

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

RAYMOND L. POWERS  
(Claimant)

WESTERN CARRIERS  
(Employer)

PRECEDENT  
BENEFIT DECISION  
No. P-B-457  
Case No. 87-00199

Office of Appeals No. S-15996

The claimant appealed from the decision of an administrative law judge disqualifying him from unemployment insurance benefits under provisions of Unemployment Insurance Code section 1256, and relieving the employer's reserve account of benefit charges.

STATEMENT OF FACTS

On April 28, 1986, the claimant was charged with overweight operation of the employer's truck and received a citation for violation of the Motor Vehicle Code. He was directed to appear at the local municipal court on June 3, 1986. The claimant contended that he was not responsible for the overweight condition since the shipper had loaded and sealed the load.

The municipal court sent notice of the hearing to the claimant's employer which, without consulting the claimant, paid from its resources the amount of the bail - \$301 - causing the bail to be forfeited and the pending case dismissed. The following day, it paid the claimant his accrued earnings, less \$25. The claimant was informed that the employer would continue to deduct at least \$25 each weekly payday until the full sum of \$301 was paid. The claimant objected, twice speaking to the owner or principal of the corporation. His efforts yielded nothing, and the deductions continued to be made until the full amount had been recovered by the employer.

On September 19, 1986, when the claimant received his weekly check he noted that the employer had once again made a deduction, this time for \$50. The claimant again complained and was told that the deduction was for a loss sustained by the employer on a short load to a customer and that the sum of \$50 was to be deducted until the claimed amount of \$196 had been reclaimed by the employer. The claimant once again complained to the employer's payroll authority, but when the deductions continued, he resigned on October 2, 1986, and pursued the matter in Small Claims Court.

The second claim was based on an alleged short load and the subsequent \$392 refund to the customer. The employer had not made inquiries concerning responsibility for the loss, but apportioned it equally between the claimant and another driver. The claimant has denied any responsibility for the short load.

At the time he was first hired, the claimant signed an authorization in which he acknowledged in writing that it was:

". . . understood it is my responsibility to return all damaged products that are not accepted by the consigned back to Western Carriers. Should I fail to do so, Western Carriers has my permission to deduct the net cost damage claim from any wages due me. I understand that at my option, I can retain the damaged product and to use it in whatever manner I desire. Should I exercise this option, Western Carriers has my permission to deduct the net cost from any wages due me. In both the above instances, I will be allowed a copy of the costs (the damage claim) . . ."

### REASONS FOR DECISION

Section 1256 of the California Unemployment Insurance Code provides that an individual is disqualified from unemployment insurance benefits if he or she left his or her most recent work voluntarily without good cause. Sections 1030 and 1032 provide that the interested employer's reserve account may be relieved of benefit charges where there is a voluntary leaving of work without good cause.

"Good cause" under code section 1256 is such cause as would, in similar situations, reasonably motivate the average able-bodied qualified worker to give up his or her employment with its certain wage rewards in order to enter the ranks of the unemployed (Evenson v. California Unemployment Insurance Appeals Board, 1976, 62 Cal.App.3d 1005; Appeals Board Decision No. P-B-27).

An employee must perform or be ready and willing to perform the service required by the contract of employment unless there exists a valid excuse for nonperformance (Labor Code sections 2858, 2859). There is a concomitant duty on the part of the employer: the performance of such services entitled the employee to compensation (56 C.J.S. 81; Ware v. Merrill, Lynch, Pierce, Fenner & Smith, Inc., 24 Cal.App.3d 35, affirmed 414 U.S. 117).

An employer must pay wages when due. "[W]ages are not ordinary debts . . . [B]ecause of the economic position of the average worker and in particular, his dependence on wages for the necessities of life for himself and his family, it is essential to the public welfare that he receive his pay" promptly (Pressler v. Donald L. Breir Co., 1982, 32 Cal.3d 831, 837). Unless specifically excepted by law, the employer may not make deductions from wages (Labor Code sections 203, 216, 222). Consequently, the failure of an employer to pay wages when due provides good cause to quit without disqualification from unemployment compensation unless there is some legally recognized exception.

At issue is whether the employer had legal justification to withhold these amounts. We conclude the employer did not have authority to withhold these wages under the Labor Code, since there is no judgment to support the seizure of wages, and the purported wage assignment did not pertain to the facts here.

Labor Code section 213 permits an employer to divert wages to guarantee the payment "for the necessities of life or for the tools and implements used by the employee in the performance of his duties." However, deductions may not be made for matters over which the employee had no control (e.g., 8 California Administrative Code 11090, section 8, concerning truck drivers). The claimant's wages were not diverted to pay for necessities or tools of the trade, and there is no proof that the losses were due to causes over which the claimant had control.

In this case the employer claimed, in effect, the right to decide whether the claimant was to defend against the vehicle citation along with the right to attach a portion of the claimant's wages to satisfy its claim against the claimant for damages sustained by the employer. This amounted to an attachment. " 'Attachment' is a proceeding to take a defendant's property into legal custody to satisfy" a judgment (47A Words and Phrases, 438; 16 Cal.Jur.3d ed 87). It is a legal process, issued only by a court of competent jurisdiction. (See for example Code of Civil Procedure, Title 6.5, Part 2, Article 1, sections 484.010ff.) The employer made no application to a court for the right to attach the property of the claimant - namely, wages due him in the possession of the employer.

Finally, the employer maintains that the claimant executed a wage assignment which permitted the employer to withhold a portion of wages. By its own terms this "assignment" is totally unrelated to the matter in dispute. The agreement governs "damaged products," not traffic citations or mistakes in loading.

The administrative law judge concluded that even if the employer had acted without authority the claimant failed to take all measures available to him before abandoning the employment.

A general principle of unemployment insurance law is that an individual, in order to qualify for benefits, must have attempted to resolve work-related dissatisfactions prior to leaving work. Even where facts would ordinarily establish good cause for voluntarily leaving work, an individual genuinely desirous of retaining employment has an obligation to attempt satisfactory adjustment of his or her dissatisfactions. Failure to do so negates whatever good cause he or she may have had and disqualifies the applicant for unemployment insurance benefits (Appeals Board Decision No. P-B-8).

The foregoing does not command complete exhaustion of all remedies, merely the exercise of reasonable alternatives. In Decision No. P-B-8, the claimant made no complaints nor did she request transfer to a different shift when her application for a day off was refused. The Appeals Board held that she should at least have complained to her supervisor. Her failure to do so negated whatever good cause she might otherwise have had for leaving the employment.

That is very different from the case before us. Here the claimant made complaints not only to the payroll authority but to the principal owner of the corporation. He was unsuccessful in his efforts and when the deductions not only continued, but were repeated, he was privileged to quit without expenditure of further futile efforts.

DECISION

The decision of the administrative law judge is reversed. The claimant is not subject to disqualification under code section 1256, and the employer's reserve account is not relieved of charges.

Sacramento, California, July 28, 1987.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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