BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 4827 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

BERNICE D. SHURTLIFF
(Claimant)

VAN DeCAMP'S HOLLAND DUTCH BAKERS
(Employer-Appellant)

PRECEDENT BENEFIT DECISION
No. P-B-319

FORMERLY BENEFIT DECISION
No. 4827

The above-named employer, on April 30, 1947, appealed from the decision of a Referee (LA-943) which dismissed the employer's appeal because of failure to appear at a hearing duly scheduled before the Referee. The matter was remanded by the California Unemployment Insurance Appeals Board to a Referee for hearing, and hearings were held in Los Angeles, California, on October 30, 1947, and January 21, 1948.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

Prior to filing her claim for benefits the claimant was last employed by the appellant-employer as a table waitress for approximately seventeen months. She voluntarily left in October 1945, for personal reasons which are not disclosed in the record.

On November 1, 1946, the claimant registered for work and filed a claim for benefits in the Los Angeles office of the Department of Employment. Upon receiving notice that a claim for benefits had been filed the employer mailed the claimant an offer of reemployment on November 5, 1946, and advised the Department of this offer. On November 15, 1946, the Department issued a determination which held that the claimant had not refused an offer of suitable employment without good cause within the meaning of Section 58(a)(4) of the Act [now section 1257(b) of the code]. The employer appealed and the matter was duly scheduled for hearing in Los Angeles on February 28, 1947, but was changed to March 28, 1947, at the request of the appellant. The employer's representative was attending to certain business matters in another city at the time of this hearing and did not appear to testify but in anticipation of this absence submitted an affidavit in lieu of a personal appearance. As a result of the employer's nonappearance the Referee dismissed the appeal on April 2, 1947. The employer appealed to this Appeals Board and the dismissal by the Referee was set aside and the matter was remanded for hearing on October 8, 1947. Hearings were held on October 30, 1947, and January 21, 1948, and a transcript of the evidence obtained has been referred to us for final consideration and decision.

The offer of reemployment on November 5, 1946, was to work in the claimant's former position as a waitress in a coffee shop operated by the appellant and in which she had previously worked. The claimant did not appear and testify at any of the hearings but a statement signed by her during an interview with a department representative in connection with the offer was entered in evidence. According to this statement the claimant was not a union worker but refused the offer because she was not willing to cross a picket line in front of the restaurant for the reason that she did "not want to be a strike breaker."

The evidence discloses that because of a trade dispute involving the employer, certain unions established this picket line on April 16, 1946. It was continuously maintained thereafter until August 27, 1947, when the picketing ended. The pickets were massed in front of the company's bakery plant and general office building. Adjacent to the main plant is an area reserved for parking and adjoining this is the coffee shop in which the claimant was offered reemployment. The picket line, which consisted of approximately 250 persons when it was first established, extended across the parking area and in front of at least one entrance to the coffee shop. Although the company operates numerous retail bakery stores and another coffee shop in addition to the above-mentioned establishments, as far as the record discloses there was no picketing except at the locality referred to in the vicinity of the main bakery plant.

There are approximately 1475 workers employed by the company and information was submitted disclosing that of this number approximately one-half work at the bakery plant, general offices, and adjoining coffee shop. The company did not stop operations during the dispute but approximately twenty workers, including some women, left their employment and/or participated in the picketing. However, the other employees continued to work, including those individuals who had to pass through the picket line to reach their employment.

A representative of the employer testified that the claimant was rehired in her former position on February 15, 1947, when she applied for work on her own behalf and that thereafter she crossed the picket line.

The appellant contends in part that the claimant should be disqualified from benefits because she refused to pass through the picket line to accept the offer of work. It is further alleged that the claimant did not have good cause for refusing the offer since she subsequently applied for the same position and was rehired at her own request.

REASON FOR DECISION

Section 13(b)(1) of the Unemployment Insurance Act [now section 1259 of the code] povides that "no work or employment shall be deemed suitable and benefits shall not be denied to any otherwise eligible and qualified individual for refusing new work . . . if the position offered is vacant due directly to a strike, lockout, or other labor dispute."

In the instant case, the Department determined that the employment offered to the claimant was not an offer of suitable employment because it was a position made vacant due directly to a trade dispute. The evidence amply discloses that the employer was involved in a trade dispute and that the picket line consequently established extended across an entrance to the premises where the claimant was offered employment. The evidence further discloses that some twenty employees of this employer left their work because of the trade dispute. Although the work categories of these people were not disclosed, it is noted that some of them were women. In this state of the record, we cannot establish as a fact whether or not the position offered to the claimant was one of the approximately twenty that were thus made vacant.

The Department determined that this was the case, however. We may presume, in the absence of evidence to the contrary, that the Department reached the conclusions expressed in its determination only after an investigation of the facts, and that the official duty of determining the eligibility of the claimant for benefits vested in the Department by Section 67 of the Act [now sections 1327-1333 of the code] was properly performed (Section 1963 CCP, sub. 15 [repealed - see Evidence Code, section 664]).

In addition, the question whether the position offered to the claimant was one made vacant by reason of a trade dispute is one peculiarly within the power of the employer to resolve by presenting pertinent evidence. In spite of the fact that there were two hearings held in this matter in which the issue was squarely presented, the employer saw fit to present no evidence that the position was not thus made vacant. The employer chose, however, to show only that a relatively few positions were made vacant by reason of the trade dispute. We concede that such evidence renders less probable that the position offered to the claimant was thus made vacant, but it certainly does not negate the possibility nor overcome the determination of the Department. In our opinion, the employer has not sustained the burden of proof that devolved upon the employer as appellant in this matter.

In Benefit Decision No. 1796-4061, this Board stated that "in the absence of evidence to the contrary, work offered behind a picket line may be presumed to be a position vacant due directly to a trade dispute." In view of the failure of the employer to present evidence to overcome the determination of the Department, it is not necessary to rely upon this precedent as a ground for decision in the instant case. We make no finding, therefore, as to whether that decision is applicable to the factual situation presently before us.

DECISION

The determination of the Department is affirmed. Benefits are allowed, provided the claimant is otherwise eligible.

Sacramento, California, April 9, 1948.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

TOLAND C. McGETTIGAN, Chairman

MICHAEL B. KUNZ

P-B-319

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 4827 is hereby designated as Precedent Decision No. P-B-319.

Sacramento, California, May 11, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT