BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6379 AS A PRECEDENT DECISION PURSUANT TO SECTION 1409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

ROBERT F. BECK, and others,
Claimants-Appellants (See Appendix)
[Appendix removed in accordance with California Code of Regulations, title 22, section 5109(e)]

BIRELEY'S, Employer-Appellant

DEPARTMENT OF EMPLOYMENT, Respondent

PRECEDENT
BENEFIT DECISION
No. P-B-357

FORMERLY
BENEFIT DECISION
NO. 6379

Referee's Decision
No. LA-8329 & others

STATEMENT OF FACTS

The claimants and the employer appealed from the decision of a referee which held that the claimants were not entitled to benefits under Section 1252 of the Unemployment Insurance Code. The matter was orally argued before the Appeals Board on July 11, 1955 at Los Angeles. The appendix to this decision is referred to and made a part of this decision.

The claimants, production employees of a food corporation, were temporarily laid off on December 9 and 10, 1954 for lack of work. On December 15, 1954, in accordance with company policy, all employees in service on December 1, 1954 or on bona fide leaves, including the claimants, were paid a Christmas bonus amounting to 3% of their earnings from December 1, 1953 through November 30, 1954, up to a maximum of $150.

This bonus, announced in a written statement on November 12, 1954, was authorized by the employer's board of directors on November 12, 1954 and has been paid annually since 1946 at the discretion of the employer, depending upon the profit of business. It was not paid because of any contractual obligation between the employer and the union or between the employer and its employees. The amount paid had no relation to years of service or to the length of the lay-off. Except in some special cases such as employees on leave on December 1, 1954, there was no requirement that the claimants return to work following the lay-off in order to receive the bonus. The prime requirement was that they be employed or on a bona fide leave on December 1, 1954. For the employer's accounting purposes for withholding tax and contribution deductions, the bonus was treated as wages in the period in which paid.

Effective December 12, 1954 and other pertinent dates (see appendix) [Appendix removed in accordance with California Code of Regulations, title 22, section 5109(e)], the claimants registered for work as totally unemployed individuals and filed or attempted to file initial or additional claims for benefits in the Hollywood and other offices of the Department of Employment. The claimants did not report the receipt of the bonus payments because clearance had been made in prior years with the department and the bonus was not treated as wages allocable to the period of lay-off. Benefits were paid to the claimants at the rate of $25 or $30 per week. On varying dates in January and February 1955, the department, upon receipt of information that the bonus had been paid, retroactively determined that the claimants were ineligible for benefits under Section 1252 of the code and were liable for repayment of the benefits received under Section 1375 of the code. Upon being notified of the determination, a timely appeal was filed by the employer and by the claimants except for claimant Bob Allen who inadvertently failed to appeal. However, the employer's appeal was timely as to his case.

That the bonus was wages was not questioned by the employer or the claimants. The issues are:

(1) Since claimant Bob Allen filed an untimely appeal, may the merits of his case be considered in view of the timely appeal filed by the employer?

(2) If the payment is allocable to the period of unemployment, are the claimants liable for the repayment of the benefits received?

(3) Is the payment allocable to the period of unemployment following the lay-off or to the period prior to December 1, 1954?

REASONS FOR DECISION

Section 1328 of the Unemployment Insurance Code provides in part as follows:

"1328. . . . The claimant and any employer who prior to the determination has submitted any facts or given any notice pursuant to Section 1327 and authorized regulations shall be promptly notified of the determination and the reasons therefor and may appeal to a referee within ten days [now 20 days] from mailing or personal service of notice of the determination. The 10-day period may be extended for good cause."

We may assume that the employer complied with the qualifying provisions of the above section since he was notified of the determination and filed a timely appeal. This was a proper appeal since the employer considered the department's allocation of the bonus adverse to its interests (Benefit Decision No. UCV 3). Therefore, since the employer's appeal was timely, we shall include claimant Bob Allen's appeal in our consideration of the rest of the cases even though his appeal was untimely.

Section 1252 of the code provides in part:

"1252. An individual is 'unemployed' in any week during which he performs no services and with respect to which no wages are payable to him . . ."

The payments made to the claimants herein on December 15, 1954 were in the nature of a bonus, which is "wages" as defined in Section 926 of the code and as held in prior board decisions (Benefit Decisions Nos. 6047 and 6275). The problem is one of allocation of the bonus, an issue which previously has been considered in Benefit Decisions Nos. 6047 and 6303. In Benefit Decision No. 6303, we held:

> "In the instant case, the employer has 'allocated' the bonus payment to the month of December, 1953, which occurred after the claimant ceased performing services and, accordingly, after such bonus was earned. This raises the question whether the employer's allocation was proper or, indeed, whether the employer had the right to allocate the bonus payment to any period other than the period in which it was earned. We think not, in both instances. A bonus payment is something extra paid for an employee's services and with respect to the period in which the services were performed or, in other words, the period when the bonus was earned (Benefit Decision No. 6047). Therefore, an employer does not have the right to allocate a bonus payment to any other period notwithstanding the fact that the payment may be made after it is earned."

Therefore, we conclude that the bonus payments received by the claimants herein in December 1954 are properly allocable to the 12-month period prior to December 1, 1954. The claimants, therefore, were unemployed and eligible for benefits for the periods in question within the meaning of Section 1252 of the code. Accordingly, no overpayment existed.

This case is distinguishable from Benefit Decision No. 5964 where the claimants were given severance pay upon the termination of their services. As severance pay, it was intended to tide the claimants over a period of unemployment and was in no sense a bonus allocable to the period prior to separation. Accordingly, that case cannot be considered as authority in this appeal.

DECISION

The decision of the referee is reversed. Benefits are payable provided the claimants are otherwise eligible. The overpayment is cancelled.

Sacramento, California, November 10, 1955.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

ARNOLD L. MORSE

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6379 is hereby designated as Precedent Decision No. P-B-357.

Sacramento, California, June 2, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT