimant is employed by Old Dominion Transit Management Company as the supervisor and only employee of the company's uniform cleaning and pressing department.

On October 1, 1976, the employer told the claimant that he should not return to work until notified because Local Union # 1220 of the Amalgamated Transit Union, the recognized bargaining agent for the company's bus operators and maintenance employees, was going on strike beginning October 4, 1976. The claimant did not participate in the dispute as he was not a union member and would not, necessarily, be

affected by any settlement of the dispute as he was not an employee covered by the collective bargaining agreement. In the past, the claimant's wages and working conditions have sometimes been affected by the settlement of a labor dispute but in other instances his wages and working conditions were not affected by such disputes.

The claimant initiated his claim for unemployment compensation effective October 17, 1976, and continued to claim benefits for five consecutive claim weeks. On November 30, 1976, the company informed the claimant that the dispute was settled and that he was to return to work that day. The claimant returned to work at an increase in pay of \$ .20 per hour. The company was not contractually obligated to give the claimant a pay increase, but it did so as a courtesy to promote good will among the employees.

Section 60.1-52 (b) of the Virginia Unemployment Compensation Act provides in part that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that:

(b) His total or partial unemployment is not due to a labor dispute in active progress or to shut-down or start-up operations caused by such dispute which exists (1) at the factory, establishment, or other premises (including a vessel) at which he is or was last employed, or (2) at a factory, establishment or other premises (including a vessel) either within or without this State, which (a) is owned or operated by the same employing unit which owns or operates the premises at which he is or was last employed and (b) supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or financing or directly interested in the labor dispute; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises (including a vessel) at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute."

The claimant's unemployment was the result of a labor dispute in active progress at the establishment where he was last employed. Therefore, he would be ineligible for benefits unless he comes within both exceptions set forth above. The second exception will be considered first as it may be most readily disposed of. The Commission finds as fact that since the claimant was the only uniform presser employed by the company, he was in a class of workers which was unique. Therefore, he did not belong to a grade or class of workers employed at the premises, any of whom were participating in the dispute.

The final issue to be resolved is whether or not the claimant was participating in, financing, or directly interested in the dispute. The Commission finds that the claimant was not a participant in the dispute as he wished to continue working notwithstanding the strike, but was not allowed to do so by the company. He, clearly, was not financing the dispute and he was not a member of the striking union.

This leaves the final possibility that the claimant was "directly interested in" the labor dispute. In Wicklund v. Commissioner of Unemployment Compensation, 18 Wash.2d 206, 138 P.2d 876, (1943), the claimant was not a member of the striking union, yet concessions granted by the employer inured to the benefit of all employees. The Court stated:

"The words 'directly interested in the labor dispute' are clearly limited in their application to those employees directly interested in furtherance of the dispute by participation and activity therein."

In the case presently under consideration, the claimant was not directly interested in the furtherance of the dispute and his wages and working conditions, though incidentally affected by the outcome of the strike, were not, of necessity, affected by its outcome. In 28 A.L.R. 2d 287 it is stated:

"The prevailing view is that a person is directly interested in a dispute when his wages, hours or conditions of work will be affected favorably or adversely by the outcome . . . ."

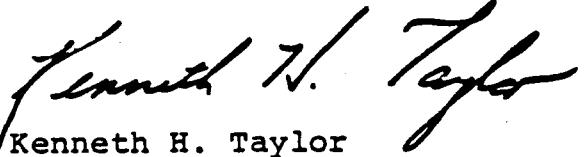
This comment points out that in order for an individual to be directly interested in a dispute, there must be a definite nexus between the outcome of the dispute and his wages and working conditions. Stated conversely, the claimant's wages and working conditions must, of necessity, be affected by the outcome of the dispute in order for there to be a finding that he is directly interested in the dispute. In the present case, the claimant's wages and working conditions were favorably affected by the outcome of the dispute, but since the employer was under no contractual obligation to extend any benefits to the claimant as a result of the strike, the benefits he realized were incidental to, and not of necessity generated by, the strike. He had testified that on other occasions his wages and working conditions had not been affected by the outcome of labor disputes, and in certain instances he had received raises when union members had not. The Commission finds, therefore, that the claimant was not "directly interested in" the dispute within the meaning of that term as it is used in the statute.

Although the claimant's unemployment during the weeks claimed was the result of a labor dispute in active progress, he would not be ineligible for benefits during that period by virtue of the labor dispute provision as he came within both exceptions to the provision.

DECISION

The decision of the Appeals Examiner which held the claimant ineligible for benefits because his unemployment was the result of a labor dispute in active progress is hereby reversed.

The Deputy is instructed to determine whether or not the claimant was meeting the availability for work requirements of the Act during the weeks claimed.

  
Kenneth H. Taylor  
Assistant Director of Appeals