BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 5850 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

SAMSON SARGIS

FREDERIC E. HENDERSON

(Claimants)

PRECEDENT BENEFIT DECISION No. P-B-322

FORMERLY BENEFIT DECISION No. 5850

The above-named claimants appealed to a Referee (SF-23277 and SF-23334) from determinations issued by the Department of Employment which held that the claimants were disqualified for benefits under the provisions of Section 58(a)(4) of the Unemployment Insurance Act [now section 1257(b) of the Unemployment Insurance Code]. On October 5, 1951, the Appeals Board set aside the decision of the Referee and removed the matter to itself under Section 72 of the Unemployment Insurance Act [now section 1336 of the code]. The interested parties have submitted briefs in support of their contentions.

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

STATEMENT OF FACT

The claimants were employed in various capacities on vessels operating on the high seas. They were members of the Pacific Coast Marine Firemen, Oilers, Water Tenders and Wipers Association (hereinafter referred to as the union) which had a membership of some 6,000 individuals. The members were employed under a collective bargaining agreement between the union and the Pacific Maritime Association and several other individual marine employers covering approximately 340 vessels operating off the west coast.

On February 20, 1951, claimant Henderson registered for work and filed a claim for benefits in the San Francisco Maritime Office of the Department of Employment. On or about March 22, 1951, the claimant Sargis registered for work and reopened a claim previously filed by him on October 3, 1950, in the same office of the Department of Employment. Upon filing their claims for benefits each of the claimants indicated to the Department that he was registered for work through the hiring hall facilities of his union. On April 10, 1951, the Department offered the claimant Henderson a referral to work in his usual occupation with the Military Sea Transport Service (hereinafter referred to as MSTS) an agency of the Federal Government operated by the Navy. The claimant Henderson refused the referral whereupon the Department, on April 17, 1951, issued a determination disqualifying him for benefits for a five-week period beginning April 10, 1951, under the provisions of Section 58(a)(4) of the Act [now section 1257(b) of the code] on the ground that he without good cause had refused a referral to suitable employment. On April 5, 1951, the Department issued a similar determination disqualifying the claimant Sargis for a five-week period beginning April 5, 1951, on the ground that he without good cause refused a referral to work as an oiler with the MSTS.

The MSTS operates approximately thirty-one vessels of various categories from the west coast in the transportation of military personnel and cargo to military bases overseas. A directive of the Federal Government provides that the compensation of military transportation service marine employees be administered in accordance with the prevailing maritime rates and practices as nearly as consistent with the public interest. MSTS conducts a continuous survey of the pay scales and conditions of employment in the maritime industry by reviewing collective bargaining agreements in effect and by frequent consultation with employers of marine personnel. This is done for the purpose of adjusting and conforming pay scales and employment practices in the MSTS with private marine employment. At the time the referrals in issue were given the wage scale of the MSTS and the union scale governing the operation of private vessels were substantially the same. The majority of the engine room personnel received compensation at a base pay of $248.50 per month in private employment and $248.33 per month MSTS employment. The hours of employment, overtime rate and bonus rate and provisions were the same in both types of employment. Some minor differences existed as to the circumstances under which overtime was paid and under the collective bargaining agreements overtime compensation was paid in a few instances not provided for in the MSTS directive relative to remuneration. The collective bargaining agreements provided, among other things, for arbitration of grievances, renegotiations of wage scales and certain other enumerated fringe benefits as for example, travel pay to point of hire. Private employment also afforded the workers fourteen days vacation per year or pro rata thereof provided they remained in employment continuously with the same employer for a period of six months and $6 a day maintenance and

cure pay. In addition the workers were covered by a $1,500 insurance policy and a $30 a week hospital allowance. MSTS affords the workers a procedure for adjustment of grievances between the parties and with a right to appeal to the several higher echelons of command up to the Secretary of the Navy. The workers in MSTS enjoy the benefits of civil service vacation rights amounting to two and one-third days per month, sick leave at the rate of one and one-fourth days per month, retirement benefits, free use of marine hospitals and steady year around employment. Similar protection for damages arising out of personal injury exists for the workers in both types of employment. Also, both afford the workers substantially the same quarters and food. The provisions relating to war risk insurance are common to both employments.

As a sample of comparative earnings the union, in behalf of the claimants, introduced in evidence the earnings of thirty-four members out of its 6,000, involving fifteen vessels out of some 340 under the collective bargaining agreement during the first quarter of 1951. Eight of these vessels operated in the Far East, three on coastwise runs and four on Alaska runs. No vessels were included from the South Pacific runs, the Hawaiian run or the South American run. Employment on the vessels of the Alaska run were admittedly not typical because most of the hiring occurred in Seattle and for the additional reason that the Alaska run is customarily unique in the high amount of overtime it affords the workers. With respect to this sample the evidence shows that the union members earned about 75.8% in excess of their base pay.

A sample of earnings of engine room personnel aboard four vessels operated by the MSTS during the period March 1, 1951, through May 15, 1951, indicates an average compensation over and above base pay of approximately 35%.

In either employment the amount of overtime compensation which any worker could reasonably anticipate is dependent upon the type of vessel, the nature of the cargo and the destination of the vessel.

A representative of the union testified that in accordance with the constitution and by-laws of the union its members could not accept employment with MSTS without the union's consent; that whether or not consent was given depended upon the shipping and employment situation at the particular time; that members of the union have been known to work for the MSTS. There is no evidence that the union ever disciplined any member for accepting employment with MSTS without the union's consent.

The claimants in this case refused the referrals without attempting to secure such consent. At the time in question there were approximately 2,000 members in employment and approximately 4,000 “on the beach."

It is contended on behalf of the claimants that they had good cause for refusing the referrals in question in that the work afforded them substantially lower potential earnings, deprived them of certain fringe benefits guaranteed to them by the collective bargaining agreement, deprived them of the right to strike and exposed them to less favorable working conditions, particularly with respect to grievance procedure and wage negotiations. The claimants also contend and stress in their belief that their refusal of the referrals was with good cause in that the acceptance of employment with the MSTS would have exposed them to disciplinary action by the union.

REASON FOR DECISION

Section 58 of the Unemployment Insurance Act [now section 1257(b) of the code] provides in part as follows

> "(a) An individual shall be disqualified for benefits if:"
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> * * *
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> "(4) He without good cause, has refused to accept suitable employment when offered to him, or failed to apply for suitable employment when notified by a public employment office."

Section 13 of the Unemployment Insurance Act [now sections 1258-1259 of the code] provides in part as follows:

> "(a) 'Suitable employment' means work in the individual's usual occupation or for which he is reasonably fitted, regardless of whether or not it is subject to this act.
>
> "In determining whether the work is work for which the individual is reasonably fitted, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and

the distance of the available work from his residence. Any work offered under such conditions is suitable if it gives to the individual wages at least equal to his weekly benefit amount for total unemployment.

"(b) Notwithstanding any other provision of this act, 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 under any of the following conditions:

* * *

"(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; . . ."

In the instant case the evidence establishes and it is not disputed that the claimants were referred to work in their usual occupations or for which they were reasonably fitted by reason of their prior training and experience. Employment with the Federal Government assured them of substantially the same hours, wage scale, overtime rate, bonus rate and provisions, and war risk insurance as employment with private shippers under contract with their union. We find nothing in the evidence with respect to the conditions of employment with the Military Sea Transport Service which would render such work substantially less favorable than similar work in the claimants' locality. Whatever fringe benefits the claimants might realize by virtue of working for private shippers under contract with the union are offset by the more advantageous conditions connected with Federal employment such as vacation pay, sick leave, retirement provisions and the important consideration of steady year around employment as distinguished from intermittent or uncertain employment with private shippers as indicated by the fact that approximately two thirds of the union membership were unemployed at or about the time in issue. Nor do we think that MSTS employment is rendered unsuitable by reason of the fact that the claimants would not enjoy the right to strike against the Federal Government. Since the right to strike against the government is barred by reason of sound public policy then by the same token it would be against public policy to hold government employment, suitable in other respects, unsuitable by reason of the loss of this right.

The evidence further establishes that MSTS employment afforded the claimants a procedure for adjusting grievances and that the pay, hours, and overtime scales were subject to periodic adjustment to conform to the prevailing scales existing in the locality. Hence the claimants' contention that acceptance of the proffered employment would have deprived them of certain grievance procedures and rights to negotiate for wage increases set forth in the collective bargaining agreements with private shippers is without substance. In behalf of the claimants, great stress is laid upon the fact that their potential earnings with private shippers under contract with their union were substantially in excess of their potential earnings with the MSTS. This contention is predicated upon certain statistics and data submitted by the claimants' union to support their assertion that private employment affords them more opportunities for overtime. The evidence in support of this assertion is meager and inconclusive and establishes nothing more than that the amount of overtime pay which the claimants could have earned in either employment was a matter of speculation as it was dependent upon the type of vessel, cargo and destination. We are of the opinion that as long as the rate of pay for overtime was comparable the work was not rendered unsuitable because one position might have afforded more opportunities for overtime than another.

Considering the foregoing and applying the criteria set forth in Section 13(a) and (b) of the Act [now sections 1258-1259 of the code] we can reach no other conclusion but that the work to which the claimants were referred was suitable. The remaining issue before us is whether the claimants have established good cause within the meaning of Section 58(a)(4) of the Act [now section 1257(b) of the code] for refusing the referrals.

In Benefit Decision No. 5539, we held that a claimant had good cause for refusing nonunion work where acceptance of such work would have exposed him to probable suspension or expulsion from the union which in turn would have excluded him from approximately ninety percent of the available work in his regular occupation. The claimant, in the cited case, was personally willing to accept the proffered work but on contacting his union he was advised not to accept the work on penalty of disciplinary action. In the instant case there is no evidence that the claimants would have exposed themselves to disciplinary action by their union in the event they accepted the referrals in issue. Although the union representative testified that the acceptance of MSTS work would violate a provision of the constitution of the union he also admitted that members have been known to work for the MSTS and that he knew of no case where disciplinary action was taken; that the union's consent to such employment would depend upon the shipping and employment situation at the particular time. Considering the fact that in the instant case the claimants rejected the referrals without attempting to secure

the consent of their union at a time when approximately two thirds of the membership was unemployed, our rationale in the cited case is not applicable to the instant case. We conclude, therefore, that the claimants have not established good cause for refusing the referrals within the meaning of Section 58(a)(4) of the Act [now section 1257(b) of the code].

DECISION

The decision of the Referee is reversed. The claimants are disqualified for benefits under Section 58(a)(4) of the Act [now section 1257(b) of the code] for the maximum period provided by Section 58(b) of the Act [now section 1260 of the code].

Sacramento, California, February 1, 1952.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

EDWARD CAIN

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5850 is hereby designated as Precedent Decision No. P-B-322.

Sacramento, California, May 18, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT