Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033

– DECISION –

Decision No.: 622-BH-88

Date: July 22, 1988

Claimant: Manuel S. Sampedro

Appeal No.: Ben. Det. 498

S. S. No.: [redacted]

Employer: Curtis Bay Towing Company

L. O. No: 1

Appellant: EMPLOYER

Issue: Whether the claimants' unemployment was due to leaving work voluntarily, without good cause within the meaning of Section 6(a); whether the claimants were discharged for gross misconduct or misconduct within the meaning of Sections 6(b) or (c); whether the claimants' unemployment was due to a stoppage of work, other than a lockout, which existed because of a labor dispute within the meaning of Section 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 MARYIAND. THE APPEAL MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THECIRCUITCOURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON August 21, 1988

— APPEARANCES —

FOR THE CLAIMANT:

Audrey Feffer - Associate Council of of Seafarers Union

FOR THE EMPLOYER:

Michael McGuire- Attorney

EVALUATION OF THE EVIDENCE

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

PRELIMINARY STATEMENT

This matter came before the Board of Appeals upon a petition for appeal filed on behalf of the employer, Curtis Bay Towing Company. The employer is appealing that aspect of the decision of the Special Examiner which deals with the status of the claimants after November 25, 1987.

It having been found that there was no stoppage of work as defined in Section 6(e) of the Maryland Unemployment Insurance Law after November 21, 1987, the Board of Appeals will limit its decision to determining whether or not there was a continuing labor dispute after November 25, 1987, or whether or not the claimant's voluntarily quit.

FINDINGS OF FACT

The employer, Curtis Bay Towing Company, (hereinafter referred to as the "Company") provides tugboat services in the Baltimore harbor. The claimants in this matter are members of and are represented by the Seafarers International Union of North America, (hereinafter referred to as the "Union"). The Union is the exclusive bargaining representative of the claimants.

The Company and the Union have entered into collective bargaining agreements for at least the last thirty years. The claimants and the Union maintain three separate collective bargaining agreements which govern three separate bargaining units of employees. The contracts of two of these bargaining units, the unlicensed tugboat employees and the shop employees, are the subject of this matter. The third contract is not at issue here. These contracts were due to and did expire on September 30, 1987.

Due to the short amount of time left for negotiations on September 17, 1987, the Company sent a letter to the Union offering to extend the existing contracts until December 16. The Union agreed to an extension until October 3 and later agreed to a further extension until October 7. During these negotiations, the employees continued to work under the provisions of the old contracts. The Company made a final offer to the Union on October 7. The employees voted to strike on October 8 and began picketing the Company at 6:00 p.m. that evening. The employees that worked on October 8, until 6:00 p.m. were paid under the terms of the old contracts.

The Company continued operation with replacement crews from October 8 until November 11. During this time period, the Company lost between 71% to 19% of its business. After November 11, the Company reduced its losses to 8% during the week ending November 18 and 1/2 of 1% during the week ending November 20.

On November 14, the Company gave its employees until November 23 to return to work. The Company advised its employees that if they did not return to work by November 23, the new hirees would become permanent employees. On November 25, the Union and the Company entered into a new collective bargaining agreement.

The constitution of the Union and its prior collective bargaining agreements with the Company did not give the claimants the right to ratification of the agreement. The Union was the sole bargaining agent of the claimants and the Company had no right to negotiate directly with the claimants. The claimants were not given an opportunity to vote or voice any objection to the new collective bargaining agreement prior to its acceptance by the Union.

After the signing of the new collective bargaining agreement, none of the 45 employees that had been striking returned to work for the Company. On November 23, the Company extended to the employees, the opportunity to return to work between November 23 and November 25. Again, the claimants were told that if they did not return to work, the new hirees would become permanent employees and the claimants would be considered by the Company to have quit. The claimants were also told they would not be rehired after November 25. Several employees returned to work prior to November 25, and they were reinstated in their positions with the Company. Those employees that did not return to their jobs by November 25, were considered by the Company to have abandoned their employment with the Company and voluntarily quit.

CONCLUSIONS OF LAW

Article 100, Section 74B of the Annotated Code of Maryland, 1957, 1985 Replacement Volume defines the term labor dispute as any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiation, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, or concerning employment relations or any other controversy arising out of the respective interests of employer or employee, regardless of whether or not the disputants stand in the proximate relation of employer or employee.

Prior to November 20, 1987, there existed between the Company and the claimants a labor dispute as defined above. There was a controversy concerning terms and conditions of employment; in fact there was a strike. The Union, on behalf of the claimants, was attempting to arrange terms and conditions of employment. On November 20, 1987, when the Company and the Union, on the claimants' behalf, entered into a new collective bargaining agreement, the terms and conditions of employment were resolved and the labor dispute no longer existed.

Pursuant to 29 U.S.C.S. Section 158(a)(5) it is an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees, subject to the provisions of 29 U.S.C.S. Section 159(a). Under the provisions of 29 U.S.C.S. Section 159(a) representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. Section 159(a) allows for the individual presentation of grievances to the employer for adjustment, so long as that adjustment is not inconsistent with the terms of the collective bargaining agreement in effect.

The fact that the claimants were not happy with the new collective bargaining agreement and did not return to work will not sustain a finding that a labor dispute was still in existence. The Union is the only certified bargaining agent of the claimants and the Company cannot bargain with any other Union or with individuals. Therefore, settlement of the labor dispute by the Union and the Company, on the claimants' behalf, ended the labor dispute. There having been no showing of bad faith on the part of the Company or the Union, the claimants are bound by the new collective bargaining agreement.

The labor dispute ended on November 20, 1987. The claimant' s had until November 25, 1987 to return to work. They chose not to return. As a result of their actions the claimants voluntarily quit their employment without good cause or valid circumstances within the meaning of Section 6(a) of the law.

The Board does not find the same situation that existed in the case of Sinai Hospital of Baltimore, Inc. v. The Department of Employment and Training, 309 Md. 28, 522 A2d. 382 (1987). In the Sinai case, the employer and the union had not reached an agreement, there was no collective bargaining agreement in place, the labor dispute still existed and Section 6(e) precluded a disqualification under Section 6(a).

Therefore, pursuant to Section 6(a) of the Maryland Unemployment Insurance Law, the claimants are disqualified from receiving unemployment benefits after November 25, 1987. Under Section 6[a), the claimants have not met their burden of showing good cause or valid circumstances for their refusal to work under the contractual conditions accepted by their own bargaining agent. The maximum penalty under Section 6(a) is thus required by the law.

DECISION

After November 25, 1987, the claimants voluntarily quit their employment, without good cause or valid circumstances within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. They are disqualified from receiving benefits from November 25, 1987 until such time as they become reemployed, earn at least ten times their weekly benefit amount and thereafter become unemployed through no fault of their own.

The decision of the Special Examiner is reversed.

Donna P. Watts
Associate Member

Hayden V. Warnick
Associate Member

Thomas W. Keech
Chairman

D:H:K
kmb
DATE OF HEARING: June 7, 1988
COPIES MAILED TO:
EMPLOYER

Curtis Bay Towing Co.

Audrey Feffer
Associate Council of Seafarers Union

J. Michael McGuire, Esquire
Shaw & Rosenthal

Leslie Tarantola, Esquire

Seafarers Int'1. Union
ATTN: Bob Pomerlane, Port Agent

UNEMPLOYMENT INSURANCE - EASPOINT

LIST A

Henry Gamp

John Howl-and

Andrew Adams

Milton Sheckells

Herman Mooney

John Zents

Anthony Roman

Robert Gordy

John Goodwin

Joseph Krause

Frank Borowick

Joseph Larkins, Sr.

Lawrence G. Butler

J. S. Wodka

Robert Henninger, Jr.

Joseph Mazurek

Alexander Borawick

Manuel Sampedro

LABOR DISPUTE

DATE : January 12, 1988

IN THE MATTER OF:

BENEFIT DETERMINATION
NO. 498

Manuel S. Sampedro, et. al.

v.

Curtis Bay Towing Company

APPEAL RIGHTS
CLAIMANT OR EMPLOYER

Any interested party to this decision has the right to appeal this decision in any Department of Economic & Employment Development Unemployment office or with the Board of Appeals, Room 515, 1100 N. 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 January 27, 1988.

BENEFIT DETERMINATION NO. 498

IN THE MATTER OF:

Manuel S. Sampedro, et al.

v.

Curtis Bay Towing Company

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 Section 6(e) of the law.

APPEARANCES

FOR THE CLAIMANTS:

Frank Paladino, Union Rep.
Steven Silverberg, Attorney
John Zents, John Wotka, Robert Henninger, Jr., Andrew Adams, Joseph Mazurek, John Goodwin, Manuel Sanpedro, Frank Borowick, Alexander Borawick, Harry Bryan, John Haulandf, Jack Andrews, Henry Moony - Claimants

FOR THE EMPLOYER:

J. Michael McGuire, Esquire
J. Crist - Vice President

FINDINGS OF FACT

Three agreements between Curtis Bay owing and its 45 employees members-of Seafarers International Union expired September 30. Curtis Bay Towing is one of two maritime companies which provide tug services in the port of Baltimore. The three. agreements covered 1) unlicensed tugboat employees, 2) shop employees and 3) licensed personnel such as captains, pilots, mates and engineers.

On September 17, the company sent a letter to the union offering to extend the existing contract until October 16, because the contract was due to expire September 30 and this left little time for negotiations. The first negotiating session, September 22, the union agreed to an extension until October 3 and thereafter agreed to an extension until October 7. During this time the employees continued to work under the terms of the old agreement. On October 7, the company made a final offer to the union with no specific date of implementation. October 8, the employees voted to strike and began picketing the employer at 6:00 p.m. Employees that had worked-up until 6:00 p.m. October 8 were paid under the terms of the-old agreement. The employer, attempted to continue operations with replacement crews but lost between 71% to 19'% of its business between October 8 and November 11. Only after November 11, was the employer able to reduce its losses to 8% during the week ending November 18 and one half of 1% during the week ending November 20.

November 14, the company advised each of its employees that the new hires would become permanent if the old employees did not return by November 23. On November 20, officers of the union entered into a "agreement" accepting the employer's final offer with substantially less favorable terms of employment. The membership was not given the opportunity to vote on this "agreement" prior to its acceptance by the officers of the union and none of the 45 employees returned to work but all continued to strike. November 23, the company extended the opportunity to return to work for the company from November 23 to November 25 and further advised its employees that the new hires would become permanent and the strikers would be considered to have quit and would not be rehired if they attempted to return after November 25.

Several employees have attempted to return to work for the company after November 25 but have not been rehired by the company. Additionally, one claimant, Mr. Zintz had his job abolished November 20, 1987 and was to be reinstated by the employer December 19. As of the date of the appeal hearing, December 18,. many of the claimants still consider themselves on strike with Curtis Bay Towing but have reluctantly found employment outside of the tugboat industry or in other ports.

CONCLUSIONS OF LAW

Since the employees had the opportunity to continue working under the terms of the old agreement until October 16, but voted instead to go on strike October 8 and in fact began withholding their services from the company October 8 by voting for a strike and setting up a picket, it must be found that they are unemployed as a result of their decision to strike. The claimant's had the opportunity to continue working under the terms of the old agreement and did not request the opportunity to continue working or accept the employer's offer of a continuance.

While the employer's tugboats may have continued to operate there was a substantial stoppage of work caused by the claimants' actions which resulted in a loss of between 71% and 19% of the employer's contracted work and corresponding reduction in revenues.

This stoppage of work occurred between October 8 and November 11 and thus the claimants must be denied benefits under. Section 6(e) of the law during the period that their strike. caused a substantial stoppage of work. However, when the employer was able to substantially resume normal operations during the week beginning November 12, until the present time it cannot be found that the claimants' unemployment was caused by a substantial stoppage of work at their place of employment and thus the claimants cannot be denied benefits under Section 6(e) of the law from the week beginning November 12 until the present time.

While the union officers may have accepted an "agreement" on behalf of its membership, it is clear that the employees of Curtis Bay did not accept this agreement as demonstrated by all of them continuing to strike. The labor dispute between the parties thus continued until the claimants were terminated by the employer November 25 by being permanently replaced by the employer. The claimants will continue to be involved in the labor dispute while on strike with the employer up until the time of their replacement and under the case of Sinai Hospital v. The Department of Employment, 309 Md. 28, cannot be considered have quit and cannot be denied benefits under Section 6(a) of the law. Likewise, since no evidence has been presented that they have been offered employment under terms and conditions similar to their last employment, they cannot be denied benefits under Section 6(d) of the law.

If the employer has any evidence that the claimants have been unreasonably restricting their availability for employment they should immediately request the opportunity to participate in individual 4(c) determinations involving individual claimants. Likewise if the employer has any evidence that the claimants have refused offers of work under conditions similar to their last employment prior to the labor dispute, they should immediately advise the agency of these circumstances so that they might participate in hearings on these issues.

DECISION

The unemployment of the claimants involved in the labor dispute was due to a stoppage of work, other than a lockout, which existed because of a labor dispute within the meaning of Section 6(e) of the Maryland Unemployment Insurance Law. Benefits are denied from the week beginning October 4, 1987 through the week ending November 14, 1987. Benefits are allowed thereafter provided the claimants meet the other eligibility requirements of the law.

The claimants did not voluntarily terminate their employment. but were discharged by the employer November 25, for a non-disqualifying reason within the meaning of Section 6(c) of the law.

John T. McGucken
SPECIAL EXAMINER

JTM:kmb
DATE OF HEARING: DECEMBER 18, 1987
COPIES MAILED TO:

CLAIMANTS (SEE LIST A ATTACHED)

EMPLOYER

Steven Silverberg, Esquire

Frank Paladino
Seafarers Int'l. Union

LIST A

Henry Gamp

John Howland

Andrew Adams

Milton Sheckells

Herman Mooney

John Zents

Anthony Roman

Robert Gordy

John Goodwin

Joseph Krause

Frank Borowick

Joseph Larkins, Sr.

Lawrence G. Butler

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UNEMPLOYMENT INSURANCE - EASTPOINT