

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6643 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

CLAYTON F. WOLBAUGH AND OTHERS
(Claimants-Appellants)
(See Appendix)
[Appendix removed in accordance
with California Code of Regulations,
title 22, section 5109(e)]

PACIFIC VEGETABLE OIL CORPORATION
(Employer-Respondent)

PRECEDENT
BENEFIT DECISION
No. P-B-375

FORMERLY BENEFIT DECISION No. 6643
--

Case No. 61-1135
and
Case No. 61-1328

In Case No. 61-1135, claimants Wolbaugh, Korte and Falkenstein appealed from Referee's Decision No. SF-TD-11043 and Others which held that they were ineligible for benefits under section 1262 of the Unemployment Insurance Code for the week beginning December 18, 1960. The decision held also that claimant Korte was not subject to disqualification for benefits under section 1257(a) of the code. However, claimant Korte was held liable for the repayment of benefits overpaid in the amount of \$55 for the week beginning December 25, 1960, but the balance of his overpayment in the amount of \$55 for the week beginning January 1, 1961 was cancelled. In Case No. 61-1328, claimant Hall appealed from Referee's Decision No. SF-TD-12867 which held that he was ineligible for benefits under section 1262 of the code for one week beginning December 18, 1960, but was not subject to disqualification for benefits under section 1257(a) of the code. Claimant Hall was held liable for benefits overpaid in the amount of \$55 under section 1375 of the code. Because of the similarity of facts and issues, these two cases have been consolidated for decision in accordance with section 5071 of Title 22 of the California Administrative Code.

STATEMENT OF FACTS

The claimants were employed at the employer's vegetable oil processing plant in Richmond, California. The claimants were members of the International Longshoremen and Warehousemen's Union, Local No. 6, which had a collective bargaining agreement with the employer covering all plant and maintenance employees.

The plant force included about 60 workers, some of whom were part of a production crew which worked on varying shifts so that operations were carried on 24 hours a day, seven days a week. The claimants, however, normally worked a shift from 8 a.m. until 4:30 p.m., five days a week, Monday through Friday. The plant was at a low state of production as of December 16, 1960, and it was anticipated that there would be a curtailment of production operations over the holidays.

At or about 1 p.m. on December 16, 1960, a stop-work meeting occurred at the plant because of a dispute over the pay rate of one of the employees. This necessitated the shutting down of operations. A sufficient force of men was left in the plant to close down the operations, which took place gradually until at or shortly before the close of the shift at 4 p.m. The remainder of the work force, including the claimants, gathered together outside the plant. The employer refused to bargain with the union until the men returned to work. The men at the stop-work meeting were instructed by the union officials to report back to work on Monday, December 19, 1960. None of the shift men reported for work over the weekend, although the plant was open and they could have been put to work. The claimants were not scheduled for work over the weekend.

The claimants reported for work shortly before 8 a.m. on Monday, December 19, 1960. They went to their work stations and either performed work to which they had previously been assigned or waited for an assignment. The union officials met with the employer in an attempt to solve the differences beginning about 8:15 a.m. At some time during the course of the next hour an understanding was reached that the men would return to work as soon as this was reasonably possible. As long as the plant was shut down and in view of the impending holidays, it was decided that full-scale operations would not be immediately resumed. About six to ten men were put to work and the remainder, including the four claimants, were laid off. When the claimants filed their claims for benefits for the week beginning December 18, 1960, they stated that they were not working because they had been laid off.

Claimant Korte was given waiting period credit for this week and then paid benefits in the amount of \$55 for each of the following two weeks. Claimant Hall received benefits in the amount of \$55 for the week beginning December 18, 1960.

REASONS FOR DECISION

Section 1262 of the Unemployment Insurance Code provides:

"1262. An individual is not eligible for unemployment compensation benefits, and no such benefit shall be payable to him, if he left his work because of a trade dispute. Such individual shall remain ineligible for the period during which he continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed." (Emphasis added)

Section 1262-1 of Title 22 of the California Administrative Code provides:

"1262-1. With respect to acts or periods of ineligibility under Section 1262 of the code 'week of ineligibility' shall be any week or weeks applicable to the individual under these regulations, during any portion of which his unemployment is due to his having left his work because of a trade dispute and for the period during which he continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed." (Emphasis added)

Section 143 of the Unemployment Insurance Code provides in part:

"143. 'Week' means a period of seven consecutive days as prescribed by authorized regulation. . . ."

Section 1253-1 of Title 22 of the California Administrative Code provides:

"1253-1. The term 'week' for benefit purposes means the seven consecutive days commencing at 12:01 a.m., Sunday, and ending 12 midnight the following Saturday."

In Benefit Decision No. 6599, [now Appeals Board Decision No. P-B-374] where the claimant left his work on May 11, 1959 because of a trade dispute and continued out of work because of the trade dispute until Tuesday, June 30, 1959, at which time the claimant was not recalled to work because no work was available, we held that the claimant was ineligible for benefits for the week beginning June 28, 1959 under section 1262 of the code. In Benefit Decision No. 6599 [now Appeals Board Decision No. P-B-374], we specifically found that the claimant had been unemployed during a portion of the week because of the fact that a trade dispute was still in active progress at the establishment in which he was employed. Although the claimant was unemployed during the remainder of the week because his employer had no work for him, unemployment insurance benefits, as distinguished from disability benefits, are payable for full weeks and not for portions of weeks.

In the present case, Sunday, December 18, 1960, was not a normal work day for the claimants. They reported for work on Monday, December 19, 1960, which was the first day of the week for which they were scheduled to work, and were laid off for lack of work. Under these circumstances, we hold that during the week commencing December 18, 1960, the claimants did not continue out of work by reason of the fact that the trade dispute was still in active progress in the establishment in which they were employed. Therefore, they were not ineligible for benefits under section 1262 of the code.

Section 1257(a) of the code provides that an individual is disqualified for benefits if he wilfully made a false statement or representation or wilfully failed to report a material fact to obtain benefits. We agree with the referee that since the claimants were in fact laid off, a disqualification for benefits under section 1257(a) of the code was inappropriate.

In view of our conclusions under sections 1262 and 1257(a) of the code, the overpayments assessed against claimants Hall and Korte must be cancelled.

DECISION

The decisions of the referee are modified. The claimants were not ineligible for benefits for the week beginning December 18, 1960 under section 1262 of the code. Claimants Korte and Hall are not subject to disqualification for benefits under section 1257(a) of the code. The overpayments are cancelled.

Sacramento, California, June 30, 1961.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ERNEST B. WEBB, Chairman

ARNOLD L. MORSE

GERALD F. MAHER

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6643 is hereby designated as Precedent Decision No. P-B-375.

Sacramento, California, January 24, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

HERBERT RHODES