

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

LONNIE B. GANT  
(Claimant)

GENERAL MOTORS  
(Employer)

PRECEDENT  
BENEFIT DECISION  
No. P-B-400  
Case No. 78-3829

Office of Appeals No. SJ-12747

The claimant appealed from the decision of the administrative law judge which held that the claimant was disqualified under section 1256 of the Unemployment Insurance Code and that the employer's reserve account was relieved of benefit charges.

STATEMENT OF FACTS

The claimant was employed by the above employer for approximately 17 years. He last worked as a production inspector on the-assembly line. He was suspended on February 23, 1978, which suspension was converted into a discharge on February 27, 1978.

The claimant's duties involved the inspection of trucks moving along the assembly line. Among the items which he was required to inspect were windshield wipers and defrosters. In the morning of February 23, 1978 the claimant's foreman observed that the claimant did not check the windshield wipers and defroster on a particular vehicle. There followed a conference between the claimant, his committee man, and supervisory personnel. As a result of that conference the claimant was warned that if he failed to follow instructions disciplinary action would result.

During the afternoon of February 23, 1978 the general foreman and production foreman observed that the claimant did not check the defroster on another vehicle. The required procedure was to turn on the blower and place one's hand above the instrument panel to determine whether air was coming through the vent. The claimant's suspension and discharge were the result of this incident.

According to the claimant, there was a personality conflict between himself and the general foreman. He contended that he was being harassed. Shortly before the afternoon incident on February 23, 1978 the claimant accused the general foreman of deliberately disconnecting a wire on a truck. The claimant concluded that this was an attempt by the general foreman to "set up" the claimant. These allegations were denied by the general foreman.

The employer had a six-step progressive disciplinary procedure. In order, these steps were described as follows: written reprimand, serious reprimand, final reprimand, suspension for balance of shift plus two weeks, suspension for balance of shift plus 30 days, and discharge.

Beginning in September 1977 the claimant received a written reprimand for abusive language. He then received a serious reprimand for insubordination. Next, he was suspended for the balance of his shift plus two weeks for threatening or interfering with a supervisor. The employer's evidence indicated that the third step, final reprimand, was bypassed in this instance because of the gravity of the offense.

The claimant next received two successive suspensions of the balance of his shift plus 30 days. In each case the reason given was absence without reasonable cause. The claimant testified that he had a medical excuse which the employer refused to accept. An employer's witness testified that although a discharge would have been warranted in the case of the last absence, a lesser penalty was assessed in view of the claimant's lengthy period of employment.

### REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides that an individual is disqualified for benefits, and sections 1030 and 1032 of the code provide that the employer's reserve account may be relieved of benefit charges, if the claimant has been discharged for misconduct connected with his most recent work.

In Appeals Board Decision No. P-B-3, based on Maywood Glass Company v. Stewart, 170 CA 2d 719, the Board stated that "misconduct connected with the work" consists of four elements:

- "(1) A material duty owed by the claimant to the employer under the contract of employment;
- (2) A substantial breach of that duty;
- (3) A breach which is a wilful or wanton disregard of that duty; and
- (4) Evinces a 'disregard of the employer's interests,' i.e., tends to injure the employer."

On the other hand, mere inefficiency, unsatisfactory conduct, poor performance because of inability or incapacity, isolated instances of ordinary negligence or inadvertence, or good faith errors in judgment or discretion are not "misconduct."

In Maywood, the court held that the employer has the burden of establishing misconduct to protect its reserve account.

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 Appeals Board Decision No. P-B-190 it was held 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 avenues than disobedience.

In Lacy v. California Unemployment Insurance Appeals Board (1971), 17 CA 3d 1128, 95 Cal. Rptr. 566, the court held that Labor Code section 2856 establishes the extent of an employee's duty to comply with his employer's instructions.

In the present case, the evidence is conflicting concerning the events leading to the claimant's discharge. However, from the weight of the evidence it appears that the claimant deliberately failed to carry out his duties on February 23, 1978 although earlier that very same day he had been warned of the consequences. The claimant's actions demonstrated misconduct within the meaning of section 1256 of the code.

Our finding of misconduct is not dependent upon whether the claimant was discharged pursuant to the employer's progressive discipline procedure. Rather, we conclude that the claimant's actions constituted misconduct without regard to private rules or standards. The responsibility for determining whether a claimant is entitled to unemployment insurance benefits rests with the Department and the Appeals Board, and is not a matter subject to private agreement between parties or a set of progressive disciplinary rules or procedures established by an employer (Pacific Maritime Association v. California Unemployment Insurance Appeals Board (1965), 236 CA 2d 325, 45 Cal. Rptr. 892; Appeals Board Decision No. P-B-47).

#### DECISION

The decision of the administrative law judge is affirmed. Benefits are denied as provided in the appealed decision and the employer's account is relieved of charges.

Sacramento, California, September 5, 1978.

#### CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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