DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032

STATE OF MARYLAND
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Governor

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Appeals Counsel

—DECISION—

DECISION NO.: 437-BH-84

DATE: April 26, 1984

CLAIMANT: Ira Clugston, et. al .

APPEAL NO.: Ben. Det. 408A

S.S.NO.:

EMPLOYER: R M R corporation

LO. NO.: 13

APPELLANT: CLAIMANTS

ISSUE Whether the claimant's unemployment is due to a stoppage of work, other than a lockout, which exists because of a labor dispute within the meaning of §6(e) of the law.

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT May 26, 1984

—APPEARANCE—

FOR THE CLAIMANT

Ilene Rothwell - Claimant
Dorothy McNalt - Claimant
Victoria Hedian - Attorney

FOR THE EMPLOYER

Joseph Pokempener - Attorney
Robert Hill - Personnel Manager

EVIDENCE CONSIDERED

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Employment & Training's documents in the appeal file.

FINDINGS OF FACT

The individual claimants, were members of local 2368 of the International Brotherhood of Electrical Workers, a labor union. However, they did not participate in any decision to engage in a labor dispute with the employer herein in connection with the labor dispute which occurred on or about August 16, 1983.

All of these claimants had been laid off from work by the employer herein months before August 16, 1983, by reason of a lack of work. While the claimants were in lay-off status, the contract under which they had previously been employed, before lay off, expired by its terms on August 15, 1983. As a result, on August 16, 1983, there was a stoppage of work, other than a lockout, because of a labor dispute between this employer and International Brotherhood of Electrical Workers at the premises from which the claimants had been laid off. Work became available as a result of the stoppage of work. On the same date that the stoppage of work began, the employer offered such available work to these claimants who refused to accept it because of the labor dispute.

The Special Examiner held that the claimants were disqualified for benefits because their refusal to cross the picket line in response to the call to return to work constituted participation in the labor dispute within the meaning of §6(e) of the law. The claimants appealed.

CONCLUSIONS OF LAW

Section 6(e) of the Maryland Unemployment Insurance Law provides that a claimant for unemployment insurance benefits shall be disqualified for them:

> For any week with respect to which the Executive Director finds that his unemployment is due to a stoppage of work, other than a lockout, which exists because of a labor dispute at the factory, establishment, or other 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 Executive Director 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 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.

Section 6(d) of the law provides a disqualification for benefits where the claimant fails, without good cause, to apply for or accept available, suitable work.

Section 6(d)(2) further provides as follows:

> Notwithstanding any other provisions of this article, no work shall be deemed suitable and benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization. [Emphasis supplied.]

It is apparent that these provisions must be read pari materia. We have been unable to find authority from the Maryland Courts reconciling these provisions however, Davis v. Hix, 140 W. Va. 398, 84 S.E.2d 404 (1954), is persuasive.

There, the United Mine Workers of America engaged in an industry-wide stoppage of work in all coal mines. Work stopped completely. A group of claimants who were members of that union but who had been unemployed prior to the labor dispute sought unemployment insurance benefits. Prior to the labor dispute, some of them had quit their jobs; some had been fired for misconduct , and others had been laid-off because of a lack of work. They refused to accept work when offered where they had. theretofore been employed because of the labor dispute at those premises. The Supreme Court of Appeals of West Virginia examined provisions in the West Virginia unemployment insurance statute very similar to the provisions of our statute set forth above.

The Court held that where the miners became unemployed for causes other than a labor dispute, and thereafter they refused to accept employment where a labor dispute was causing the work stoppage, they were not disqualified for unemployment benefits under a statutory provision that an individual shall be disqualified for benefits if his unemployment is due to a stoppage of work because of a labor dispute if one was participating, financing, or directly interested in the dispute and belonged to the grade or class of workers who were participating, financing or directly interested in the dispute.

Moreover, the Court held that where the employer-employee relationship had been severed prior to the beginning of the work stoppage resulting from the labor dispute at the premises where an applicant for unemployment benefits was last employed, the applicant does not have the burden of affirmatively showing that he is not disqualified for benefits for the week in which his unemployment is due to a work stoppage existing because of a labor dispute at the premises at which he was last employed unless he was not participating, financing or directly interested in such dispute, and did not belong to the grade or class of workers who were participating, financing or directly interested in the labor dispute which resulted in the stoppage of work.

Furthermore , the Court continued, where an individual has no employment relationship with, or attachment to, any employer, any work which may be offered to him or her is "new work" 'within the meaning of the statutory provision that no work shall be deemed suitable and unemployment benefits shall not be denied to an individual for refusing to accept "new work" if the position offered is vacant due to a labor dispute. The Court stated that the phrase "new work" does not envisage only employment in an industry in which the unemployed individual has not theretofore been employed.

The Court went on to hold that membership in a labor union by an individual who has no employment relationship with the employer, without more, does not ipso facto disqualify him or her under the labor dispute provision

Finally, the Court held that the work offered to the claimants was not "suitable" under the relevant statutory provision.

In the case sub judice, the claimants' unemployment was due directly to a lack of work before the labor dispute, and not to a stoppage of work because of the labor dispute. See, Tucker v. American Smelting & Refining Co. , 189 Md. 250, 55 A.2d 692, 695 (1947). Therefore, they are not disqualified for benefits under §6(e) of the law.

Further, the offers of work were not offers of "suitable" work, because the positions offered were vacant due directly to a labor dispute and the claimants' refusal was a refusal to accept "new work" within the meaning of §6(d) of the law.

DECISION

The unemployment of the claimants was not due to a stoppage of work because of a labor dispute, other than a lockout, within the meaning of §6(e) of the Maryland Unemployment Insurance Law. No disqualification is imposed under this section of the law.

The claimants did not fail to accept suitable work when offered within the meaning of §6(d) of the Maryland Unemployment Insurance Law. No disqualification is imposed under this section of the law.

The decision of the Special Examiner is reversed.

Maurice E. Dill
Associate Member

Hazel A. Warnick
Associate Member

Thomas W. Keech
Chairman

D:W:K
kmb
DATE OF HEARING: April 17, 1984
COPIES MAILED TO:

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IBEW, Local 2368

M. C. Ashley - U. I. Director

John Roberts - Legal Counsel

UNEMPLOYMENT INSURANCE - ELKTON

LABOR DISPUTE

DATE : February 7, 1984

IN THE MATTER OF:
Ronald L. Savage, et. al.

BENEFIT DETERMINATION NO. 408A

v.

R M R Corporation

APPEAL RIGHTS
CLAIMANT OR EMPLOYER:

Any interested party to this decision may request an appeal and such Petition for Appeal may be filed in any Employment Security Office or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, Maryland 21201, either in person or by mail. If the Claimant appeals this determination and remains unemployed, he/she MUST CONTINUE TO FILE CLAIMS EACH WEEK. NO BACK-DATED CLAIMS" WILL BE ACCEPTED.

The period for filing a Petition for Appeal expires on February 22, 1984.

BENEFIT DETERMINATION NO. 408A

IN THE MATTER OF:

Ronald L. Savage, et. al.

v.

R M R Corporation
BOX 469
Elkton, MD 21921

ISSUE: Whether the claimants' unemployment was due to a stoppage of work, other than a lockout, which exists because of a labor dispute within the meaning of §6(e) of the Maryland Unemployment Insurance Law.

APPEARANCES

FOR THE CLAIMANTS

Lena Scarbury
Carol Culver
Ira Clugston
John Smith
Mary Smith
Nola Earl

FOR THE EMPLOYER:

Joseph Pokempner, Esquire
Robert H. Hill - Personnel Manager

STATEMENT OF THE CASE

In Benefit Determination No. 408 it has previously been decided by the Special Examiner that a work stoppage existed at the premises of the employer RMR Corporation from August 16, 1983 until August 28, 1983. It was also decided that this work stoppage resulted from a labor dispute between the R M R Corporation and Local 2368 of the International Brotherhood of Electrical Workers. The claimants in that case were disqualified from receiving unemployment insurance benefits under §6(e) of Article 95A. The claimant's in Benefit Determination No. 408 were working at the time the work stoppage began. The claimants in this case, Benefit Determination No. 408A, were in lay off status at the time that the strike began.

The issue raised by these circumstances in Benefit Determination No. 408A is whether or not the claimant's are disqualified under §6(e) of Article 95A because they did not return to work at the struck premises when called upon by the employer to do so.

EVIDENCE CONSIDERED

The Special Examiner appointed by the Board of Appeals has considered all of the testimony, exhibits and articles presented at the hearing of this case which was held in Elkton, Maryland on November 7, 1983. Also considered were the documents contained in the files of the Department of Employment & Training in connection with the claims for unemployment insurance benefits filed by the claimant's in this determination.

FINDINGS OF FACT

The claimants on List A attached hereto and made part hereof are members of local 2368 of the International Brotherhood of Electrical Workers.

The collective bargaining agreement between that union and the employer expired by its terms on August 15, 1983 at midnight. The" next day at 1 minute after midnight, August 16, 1983 the union began a strike against the employer whit'n was accompanied by picketing.

The strike was effective and resulted in an almost complete stoppage of work at the employer's premises. Out of a total work force of nearly three hundred there were only 20 workers working after the strike was called.

The strike resulted in a 95% reduction in the work performed on the premises in the first week and a complete stoppage during the second week of the strike.

The strike continued until a settlement was achieved and ratified by the claimants' union on August 28, 1983 at 9:00 p.m. The claimants who had been working just prior to the strike did not immediately return to work although they were ready to do so.

The employer decided at the conclusion of the strike to take one week at that time for its annual inventory. Although the employer' s operation is the kind where it is conceivable that the work stoppage would have extended beyond the actual strike it makes no contention that the unemployment of the claimant's during the week of inventory was in any way caused by the work stoppage,

The claimant's on list A attached hereto were all in layoff status at the time that the strike was called by their more fortunate co-unionists who were working at that time. The claimants under the collective bargaining agreement which had existed up until August 15, 1983 at midnight had acquired rights to recall at the employer's premises within two years after the time of their layoff. During that time span claimant s had a right to insist that they be recalled to work when work was available on a seniority basis.

The employer in order to replace the members of local 2368 who had gone on strike recalled the claimants on List A attached hereto to return to work on August 17, 1983. The recall was made on August 16, 1983. The claimants on List A did not cross the picket lines established by their co-unionists and report for work.

While the claimants were in lay off status they did not participate in the decision to strike the employer and did not have union dues checked out of their salaries.

Although some of the claimants urged that their failure to report to work in response to the recall was because they did not wish to cross the picket line because they feared physical injury their is no evidence in the case that they were subjected to' any physical coercion or credible threats of violence which would justify a refusal to cross a picket line.

CONCLUSIONS OF LAW

The claimants were called to return to work in accordance with seniority rights they had acquired under a previous collective bargaining agreement with the employer. They refused to return to work because they did not wish to cross the picket line of the union. Since there was" no credible evidence from which to conclude that they had a justifiable fear of threatened violence their failure to cross the picket line made them participants in the labor dispute which caused the work stoppage in this case. Additionally the claimants belonged to a grade and class of workers of which immediately before the beginning of the work stoppage there were members employed at the premises of the employer where the stoppage occurred. Members of this grace and class of worker were participating in financing and directly interested in the labor dispute which caused the work stoppage.

When the claimants refused to cross the picket line in response to the call to return to work from the employer they became involved in the labor dispute, they became parties to a labor dispute which caused a work stoppage at the employer's premises and their unemployment from that point on was due to their participation int he labor dispute which resulted in the work stoppage at the employer's premises. The claimant's must therefore b-e denied unemployment insurance benefits under §6(e) of the Maryland Unemployment Insurance Law.

DECISION

The unemployment of the claimants on List A attached hereto and made part hereof was due to a work stoppage, other than a lockout, resulting from a labor dispute within the meaning of §6(e) of the Maryland Unemployment Insurance Law. They are disqualified from receiving unemployment insurance benefits from August 17, 1983 until August 28, 1983.

Martin A. Ferris
SPECIAL EXAMINER

kmb
DATE OF HEARING: November 7, 1983

COPIES MAILED TO:

CLAIMANTS (See List A attached hereto)

EMPLOYER

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M. C. Ashley - U. I. Director

UNEMPLOYMENT INSURANCE - ELKTON