

VIRGINIA EMPLOYMENT COMMISSION

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LABOR DISPUTE - 245  
In Active Progress.

Decision of Commission

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|----------------------|---|---------------------------------|
| In the Matter of     | § | Appeal from Examiner            |
|                      | § |                                 |
| Feba C. Bryan, et al | § | Date of Appeal: May 27, 1971    |
|                      | § |                                 |
| (See Appendix)       | § | Date of Hearing: July 1, 1971   |
|                      | § |                                 |
| Dean Foods Company   | § | Decision No. : 5399-C           |
| Richmond, Virginia   | § |                                 |
|                      | § | Date of Decision: July 22, 1971 |
| Employer             | § |                                 |
|                      | § | Place: Richmond, Virginia       |

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This is a matter before the Commission on appeal by the employer from the decision of the Appeals Examiner (No. UI-71-1070) dated May 17, 1971.

ISSUE

Are the claimants unemployed due to a labor dispute in active progress or to shutdown or start-up operations caused by such dispute?

FINDINGS OF FACT

The findings of fact by the Appeals Examiner are adopted by the Commission.

OPINION

Section 60.1-52 of the Code of Virginia 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 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."

Once a labor dispute commences, it remains in "active progress" until it is finally settled, terminated, or completely abandoned. It is not necessary, as the employer contends, that the issues be settled. A labor dispute can be abandoned by the employees, which the Union contends was done here. The mere fact, however, that picket lines are withdrawn or even that a strike is terminated does not per se mean that the labor dispute is abandoned, because there are other methods of continuing the labor dispute. In this case, however, there is no evidence that the union was taking any action, subsequent to March 26, 1971, to continue the labor dispute. It did not, however, take sufficient steps to make it clear that the labor dispute had been abandoned. (Underscoring supplied)

The question arises as to what the employees must do to properly and completely terminate a labor dispute by abandoning it. The Commission is of the opinion that for a labor dispute to be abandoned, the employees, personally or through properly designated and authorized representatives, must not only notify the employer of the abandonment, but must make an unconditional offer to return to work with the employer. Until this is done, it cannot be said that their unemployment is not due to a labor dispute in active progress. It is possible, of course, that the employer may clearly indicate at the time the union attempts to abandon the labor dispute that the employees will not be rehired, thereby making the requirement of offering to return to work unnecessary. This, however, is not the case with the present claimants. The only offer to return to work by these claimants was made on February 12, 1971, which was conditioned upon the employer's allowing all the striking employees to return. The fact that the employer had no work available on February 12, 1971, did not mean that it still did not on March 26, 1971; particularly when the employer had agreed to accept the striking employees as soon as vacancies occurred. (Underscoring supplied)

The removal of the picket lines on March 26, 1971, did not in itself terminate the labor dispute. Even though the Federal mediator was notified that the strike was being abandoned, there was not, in the opinion of the Commission, a sufficient abandonment of the labor dispute.

Section 60.1-52 of the Code of Virginia further provides 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 evidence clearly shows that these claimants participated in the strike and manned the picket lines while the strike was in effect. Therefore, they clearly did not meet the exceptions to the labor dispute provision. Since the labor dispute was still in active progress, they cannot be eligible for benefits for the weeks in question.

The Commission, therefore, is of the opinion that for the weeks in question these claimants were not unemployed due to lack of work, but due to a labor dispute in active progress.

#### DECISION

The decision of the Appeals Examiner that these claimants' unemployment was not due to a labor dispute in active progress or to start-up operations caused by such dispute is hereby reversed.



B. Redwood Council  
Assistant Commissioner