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Labor Law-Unemployment Compensation-Applicable Disqualification Provision Where Claimant is Discharged for Unauthorized Walkout

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LABOR LAW—UNEMPLOYMENT COMPENSATION—APPLICABLE DISQUALIFICATION PROVISION WHERE CLAIMANT IS DISCHARGED FOR UNAUTHORIZED WALKOUT—Plaintiff was discharged by his employer for participating in a walkout which was not authorized by the union of which he was a member and which was in violation of the applicable collective bargaining agreement. In passing upon his subsequent application for unemployment compensation, the Appeal Board ruled that he was disqualified from receiving benefits for the duration of his unemployment because his actions had constituted “misconduct” under section 29(1)(a)(2) of the Michigan Employment Security Act.¹ The circuit court reversed, holding that the “misconduct” provision did not apply and that plaintiff’s acts were properly cognizable under section 29(1)(b)² which provides for disqualification from benefits only for the duration of the “labor dispute” in which a claimant is engaged. On appeal, *held*, affirmed, two justices dissenting. Where a claimant is discharged for “labor dispute” activities which violate a collective bargaining agreement, the “labor disputes” section of the Employment Security Act governs rather than the “misconduct” section. *Lillard v. Employment Security Comm’n*, 364 Mich. 401, 110 N.W.2d 910 (1961).

The purpose of the Michigan Employment Security Act is to provide economic security for persons unemployed through no fault of their own.³ This objective is accomplished by requiring an employer to contribute to trust accounts⁴ from which funds are distributed to those prior employees of his who qualify under the provisions of the act.⁵ The amount of an employer’s contribution is dependent upon the depletion of his account through claim payment;⁶ thus, he is very interested in insuring that no claimant receives benefits to which he is not entitled. An individual otherwise qualified to receive benefits will be disqualified if he is validly discharged for “misconduct” or if his unemployment is due to a “labor dispute.”⁷ A discharge for “misconduct” imposes a disqualification for the duration of the unemployment, whereas one resulting from participation in a “labor dispute” disqualifies only for the weeks in which there was a resulting stoppage of work.⁸ “Misconduct” involves an intentional and substantial disregard of the standards of behavior which the employer has a right to expect of his employee,⁹ contemplating more than mere negli-

¹ MICH. COMP. LAWS § 421.29(1)(a)(2) (Supp. 1956).

² MICH. COMP. LAWS § 421.29(1)(b) (Supp. 1956).

³ MICH. STAT. ANN. § 502 (1960).

⁴ MICH. COMP. LAWS § 421.10 (Supp. 1956).

⁵ MICH. COMP. LAWS § 421.28 (Supp. 1956).

⁶ MICH. COMP. LAWS §§ 421.13, .19 (Supp. 1956).

⁷ MICH. COMP. LAWS § 421.29 (Supp. 1956).

⁸ MICH. COMP. LAWS § 421.29 (Supp. 1956).

⁹ *Boynton Cab Co. v. Neubeck*, 237 Wis. 249, 260, 296 N.W. 636, 640 (1941). The courts in Michigan, as well as in many other jurisdictions, accept the definition of

gence or substandard conduct,¹⁰ and must be connected with the employee's work.¹¹ Because of its serious ramifications, substantial evidence must be adduced to support its allegation, with the burden of proof being on the employer.¹² Violation of company rules, frequent absences or tardiness, insubordination, and dishonesty have been held to constitute "misconduct."¹³ No uniform definition of a "labor dispute"¹⁴ has been developed, but in general the term includes a walkout or stoppage of work incident to a controversy between an employer and his employees regarding matters connected with the employment.¹⁵

It can easily be recognized that there is no inherent conceptual inconsistency between finding that the actions of an employee engaged in a "labor dispute" also constituted "misconduct." Thus an employee who leaves his job without permission, refuses to take orders, or is insubordinate, all of which are often involved in a "labor dispute," has generally been held guilty of "misconduct."¹⁶ Even before the principal case, however, the Michigan Supreme Court, in overruling a prior decision,¹⁷ held that an employee's participation in an unauthorized walkout in violation of a collective bargaining agreement was not "misconduct."¹⁸ In justifying this conclusion the court asserted that it was not the proper function of the court to review the merits of a "labor dispute" in an unemployment compensation case, and that such a review would be necessary to determine whether the employee's actions involved "misconduct."¹⁹ It further stressed the fact that the penalty of discharge provided for in the collective bargaining agreement had been applied and that it would not impose the additional penalty of a "misconduct" disqualification.²⁰ Neither of these reasons is persuasive, with the court apparently attempting merely to rationalize its result. A holding that, in the context of a labor

misconduct set forth in this case. *E.g.*, *Cassar v. Employment Security Comm'n*, 343 Mich. 380, 406, 72 N.W.2d 254, 258 (1955); 1A CCH UNEMPLOYMENT INS. REP. ¶ 1970 (1961).

¹⁰ *Boynton Cab Co. v. Neubeck*, *supra* note 9.

¹¹ MICH. COMP. LAWS § 421.29 (Supp. 1956).

¹² 1A CCH UNEMPLOYMENT INS. REP. ¶ 1970 (1961).

¹³ *Ibid.*

¹⁴ 1A CCH UNEMPLOYMENT INS. REP. ¶ 1980 (1961).

¹⁵ Principal case at 420, 110 N.W.2d at 919.

¹⁶ 1A CCH UNEMPLOYMENT INS. REP. ¶ 1970 (1961); 5 CCH UNEMPLOYMENT INS. REP. ¶ 1970 (1958).

¹⁷ *Cassar v. Employment Security Comm'n*, 343 Mich. 380, 72 N.W.2d 254 (1955).

¹⁸ *Linski v. Employment Security Comm'n*, 358 Mich. 239, 99 N.W.2d 582 (1959).

¹⁹ *Id.* at 244, 99 N.W.2d at 585. This would seem to imply that an employer's wrongful acts might justify what would otherwise be misconduct on the part of the employee. See Jones, *The Conflict Between Collective Bargaining and Unemployment Insurance*, 28 ROCKY MT. L. REV. 185, 203 (1956).

²⁰ *Linski v. Employment Security Comm'n*, 358 Mich. 239, 245, 99 N.W.2d 582, 586 (1959).

dispute, the "labor disputes" provision applies unless "misconduct" is shown, while at the same time refusing to determine, in such a situation, whether an employee's acts constitute "misconduct," is tantamount to a predetermination that there was no "misconduct." Moreover, the fact that a penalty for breach of the agreement had already been provided for by the parties seemingly has no relevance to a determination of whether the legislature meant a particular disqualification provision to apply or not. Using these rationalizations for support, however, the court, in so construing the two disqualification provisions, has essentially made them mutually exclusive when applied to normal conduct by employees involved in a labor dispute,²¹ arguably by reading into the statute something which was probably never intended since the objectives of the two provisions would appear to be quite different. "Misconduct" disqualifications were designed to prevent individuals from taking advantage of unemployment compensation benefits when their unemployment has resulted from their own wrongful actions.²² "Labor disputes" disqualifications, on the other hand, were designed primarily to preserve the neutrality of the state in labor disputes by preventing unemployment compensation, insofar as possible, from being an operative factor in the causation and prolongation of labor disputes.²³ And this provision was probably never meant to apply to discharge, but only to the voluntary and temporary absence from work normally associated with certain labor dispute activities.²⁴

It is highly doubtful that the Michigan court would hold that the "misconduct" provision could never be applicable to an employee involved in a labor dispute since it is easy to visualize situations where the employee's conduct would be so flagrant as to necessitate such a finding.²⁵ The reason why the line has been drawn so as to exclude from consideration the type of breach of a collective bargaining agreement found in the principal case is, however, not clear. Courts in other jurisdictions having the same or

²¹ "[W]here there is in the same statute a specific provision, and also a general one which in its most comprehensive sense would include matters embraced in the former, the particular provision must control, and the general provision must be taken to affect only such cases within its general language as are not within the provisions of the particular provision." *Linski v. Employment Security Comm'n*, *supra* note 20, at 244-45, 99 N.W.2d at 585.

²² 1A CCH UNEMPLOYMENT INS. REP. ¶ 1968 (1961).

²³ Other theories advanced to explain the "labor disputes" provision are: (1) The statute is designed to compensate for involuntary unemployment only and the unemployment occasioned by a labor dispute is voluntary. (2) There are serious financial dangers involved in undertaking to compensate large masses of workers in something so actuarially unpredictable as a strike. Williams, *The Labor Dispute Disqualification—A Primer and Some Problems*, 8 VAND. L. REV. 338, 354 (1955).

²⁴ The "misconduct" provision speaks of "discharge" whereas the "labor disputes" provision speaks only of an employee's total or partial unemployment for the weeks his unemployment is due to a stoppage of work. MICH. COMP. LAWS § 421.29 (Supp. 1956).

²⁵ *Linski v. Employment Security Comm'n*, 358 Mich. 239, 245, 99 N.W.2d 582, 586 (1959).

similar provisions in their unemployment compensation acts have not agreed with this construction by the Michigan court.²⁶ The differences might be the result of differing judicial conceptions of the ultimate purpose of unemployment compensation benefits in the social and legislative scheme of the state. The more welfare-oriented this purpose is deemed to be, the less likely that a court will invoke the more severe "misconduct" provision in other than extreme instances.²⁷ A more limited, and possibly more satisfactory explanation, however, might be found in the particular court's conception of the nature of a collective bargaining agreement. A court which construes such an agreement as something less binding than an ordinary contract and as made primarily for the benefit of the employees²⁸ would probably take a more lenient view of a breach by an employee than a court which considers such an agreement to be a standard contractual arrangement which is equally binding on all parties.²⁹ It is unlikely that the majority of the Michigan court would go so far as to hold that a person who breaches his contract is not a wrongdoer or that such action would not ordinarily constitute "misconduct."³⁰ To do so would be to accept a historically interesting but generally rejected view of the nature of a contract.³¹ It is more likely that the court considers a breach of contract less significant in a labor dispute setting, or that a breach of a collective bargaining agreement is not as serious as the breach of an ordinary contract. In either case, unemployment compensation rights should not be made dependent on the results of a bargaining process. The humanitarian and economic purposes of unemployment insurance too

²⁶ See, e.g., *Progress Mfg. Co. v. Unemployment Compensation Bd. of Review*, 195 Pa. Super. 110, 169 A.2d 567 (1961).

²⁷ The Michigan court appears to be quite "welfare oriented." "These benefits are designed to run not only to the benefit of claimants but, also, to the benefit of any wives and children they may have and to the benefit of the public generally." Principal case at 418, 110 N.W.2d at 919.

²⁸ A court might come to this conclusion by analogizing the agreement to a third-party beneficiary contract; Howlett, *Contract Rights of the Individual Employee as Against the Employer*, 8 LAB. L.J. 316, 319 (1957); or to a trust for the benefit of the employees; Cox, *The Legal Nature of Collective Bargaining Agreements*, 57 MICH. L. REV. 1, 20 (1958); or merely to a list of restrictions on management action; Tracy, *Panel Discussion; The Nature of the Collective Bargaining Agreement*, in COLLECTIVE BARGAINING AND THE LAW 156 (Univ. of Mich. Law School 1959).

²⁹ This view is generally arrived at by construing the agreement as being, in essence, two bilateral contracts, one between the union and the employer and the other between the employee and the employer which incorporates the former. Cox, *supra* note 28, at 19.

³⁰ *But see* *Cassar v. Employment Security Comm'n*, 343 Mich. 380, 390, 72 N.W.2d 254, 265 (1955) (Smith, J. dissenting).

³¹ The view that the duty not to breach a contract means merely a prediction that one must pay damages if he doesn't and that no moral significance is attached to a breach was strongly advocated in Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 462 (1897). Its implications have been vigorously questioned and contested. See WILLISTON, *CONTRACTS* § 1357 (rev. ed. 1937). See also Bauer, *Consequential Damages in Contract*, 80 U. PA. L. REV. 687, 696 (1932).

often conflict with the practical business aspects of collective bargaining.³²

Whatever the underlying factors of the court's decision, the negative implications far outweigh any ostensible advantages. One of the most important benefits which an employer derives from a collective bargaining agreement is the promise that the union and its members will follow certain grievance procedures, usually including arbitration, instead of staging a walkout.³³ If these procedures are not followed, an employer may generally discharge the breaching workers as a matter of contract right.³⁴ This decision by the Michigan court renders this remedy somewhat nugatory. The employer may still exercise his right to discharge, but if he does so, he must continue, at least partially, to support the discharged workers. Such result is arguably not consistent with the purposes of the Employment Security Act. Disqualification provisions were introduced into such acts to insure that an employer was chargeable only when he was responsible for an employee's unemployment,³⁵ and was not to be held financially responsible if the employee was properly discharged for wrongful conduct. To determine who is responsible in a particular case requires an examination of the facts and circumstances. An employer should not be penalized because a court is unwilling to do this. Rather, the employee, or, in a given situation, his union, who created the situation by failing to follow the procedure for determination of fault which is provided for in the collective bargaining agreement, should be made to bear any financial burdens resulting from such actions.

L. R. Bishop

³² Jones, *The Conflict Between Collective Bargaining and Unemployment Insurance*, 28 ROCKY MT. L. REV. 185, 194 (1956).

³³ CCH, UNION CONTRACT CLAUSES ¶ 51,551 (1954).

³⁴ CCH, UNION CONTRACT CLAUSES ¶ 51,701 (1954).

³⁵ Larson & Murray, *The Development of Unemployment Insurance in the United States*, 8 VAND. L. REV. 181, 216 (1955).