

VIRGINIA EMPLOYMENT COMMISSION

DECISION OF APPEALS EXAMINER

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Decision No.: UI-71-2347

Date: November 18, 1971

LABOR DISPUTE: 445.2

Termination of labor dispute -
Discharge or replacement of
workers.

ISSUES

- (1) Is the claimant unemployed due to a labor dispute in active progress?
- (2) Did the claimant voluntarily leave her last employment without good cause?
- (3) Has the claimant been available for work during the week or weeks for which she claims benefits?

FINDINGS OF FACT

The claim filed by this claimant was referred to the Appeals Examiner pursuant to the provisions of Section 60.1-61 of the Code of Virginia.

Dean Foods Company, Richmond, Virginia, was the claimant's last employer for whom she had worked through July 14, 1970.

She was a member of the Amalgamated Meat Cutters & Butchers Workers of North America, AFL-CIO, Union Local 272. This union had been certified by the National Labor Relations Board as the bargaining agent for the employer's workers. Efforts to negotiate an employment contractual agreement between the union and the employer were unsuccessful, and the union members did not report for work on July 15, 1970. A picket line was formed and manned by union members including the claimant. On July 15, 1970, the employer mailed registered letters to all striking members advising that if they did not report for work by July 20, 1970, it would be assumed they had voluntarily left their jobs and they would be replaced. None of the union members, including the claimant, offered to return to work in response to the letter.

The employer hired replacements for all the strikers and continued to operate his plant. Several negotiating meetings were held without resolution of the dispute. The last meeting occurred on February 12, 1971. On March 27, 1971, the union withdrew the pickets and advised its members that the dispute was being abandoned. The members were

told that those who could not find work elsewhere should file for unemployment compensation. The union also informed the federal mediator, who had been present during the negotiations that the dispute was being abandoned. The union did not inform the employer directly that efforts to resolve the dispute were being abandoned because recent communications with the employer had been through the federal mediator and believed that advising him was sufficient. Although the employer knew the pickets were withdrawn after March 26, 1971, he received no official word that the union was abandoning the strike. Most of the union members including the claimant did not ask the employer to be returned to their jobs because the employer had advised, at the February 12, 1971 meeting, that there were no job vacancies for them.

The claimant, along with others, initiated a claim for unemployment compensation on March 28, 1971. The Commission in its Decision No. 5399-C, dated July 22, 1971, held that these claimant's were ineligible for benefits because the labor dispute was still in active progress. In commenting upon this issue, the Commission stated that:

"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."

At a hearing held on May 13, 1971, the president of the union local testified, in the presence of employer representatives, that the strike was officially abandoned on March 26, 1971, and that he did not consider a state of dispute to exist on that date because:

"We are not meeting."

He further stated, in answer to the question as to whether a dispute was then existing between the union and the employer, "Only on the terms of hoping that they would be benefited by unemployment."

On September 27, 1971, the claimant in this case went to the employer's establishment and filed a written application for employment. The employer did not have any job vacancies and she was not offered any employment. The claimant then reopened her claim for

unemployment compensation and claimed benefits through October 23, 1971. During this period she personally applied to several employers each week for work.

The employer feels that the labor dispute is still in active progress, and the claimant, therefore, is ineligible for benefits because the union has no contractual agreement with the employer and the union has not taken action to decertify itself as the bargaining agent with the company for its employees.

OPINION

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

In Decision No. 5399-C, the Commission enumerated two criteria which must exist to show that a labor dispute had ended through abandonment. One requirement is that the employer must be notified of the abandonment. While neither the union nor the claimant had taken deliberate or definite steps until the May 13, 1971, hearing to inform the employer that the labor dispute was being abandoned, the president of union local did at that time effectively show that was the intention.

The claimant in this case complied with the second requirement of making an unconditional offer to return to work, when she filed a written job application with the employer on September 27, 1971.

The employer's contention that a labor dispute in active progress still exists, because there is no agreement and the union has not filed for decertification as the bargaining agent, does not give due consideration to all the facts in the case. To hold that the dispute is active merely on the basis that the union remains in a position to renew its demands and active efforts, if and when it may deem the time and circumstances to be appropriate to its interests, would be basing a present conclusion on anticipated acts or conditions which may or may not develop. If and when new demands be made or old demands renewed, then, and only then, could it be held that a labor dispute was in active progress or actually existed. The picket lines have been withdrawn; negotiations have been abandoned by the union, which initiated the dispute; and all striking employees, including the claimant, have abandoned their actions and efforts to force the employer to negotiate matters involved in the dispute. The employer has been informed of these matters and the claimant has made a formal application to return to her job. There is nothing more that the claimant could do or stop doing to show that the labor dispute and her participation in it no longer exists. It is concluded that the claimant's unemployment since September 27, 1971, has not been due to a labor dispute in active progress or to shutdown or start-up operations caused by such dispute. (Underscoring Supplied.)

While the employer was justified in permanently replacing the claimant when she did not make an unconditional offer to return to work in response to his July 15, 1970 letter, this action did not sever the employer-employee relationship. This relationship continued as long as the dispute remained in active progress and ended on September 27, 1971, when the employer was not in a position to accept her unconditional offer to return to work. Inasmuch as the claimant has made application to return to work but was not rehired by the employer, her continued unemployment was not voluntary on her part and she, therefore, is not subject to the disqualifying provisions of Section 60.1-58 (a) of the Code of Virginia.

It further is the opinion of the Appeals Examiner that the claimant was meeting the eligibility requirements of Section 60.1-52 (g) of the Code during the four claim weeks ending October 23, 1971.

DECISION

It is held that the claimant's unemployment from September 27, 1971, is not due to a labor dispute in active progress or to shut-down or start-up operations caused by such dispute.

It also is held that the claimant was meeting the eligibility requirements of the Act from September 26, 1971, through October 23, 1971, the claim weeks before the Appeals Examiner.

It further is held that no disqualification should be imposed in connection with the claimant's separation from her last employment.

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NOTE: Decision affirmed by the Commission in Decision No. 5538-C, dated December 20, 1971.