

UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

DECISION OF COMMISSIONER

---o0o---

Decision No: 3184-C

Date: Jan. 28, 1958

LABOR DISPUTE - 35.15

At the factory, establishment,  
or other premises - Separate  
branch or department

---

This is a matter before the Commission on appeal by the claimants from the decision of the Examiner (No. S-5933, etc., - 5891) dated December 16, 1957.

ISSUE

Whether or not the claimants are subject to disqualification under Section 60-47 (d) of the Act.

FINDINGS OF FACT

This cause came on as an appeal by the claimants from a decision of the Appeals Examiner rendered December 16, 1957, awarding the claimants a waiting period but disqualifying each of them from the end of their waiting period, week through October 22, 1957. The disqualifications were imposed under the provisions of Section 60-47 (d) of the Virginia Unemployment Compensation Act which reads as follows:

"Section 60-47 (d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a stoppage of work which exists (1) because of a labor dispute at the factory, establishment, or other premises (including a vessel) at which he is or was last employed, or (2) because of a labor dispute 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 which caused the stoppage of work; and

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

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises. Provided further, that mere membership in a union, or the payment of regular dues to a bona fide labor organization, shall not alone constitute financing a labor dispute."

National Airlines, Inc., is engaged in the business of operating an air transportation service in interstate commerce with headquarters at Miami, Florida. The claimants initiating this appeal were employed at the Norfolk, Virginia, facility of the National Airlines and were separated on September 22, 1957. A representative of the National Airlines notified these employees that due to a wildcat strike in several cities outside of Virginia it would be necessary to cease operations until the dispute was settled.

National Airlines had an Agreement with the Air Line Agents Association, a bargaining agent representing employees employed as secretaries, stenographers, clerk-typists, office boys, clerks, IBM operators, IBM technicians, accounting personnel, operations personnel, cargo agents, ramp agents, sales agents, and porters. This agreement had terminated on April 1, 1957, and the National Airlines and the Association were unable to reach a new Agreement. The dispute was submitted to the National Mediation Board in accordance with the provisions of the Railway Labor Act in April 1957. The Mediation Board was unable to conciliate the differences and mediation was recessed in May 1957. The Mediation Board reopened the matter August 5, 1957, and had not released its jurisdiction at the time the dispute occurred.

On Wednesday, September 18, 1957, at 8 P. M. during a regular evening shift, certain employees, members of the Air Line Agents Association, and employed in the categories specified previously, walked off the job at the National Idlewild facility in New York. Supervisory employees from other cities were sent to fill these jobs. From September 20, 1957, through September 22, 1957, walk offs occurred in four other key cities served by National Airlines, to wit, Miami, Jacksonville, and Tampa, Florida, and New Orleans, Louisiana. Approximately 90% of National Airlines business either originates or terminates in one of the aforementioned cities. The company therefore found it impossible to continue its operations and its entire system was shut down. None of the Norfolk employees engaged in strike activity and all of them worked until the employer was forced to cease operations.

On October 22, 1957, a new contract between the National Airlines and the Air Line Agents Association was consummated. The company resumed operations on October 23, 1957, and all of the claimants returned to work on or near that date.

The employees involved in this appeal are classified as sales agents, operations personnel, and one porter. All of them are represented by the Association and are eligible for membership and all except one are members thereof. As a result of the new contract these claimants received a wage increase and certain other fringe benefits.

All of the individuals listed on the final page appended to this decision, entitled "claimants", are the parties to this appeal and the findings and holdings of this decision are equally applicable to each of them.

### OPINION

There is a mandatory reference under Section 60-49 of the Unemployment Compensation Act of Virginia requiring any deputy to promptly transmit his full findings of fact in any claim to the Commission where the payment or denial of benefits will be determined under the provisions of Section 60-47 (d) of the Act. The purpose of this mandatory reference is obvious, since as in the instant case, Section 60-47 (d) often involves an out-of-state employer and the impact of the determination often affects claimants in different localities, served by different local offices and deputies of the Unemployment Compensation Commission.

The initial reference of the dispute and work stoppage involving National Airlines employees came from the local office in Alexandria, Virginia, and involved certain claimants who had been employed by National Airlines at their Washington, D. C. facility. In addition to the facts which the deputy at the Alexandria office was able to supply, the Commission made inquiry of both National Airlines and the Air Line Agents Association as to the details of the dispute and rendered an initial determination which was transmitted to the deputy at Alexandria; and, since subsequent claims involving the same dispute had been filed at Arlington, Richmond, Norfolk and Portsmouth, Virginia, the deputies in those cities were forwarded similar initial determinations. This appeal involves only claimants from the last two mentioned cities.

An observation concerning the record in this matter seems pertinent at this juncture. The composite record, which this Commission has thoroughly reviewed, is comprised of correspondence with the employer, whose main offices are located in Miami, Florida, and with the Air Line Agents Association whose main offices are located in Chicago, Illinois; a transcript of the testimony adduced by the Appeals Examiner at the hearing held in Norfolk, Virginia, on Wednesday, November 13, 1957; and, an affidavit filed with the Commission by the National Airlines, Inc., and various documents submitted by the parties as exhibits.

The record, like any compiled in an administrative proceedings of this nature, necessarily contains considerable hearsay testimony and documentary evidence which would not be admissible if this Commission were bound by the rules of admissibility limiting judicial proceedings; but for the essential facts necessary to the determination of the issues presented here the record does contain evidence of sufficient probative value to be understood and met by the parties. This satisfies the criterion which this Commission has established and adhered to under the relaxed procedures which it has been authorized to adopt under Section 60-53 of the Act.

The burden of proof in this case rests with the individuals claiming unemployment compensation and that burden never shifts.

An analysis of the conclusions which must be drawn if these claims are to be paid calls for careful examination of Section 60-47 (d) of the Act.

First: It must be determined whether the unemployment of these claimants is due to a stoppage of work which exists because of a labor dispute either, (a) at the factory or establishment where these claimants were last employed, or, (b) at a factory or establishment, either within or without this State, which is owned or operated by the same employing unit owning or operating the establishment where these claimants were last employed. If the finding indicates that the dispute exists at some other establishment than that at which they were last employed and such other establishment is owned or operated by the same employing unit for which these claimants work, it must further be determined whether the establishment at which the dispute exists furnishes supplies, materials or services necessary to the continued and usual operation of the premises where the claimants were last employed.

Second: If the unemployment of the claimants is determined to exist for either of the above reasons then it must be shown to the satisfaction of the Commission that:

- (a) These claimants were not participating in or financing or directly interested in the labor dispute causing the stoppage of work, and, (b) They do not belong to a grade or class of workers, some of whom were participating in or financing or directly interested in the dispute.

Under the definitions consistently accorded the terms "stoppage of work" and "labor dispute" by this Commission (and approved by the vast majority of jurisdictions administering similarly worded statutes) these claimants were unemployed due to a stoppage of work existing because of a labor dispute.

Apparently the dispute erupted when certain employees at Idlewild walked off their jobs for alleged activity on the part of their employer in having private detectives shadow them during "off" hours. This unauthorized walk-out did not produce a work stoppage since the employer was temporarily able to replace these persons with supervisory employees. However, when these individuals requested reinstatement and the company denied same, there was a general walk-out of the office and station employees in Miami, Tampa, Jacksonville, New York and New Orleans. The strained relations between National Airlines and its office and station employees, which had been fomenting since April and had even at one point reached a strike vote, had now broken into open remonstrance. The cessation of work in these cities did cause a stoppage of work. The term "labor dispute" is a comprehensive term covering any controversy where conflicting views exist between an employer and his employees. It generally arises out of wages, hours, or conditions affecting the working conditions, but it is not necessarily confined to these causes. While it is true that disputes in the labor field are often characterized by actions of the parties described as "strikes", "walk-outs" or "lockouts" these acts themselves are not the dispute, but merely the means taken by the disputants to gain their point. The fact that the actions taken by the employees in the particular dispute under consideration were "unauthorized" has no bearing. There is no provision - nor inference - in the Act that a labor dispute cannot exist unless the actions of the parties are authorized, or legal, or in accordance with a collective bargaining agreement. Neither is there any re-

quirement that a union, or a specified number of employees be involved, or directly interested, in the matter in order for the conflict to be a labor dispute. It likewise makes no difference, for unemployment compensation purposes, which of the disputants is in error. As the Appeals Examiner noted in his decision, this Commission is not concerned with an inquiry into, nor a determination of, the merits of the parties to the labor dispute - but only with the determination of its existence or non-existence.

The walk-outs by the employees at the key cities served by National Airlines was sufficient, even accepting the claimants' version of the reasons therefor, to support the finding that a labor dispute did exist.

Did this labor dispute result in a "stoppage of work"? This Commission is of the opinion that it did. (The term "stoppage of work" has consistently been held to mean a cessation or substantial curtailment of the normal operations of an employer. It does not refer to the labor of any particular individual or claimant.) The fact that a cessation of work in the key cities where the walk-outs occurred rendered further operations in those cities, and the stops in-between, impractical if not impossible and that this employer did in fact close down its operations is uncontroverted. The operation and services afforded at these key cities were clearly "necessary to the continued and usual operation of the premises" at which the claimants on this appeal were last employed.

The first inquiry under Section 60-47 (d) must therefore be answered affirmatively, that is, that the claimants were unemployed due to a stoppage of work which existed because of a labor dispute at the premises owned or operated by their employer which supplied services necessary to the continued and usual operation of the premises where they last worked.

It therefore becomes essential to pursue the second general inquiry raised by Section 60-47 (d), namely were these claimants participating in or financing or directly interested in the dispute, or did they belong to a grade or class of workers some of whom were participating in or financing or directly interested in the dispute immediately before the commencement of the stoppage. All of these inquiries being in the alternative, an affirmative finding as to any one will suffice to disqualify these claimants.

There is no suggestion in the record that any of these claimants either financed or personally participated in the labor dispute causing the stoppage of work and this Commission so finds.

Were these claimants "directly interested" in the dispute? This Commission, in accord with the great weight of authority, has consistently expressed the view 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. Participation in a dispute and interest in a dispute are not synonymous. Participation connotes personal activity, but a direct interest may exist whether or not the individual is among those actively conducting the dispute - or even when the individual is not in sympathy with the purposes of the dispute. See, Martineau v. Director of Division of Employment Security, (Mass.), 106 N. E. (2d) 420.

The labor dispute in the instant case terminated on October 22, 1957, when the National Airlines and the Air Line Agents Association finally signed

two agreements. The first agreement was an amendment to a previous contract between these parties which had been effective from September 1, 1955; the second agreement concerned dismissal of a number of lawsuits and the release of claims between the parties. Under the provisions of the amendment to the prior contract certain employees of National Airlines, including all of the claimants were granted wage increases and other fringe benefits relating to their conditions of work. With the signing of this amendment, a new contract was realized which according to its terms is to continue through October 22, 1960. Directly following this action the labor dispute dissolved, work was resumed, and the stoppage ceased to exist. In the face of these facts this Commission must conclude that the claimants here on appeal were directly interested in the dispute in that their wages and conditions of work were to be, and were in fact, affected by its outcome.

At this point the imposition of the disqualification of Section 60-47 (d) is inescapable, but the import of this matter warrants a complete examination of every aspect of Section 60-47 (d). In any event there remains but one further inquiry and that concerns the "grade or class" of workers to which these claimants belong and a correlary finding of whether any persons of their same grade or class were participating in or financing or directly interested in the dispute immediately prior to the stoppage of work.

Once again the term "grade or class" presents the task of defining a phrase which is undefined in the Act, and once again its interpretation must be resolved by reference to the meaning repeatedly attributed to that term in the numerous cases involving its application which have heretofore been determined by this Commission and the courts of other jurisdictions where the same statutory term has been defined. In doing so this Commission has endeavored to be mindful of the cardinal rule of statutory construction requiring that words be given their ordinary meaning where possible unless the context of the legislation clearly requires otherwise. In keeping with this rule the following are pertinent definitions of "class".

"Webster's Dictionary:

A group of individuals ranked together as possessing common characteristics or as having the same status . . ."

"Black's Law Dictionary:

. . . a group of persons or things, taken collectively, having certain qualities in common, and constituting a unit for certain purposes . . ."

The word "grade" has a narrower connotation than the word "class" and is generally used to denote a level, rank, or relative portion of employees in a common service. Therefore a class of workers could include several grades. See, 18 A "Words and Phrases" (Permanent Ed.) pp. 331; 338.

The claimants in the instant case fall into three separate job classifications, but these job classifications are merely descriptive of the particular type of services rendered by the individuals in those classifications. A grade or class of workers may, and usually does, include individuals in numerous job classifications. To limit the construction of the term grade or

class to a single job classification, unless those comprising that particular job classification have segregated and allied themselves for some purpose, would result in obvious injustice. The framers of the Act must be presumed to have intended a reasonable basis for subdivision which would not arbitrarily deny benefits to one group and permit compensation of another. The services performed by all of the claimants were interrelated and although there may have been some difference in the particular duties they were called upon to perform there is no justification for saying they were different grades or classes of workers. All of these claimants were in job classifications which had bound together under the representation of the Air Line Agents Association. It was, and is, the bargaining unit for all of the combined classifications into which these claimants fall; and, through it they are commonly identifiable so far as their interest and purpose in this particular dispute is concerned.

National Airlines has other grades and classes of workers obviously distinguishable from these office and station employees. These are the mechanics, pilots and communications personnel. Each of these particular groups, and there may be others, is represented by a different bargaining agent. Those persons falling in the job classifications which make up any of these last mentioned groups are in no way identifiable with this particular dispute. Each of these groups clearly constitute a separate grade or class of worker, and the individuals falling into these latter mentioned grades and classes were properly held free of disqualification under Section 60-47 (d). On the other hand the claimants in this appeal were all office and station employees who had collectively allied themselves for bargaining purposes and had for such purposes set themselves apart from other grades or classes of workers employed by National. The principles inherent in the dispute arose with their grade and class and the issues of the controversy were to affect them alone when ultimately decided - and this truth is not altered even though the claimants here in Virginia did not actually participate in the activity through which the dispute was pursued. Accordingly, this Commission concludes that the claimants in this case do belong to a grade or class of workers of which, immediately before the commencement of the stoppage there were members employed at the premises where the stoppage occurred, some of whom were participating in or financing or directly interested in the dispute.

Where a conflict arises between an employer and his employees and it reaches such proportions as to occasion a stoppage of work, Section 60-47 (d) was designed to deny succor to any person identifiable with the dispute or with those immediately involved in it without regard to the merits of the contentions of the parties. The importance of the premise that unemployment compensation must in no instance be available for the sustenance of persons even remotely connected with such a controversy dictated the sweeping language of Section 60-47 (d). Although at times its provisions may appear to impose a hardship upon some, the philosophy of its purpose is essential to a preservation of the ideals for which the Act was intended.

#### DECISION

For the reasons stated the decision of the Appeals Examiner awarding these claimants a waiting period but disqualifying each of them from the end of their waiting period through October 22, 1957, under Section 60-47 (d) of the Act was proper and the same is hereby sustained and affirmed.