



VIRGINIA EMPLOYMENT COMMISSION
DECISION OF APPEALS EXAMINER

NOTICE: This decision becomes final unless appealed in writing by any party named setting forth the grounds upon which the appeal is sought either at the office where the claim was filed or by mail to the Appeals Section, Virginia Employment Commission, P. O. Box 1358 Richmond, Virginia 23211, not later than midnight of

October 14, 1982

In the matter of:

Claimant

Philip Hedrick, et al

Employer

R. P. Thomas Trucking Company, Inc.
PO Box 5268
Martinsville, VA 24112

Appellant: Employer Claimant

Claimant's S.S. No.: See Appendix

Decision No.: UI-82-9357

Date Deputy's Determination: - - - - -

Date Referred or Appealed: August 25, 1982

Date of Hearing: September 15, 1982

Place of Hearing: Collinsville, VA

Date of Decision: September 16, 1982

Date of Mailing: September 23, 1982

APPEARANCES: Employer Representative, Union Representative, Twenty Claimants

STATUTORY PROVISION(S) & POINT(S) AT ISSUE: Code of Virginia - Section 60.1-52(b), Was the claimants' unemployment a result of a labor dispute in active progress or to shut-down or start-up operations caused by such a dispute and, if so, do the claimants come within the exception set forth in this Section of the Code?

FINDINGS OF FACT: The claimants' claims for benefits were referred to the Chief Appeals Examiner pursuant to the provisions of Section 60.1-61 inasmuch as it appears that their unemployment may have been the result of a labor dispute in active progress.

The claimants were all employed by the R. P. Thomas Trucking Company, Martinsville, Virginia through May 15, 1982, as over-the-road drivers, local drivers, warehousemen, checkers, or maintenance workers. Their work was covered under a bargaining agreement between the company and Local Number 22 of the Teamsters Union.

The contract between the company and the union expired as of May 15, 1982, and negotiations to reach a new one had not made progress. Union membership voted not to continue to work but to call a strike as of the date the contract expired and picket lines were set up at that time. The employer

virtually shut down all of its operations and the strike continued through July 31, 1982, when a new contract was ratified to be effective the following day.

While the strike was in progress, one of the employer's major shippers made other arrangements with other trucking companies to have its goods taken to market. When the employer returned to operations, the loss of this business meant that not all the workers could be called back immediately. Because of this, the employer was unable to call more than half of the workers back by the time of the hearing.

All of the claimants who testified indicated that they were union members and that they had gone out on strike. The question was raised as to those individuals who may have voted not to go out on strike and who still could not work during the time it was going on. It was the employer's contention that the loss of business causing the lingering unemployment at the time of the hearing was directly due to the labor dispute and, therefore, comprised a "start-up operation". The employer did indicate that freight which was stuck at the terminal during the dispute was moved out within one week after the contract was ratified. It was the union representative's contention that such freight was moved in only one day, namely, Sunday, August 1, 1982.

OPINION: Section 60.1-52 (b) of the Virginia Unemployment Compensation Act provides:

"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 shutdown 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."

In the present case, the facts clearly indicate that a labor dispute was in active progress at the terminal of the R. P. Thomas Trucking Company, Martinsville, Virginia, between May 15, 1982, and July 31, 1982, when the new contract was ratified. It appears that all of the claimants were either actively participating in that dispute or directly interested in it, even if they did not participate, inasmuch as they were members of the same grade or class of workers directly affected by it. It is, therefore, apparent that during the pendency of the dispute, none of the claimants can be declared eligible for benefits for any weeks claimed.

The only question then remaining is whether or not the claimants' unemployment after the ratification of the new contract was a result of start-up operations caused by the labor dispute. While the employer feels that a loss of business caused by the dispute must be regained before the employer can be considered to have fully re-started, the Appeals Examiner feels that this is far too broad an interpretation of the term "start-up operations". It does appear that such operations can only be limited to those operations necessary to get the employer's terminal in to shape to renew its business without regards to whether or not there is business to be performed. Such operations can be extended to performing necessary maintenance or repairs to damage that occurred during the labor dispute. Inasmuch as the evidence indicated that regular business operations began August 1, 1982, the Appeals Examiner feels that the claimants could not be declared ineligible for benefits under this Section of the Act for any week after July 31, 1982, because of "start-up" operations. (Underscoring supplied)

DECISION: It is held that the claimants' unemployment was the result of a labor dispute in active progress in which they were actively participating or directly interested for any weeks claimed between May 15, 1982, to July 31, 1982.

It is held that the claimants' unemployment, effective August 1, 1982, was not the result of a labor dispute in active progress or to start-up operations and, therefore, the Deputy is instructed to determine their eligibility for benefits for any weeks claimed after that date under any other Section of the Act.

Charles A. Young III
Charles A. Young, III
Appeals Examiner

NOTE: Decision affirmed by the Commission in Decision No. 19687-C, dated November 4, 1982.