

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

SAM ABDILLA AND OTHERS
(Claimants)
(See Appendix)
[Appendix removed in accordance
with California Code of Regulations,
title 22, section 5109(e)]

PRECEDENT
BENEFIT DECISION
No. P-B-119
Case No. 70-5107

PACIFIC MARITIME ASSOCIATION
(Employer)

The employer appealed from that part of Referee's Decision No. SF-TD-400 which held that the claimants listed on the attached appendix were entitled to benefits under the Unemployment Insurance Code. Written argument was submitted by the employer only.

STATEMENT OF FACTS

The claimants are Class B, or limited registration, longshoremen who obtain their work from the employer group through the hiring hall jointly operated by the International Longshoremen's and Warehousemen's Union for the Port of San Francisco and the employer group. As such they are entitled to be dispatched to available work after the job opportunities have been made available to the Class A longshoremen. This latter group are considered fully registered members of the union and accordingly have preference for available work.

The collective bargaining agreement in effect between the International Longshoremen's and Warehousemen's Union (hereinafter referred to as the Union) and the employer group provides in pertinent part as follows:

"2.5 Men and gangs shall be available to the Employers for three shifts. The employer shall determine the number of shifts to be worked and the number of gangs used on each shift.

Gangs and men will report at the shift starting time designated by the employer in accord with the Contract Document."

* * *

"SECTION 4
SCHEDULED DAY OFF

"4.1 Each registered longshoreman shall be entitled to one full day (24 hours) off each payroll week.

"4.11 The Joint Port Labor Relations Committee shall fix, arrange, direct, and schedule days off in advance in accordance with the above to the extent possible considering needs of the port and men available.

"SECTION 5
HOLIDAYS

"5.1 The following holidays shall be recognized: New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Statewide Election Day, Christmas Day, or any other legal holiday that may be proclaimed by state or national authority. When a holiday falls on Sunday, the following Monday shall be observed as a holiday.

"5.2 Election Day. On election day the work shall be so arranged as to enable the men to vote."

Under the authority of section 4 of the above quoted agreement the San Francisco Port Labor Relations Committee, which is comprised of both employer and union representatives and charged with administering the hiring hall, issued certain rules and regulations. Rule 14 reads as follows:

"14. SQUARING OFF: Any longshoreman who wants a day off in any one calendar (payroll) week without losing his work opportunity may do so by 'squaring off'. When squared off a man's number will not be called. Squaring off is done by drawing a square around a man's number on the list. This will enable men to have a scheduled day off. No man below average the day before he desires a day off may square off. No squaring off on straight time day preceding Saturday or Holiday.

Men are entitled to one day off in any one payroll week and the first day missed during the week of work opportunity shall be considered their scheduled day off. If a man has not been available or has 'flopped' he is not eligible to square off for the duration of that particular payroll week."

The employer contended that under the collective bargaining agreement the hiring hall must be operated on a 24-hour-a-day basis every day of the year since work is performed around the clock in the maritime industry. On occasion the Union has closed the hiring hall and although the employer has objected to this procedure the employer discontinued ordering gangs of longshoremen to work on the day the hall was closed because the employer realized such a procedure was futile. The Union has not always been consistent with regard to closing the hall on the same days each year but generally it has been closed, except for dispatch to certain types of work, on Christmas, New Year's Day and Thanksgiving.

The Minutes of the Longshoremen's Labor Relations Committee of San Francisco of November 25, 1969 contain a notice under "General Business" to the effect that no work would be performed on Thanksgiving Day, Thursday, November 27, 1969, on the day and night shifts, with the exception that on the day shift mail, baggage, perishables, passenger ships and essential work at military installations would be handled. The Minutes further related that "the Employers protested this action as being a violation of the Contract." Notwithstanding this protest the hiring hall was closed.

Some of the claimants were aware of this closing and accordingly did not report to the union hall for dispatch on Thanksgiving Day. Other claimants reported to the hall but found it closed. None of the claimants had signified an intention to "square off" on Thanksgiving Day.

The process of squaring off consists of a longshoreman placing a square around his number on the out-of-work or registration list to indicate that he does not desire to be dispatched to work on that day. By doing so the man will not lose his place on the dispatch list or "flop." He thereby precludes being penalized for not being available for work. The employer accepts this arrangement as providing the longshoreman's rightful day off.

The claimants contended that under the above quoted Rule 14, failure to be present for dispatch on a particular day, notwithstanding the fact the

longshoreman may not have squared off, should be considered as a scheduled day off. The employer disagrees with this contention and maintains that the collective bargaining agreement can only be complied with where the day off is scheduled in advance. Otherwise the employer might be faced with a shortage of longshoremen on a particular day because an inordinate number of men failed to register for work or show up for dispatch to work on that day.

The Department considered that a longshoreman's failure to be available for work on any day renders him unavailable for the entire week since longshoring work is a seven-day-a-week occupation.

REASONS FOR DECISION

Section 1253 (c) of the Unemployment Insurance Code provides as follows:

"1253. An unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if the director finds that:

* * *

"(c) He was able to work and available for work for that week."

Unemployment insurance benefits are paid on a weekly basis and in order for an individual claimant to be considered available for work during any one week, he must be available for work during each and every regular workday of that week. Work is regularly available for longshoremen seven days a week and therefore under the above cited section of the code a longshoreman, in order to be considered available for work, must be available seven days per week. However, the legislature saw fit to add section 1253.2 of the Unemployment Insurance Code. This section reads as follows:

"1253.2. An unemployed individual who is in all respects otherwise eligible for unemployment compensation benefits shall not be deemed ineligible for any week in which pursuant to the provisions of a collective bargaining agreement he is allowed not more than one uncompensated day off in that week

or is allowed not more than one uncompensated holiday on one day in that week if:

"(a) He is employed in longshoring operations;

"(b) His employer regularly offers employment to individuals employed in such operations seven days a week;

"(c) He is able to work and available for work for six days of the week except as provided in Section 1253.1."

This section of the code conforms with the collective bargaining agreement between the Union and the employers in this matter which includes a provision for allowing no more than one uncompensated day off in any week. Rule 14 adopted by the San Francisco Port Labor Relations Committee delineates the method to be followed in obtaining a scheduled day off by individual longshoremen.

The rules of the Port Labor Relations Committee were promulgated primarily to provide for an orderly method by which longshoremen could choose their scheduled day off each week and to provide sufficient numbers of workmen each day to meet the needs of the employer.

Neither the collective bargaining agreement nor the rules of the Port Labor Relations Committee contemplate that all longshoremen would select the same scheduled day off. As a matter of fact, in this case none of the claimants selected Thanksgiving Day as their day off. It was selected by the Union which notified the employer somewhat in advance of November 27, 1969 that no longshoremen would work on that day. That is, the Union took unilateral action and in effect designated a single day for a complete work stoppage. It might be contended that although the employer objected to the Union's announcement it tacitly agreed by not sending orders for longshoremen to the hiring hall on November 27, but in our opinion this would have been an idle act on the part of the employer because of the prior history relating to such unilateral work stoppage by the Union. It might also be contended that some of the claimants herein did not decide Thanksgiving Day as their scheduled day off but so long as they remained members of the Union they were bound by the action of the Union. There is no evidence presented that any of the claimants expressly repudiated such action and we must therefore conclude that they approved of the unilateral work stoppage.

Under the facts of this case we conclude that November 27, 1969 was not a scheduled day off for any of the claimants. They were not available for work on a regular workday during the week commencing November 22, 1969 and therefore must be held unavailable for work during that entire week.

DECISION

The decision of the referee is reversed. The claimants were unavailable for work during the week commencing November 22, 1969 and therefore benefits are denied for that week.

Sacramento, California, November 23, 1971.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS

CARL A. BRITSCHGI

DISSENTING - Written Opinion Attached

DON BLEWETT

DISSENTING OPINION

I do not agree with the majority that the claimants concerned in this matter should be held ineligible for benefits on the ground that they were not available for work during the week commencing November 2, 1969.

These claimants are all longshoremen and in the longshore industry operations are carried on 24 hours a day, seven days a week. For this reason the legislature in 1965 added section 1253.2 of the Unemployment Insurance Code to provide that a longshoreman need not be available for work seven days a week but can take a day off during the week if the collective bargaining agreement between his union and the employer group so provides.

The collective bargaining agreement between the claimants' union and the employer group provides that each longshoreman shall be entitled to one full day off each payroll week. Rules regarding the one day off were adopted by the San Francisco Port Labor Relations Committee which is made up of representatives of both the employer group and the union. The rules are equally binding upon each and they provide for two manners in which a longshoreman may take one day off during a week. The rules provide that the first day missed during any week of work opportunity shall be considered as the day off. The other manner in which a day off may be obtained is to "square off." However, if a man took a day off by missing one day during the week he may not "square off." In my opinion these claimants conformed to the rule jointly adopted by the representatives of the employers and the claimants and their day off was the day they missed; none of them squared off. The employer group had advance notice of this situation and, although made some slight objection to it, tacitly agreed because the record shows that the employer group submitted no job orders to the hiring hall.

I understand the employer's position of course. The employer group was inconvenienced by the fact that all of the longshoremen chose to miss the same day during the week. However, I do not believe that we should permit the unemployment insurance program to be used as a means of retaliation against employees because actions of some caused inconvenience to the employer.

In my opinion these claimants conformed with section 1253.2 of the Unemployment Insurance Code, to the collective bargaining agreement and the rules promulgated by the Port Labor Relations Committee. I would authorize benefits for this week.

DON BLEWETT