

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6598 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

LEE ROY D. LUDLOW
(Claimant-Respondent)

NORTH AMERICAN AVIATION, INC.
(Employer-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-190

FORMERLY BENEFIT DECISION No. 6598
--

STATEMENT OF FACTS

The employer appealed from Referee's Decision No. LA-78575 which held that the claimant was not subject to disqualification for benefits under section 1256 of the Unemployment Insurance Code and that the employer's account was not relieved of benefit charges under section 1032 of the code. Oral argument was presented on behalf of the employer in connection with the appeal.

The claimant was employed by the employer from September 20, 1954 until August 17, 1959, when he was discharged for insubordination. The claimant was classified as a paint and processing utility man at the time of his discharge. About three weeks before his discharge, the claimant was requested by his leadman, who had supervisory duties but no disciplinary power, to dust the fire extinguishers in his area. The claimant had worked in the same department for some eight months and had never before been asked to dust the fire extinguishers. The claimant did not refuse the request at that time but continued cleaning the floor for ten minutes until his break time when he went to see a union committeewoman about the request. She informed the claimant that this work was outside his job classification and should be performed by the company firemen. The claimant returned and informed the leadman that the work was outside his classification. The leadman made a noncommittal remark and did nothing further about the matter at that time.

At 8:15 a.m. on August 14, 1959, the leadman again asked the claimant to dust the fire extinguishers. The claimant was then masking parts in preparation for painting. When he had completed this operation, his leadman for the third time asked the claimant to dust the fire extinguishers. The claimant refused, so the leadman reported the matter to the assistant foreman. The assistant foreman repeated the request and the claimant refused, contending the work was outside his classification, and requested that the committeewoman be called. The assistant foreman did not call the committeewoman but told the claimant to return to his work. The assistant foreman then discussed the matter with a company labor relations representative and returned to again request the claimant to dust the fire extinguishers. The claimant refused and, at approximately 9:15 a.m., was told to leave the premises on a disciplinary suspension. About 1 p.m., the assistant foreman telephoned the claimant at his home and told him to report back on Monday, August 17, 1959, at which time the labor relations representative discussed the matter with the claimant and discharged him for insubordination.

Although the claimant denied that he had been warned by the assistant foreman on August 14, 1959 that his continued refusal would be considered insubordination and subject him to discharge, the assistant foreman testified that he had warned the claimant; a certified statement to this effect by the leadman was presented at the hearing; and the referee found that the claimant had been so informed. As a union steward, the claimant could have represented himself in initiating the grievance procedure without having another steward or committeeman present, but the claimant was not fully aware of this, having been a steward only one day.

The description of the claimant's job classification did not specify that the claimant was to dust fire extinguishers. Neither did it specify that the claimant was to perform other duties, such as masking parts for painting, which the claimant performed without question. It was well understood company policy that individuals were responsible for keeping their work areas clean at all times. One of the claimant's duties was to dust the bin in stock clerk production where he worked. Six other employees identified at the hearing as in the claimant's same job classification did dust fire extinguishers either upon request or without being asked.

Effective August 16, 1959, the claimant filed a claim for unemployment insurance benefits. The Department of Employment issued a ruling and determination that the claimant had been discharged for reasons other than misconduct connected with his work.

The question presented to us for consideration is whether the claimant's refusal to perform the work assigned to him constituted misconduct within the meaning of sections 1030 and 1256 of the code.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides that an individual is disqualified for benefits if he was discharged for misconduct connected with his most recent work. Section 1032 of the code provides that an employer's reserve account shall not be charged if it is ruled under section 1030 of the code that the claimant was discharged by reason of misconduct connected with his work.

Section 2856 of the California Labor Code provides as follows:

"An employee shall substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee."

In Benefit Decision No. 5672, this board discussed this provision of the Labor Code at some length and held that the refusal to comply with a reasonable and lawful order constitutes misconduct, and the beliefs which motivated the employee in taking the action were immaterial. This board has consistently adhered to the view that deliberate disobedience of lawful and reasonable instructions is misconduct and that if employees doubt the reasonableness or legality of supervisors' instructions, they should seek redress through other than disobedience. (Benefit Decisions Nos. 5612, 5827, 6092 and 6421).

In the present case, it is our opinion that the instruction to the claimant to dust the fire extinguishers in his work area was not unreasonable or unlawful and could readily have been performed along with his other duties, which included dusting and sweeping. He deliberately refused to obey this instruction on five separate occasions, persisting in his refusal even after he was warned of the serious consequences which would result. Under these circumstances, it is our opinion, in accordance with the views expressed in our prior decisions, that the claimant was discharged for misconduct connected with his work. If he felt that the work should not be performed by individuals in

his classification, his remedy was to have the matter settled through proper channels and not through deliberate disobedience of his supervisor.

DECISION

The decision of the referee is reversed. The claimant was subject to disqualification under section 1256 of the code and any benefits paid to the claimant subsequent to the termination of employment on August 17, 1959 based upon wages earned prior to the termination shall not be charged to the employer's reserve account under section 1032 of the code.

Sacramento, California, January 22, 1960.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ERNEST B. WEBB, Chairman

ARNOLD L. MORSE

WM. A. NEWSOM

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6598 is hereby designated as Precedent Decision No. P-B-190.

Sacramento, California, January 27, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT