



DECISION OF COMMISSION

In the Matter of

Michael W. Rasnake  
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Nacirema Operating Company,  
Incorporated  
Portsmouth, Virginia

Date of Appeal  
To Commission: August 24, 1983  
Date of Hearing: August 16, 1983  
Place: RICHMOND, VIRGINIA  
Decision No.: 19439-C  
Date of Decision: September 2, 1983  
Date of Mailing: September 23, 1983  
Final Date to File Appeal  
with Circuit Court: October 13, 1983

This is a matter before the Commission on appeal by the claimant from the decision of the Appeals Examiner (No. UI-82-7880), mailed August 23, 1982.

APPEARANCES

Virginia Diamond, Attorney for Claimant; Robert Scott, Attorney for Claimant; F. Nash Bilisoly, Attorney for Employer; Charles R. Chambers, Employer Representative; J. Scott Robinson, Attorney for Employer

ISSUE

Did the claimant leave his employment voluntarily without good cause as provided in Section 60.1-58(a) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The employer is one of several companies which operate terminals in the port of Hampton Roads. Ships are loaded and unloaded by "freight handlers" and "checkers" with the freight handlers responsible for the actual labor and the checkers doing the paperwork.

Since the workload is contingent upon the arrival and departure of ships from the port, the demand for labor fluctuates constantly. In order to supply labor for the port, a unique relationship has evolved between the workers and the various employers. The multi-employer unit has chosen to bargain as a group with local unions of the International Longshoreman's Association representing freight handlers and checkers.

The contract presently in effect "recognizes" a seniority system which has evolved since 1969. The contract provides that the union is responsible for implementing the seniority system. Under this system, each worker is assigned a classification, A, B, C, D, or E depending upon his length of employment at the port. As a general rule, those workers with greater seniority receive preferential treatment in obtaining work assignments from the "open pool" of workers maintained by the local union.

Under the present contract, the workers are, technically, only hired for a day at a time, as the workload requires. In reality, each terminal operator has a list of regular "gangs" (of freight handlers), and a list of regular checkers, called the "permanent board." These are workers the terminal operators have consistently employed over the years for the sake of continuity in their operation. The employer posts a list of regular workers they will be needing the next day--the workers crossed off the list by the terminal operators revert to the pool of workers and are referred to other jobs by the union according to seniority as such work becomes available. If the regular workers at a particular terminal are insufficient to meet the workload, the union receives a request from the terminal operator for more men and it refers other workers according to seniority from the pool. (Underscoring supplied)

The claimant, a checker, had worked for Nacirema on the employer's permanent board at the Portsmouth Marine Terminal from August of 1980, until May 20, 1982. After May 20, 1982, there was no work for the claimant at the Portsmouth Terminal so he resigned from the employer's permanent board in hopes of getting work at the Norfolk Naval Base. He is at the time of filing his claim unemployed due to lack of work.

#### OPINION

Section 60.1-58(a) of the Virginia Unemployment Compensation Act provides a disqualification for benefits if the Commission finds that an individual has left work voluntarily without good cause.

An amendment to the above statute enacted by the 1983 Virginia General Assembly provides:

"An individual shall not be deemed to have voluntarily quit solely because the separation was in accordance with a seniority-based policy."

Although this amendment would not be controlling in deciding the case presently under consideration, as it was not effective until July 1, 1983, (after the filing of this claim), it offers some guidance in construing the above statute. It clearly reflects the intention of the legislature to prevent an individual from being disqualified from unemployment benefits merely because he is unemployed due to the operation of a seniority-based system.

In urging the Commission to disqualify the claimant for "voluntarily leaving" his work, counsel for the employer cites Clarence Babb et al. v. Maritime Terminals, Inc., Commission Decision #12198-C (decided August 17, 1979). The facts as found by the Commission in Babb, were that the union furnished workers on a daily basis to the terminal operators who had no control over which workers were being referred. Clarence Babb and the other claimants were "displaced from their employment with Maritime Terminals by operation of the union's seniority system when some of the more senior members of the union were rotated from other jobs." (Emphasis added)

These two facts, crucial to the Babb decision, are not present in the record of this particular case. The record developed in this case shows that the employer, and not the union, determines which workers it will put on the regular list--with the union only supplying any deficiencies from the open pool. This record also reflects no displacement or "bumping" of the claimant by other union member with greater seniority from another job because of lack of work at that second work location. Unlike the claimants in Babb, the claimant in this case was unemployed solely because of a lack of work at his customary work location. The employer in the Babb case, Maritime Terminals, argued that their employment level had not decreased from one day to the next, hence it would be unconscionable to charge them with a claim for unemployment compensation generated by a bumping of one of their employees by another union member laid off at another job.

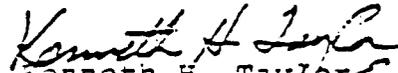
Accordingly, the Commission is of the opinion that the holding in Babb should be limited to the facts of that particular case; it would not apply to the case presently under consideration.

Since the Commission finds that the claimant was un-employed because of lack of work, it would be inappropriate to impose a disqualification provided by Section 60.1-58(a) of the Code of Virginia.

DECISION

The decision of the Appeals Examiner which disqualified the claimant for benefits for having left work voluntarily without good cause is hereby reversed. It is held that no disqualification should be imposed with respect to the claimant's separation from his last employment.

The Claims Deputy is directed to determine the claimant's eligibility for benefits during the week or weeks claimed.

  
Kenneth H. Taylor  
Special Examiner

Note: Affirmed by Circuit Court of the City of Portsmouth, Chancery No. C-83-583, dated August 20, 1984.