

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

THOMAS W. ELLIOTT
(Claimant-Respondent)

PRECEDENT
BENEFIT DECISION
No. P-B-43
Case No. 69-398

EARTH SCIENCES
A TELEDYNE COMPANY
(Employer-Appellant)

The employer appealed from Referee's Decision No. BK-17498 which held that the claimant was not ineligible for benefits under section 1252 of the Unemployment Insurance Code. The employer filed written argument with this board. Such argument has not been received from the claimant or the Department of Employment.

STATEMENT OF FACTS

The claimant was employed for 34 months as the employer's industrial relations manager. His employment was terminated under circumstances not material herein and he was paid vacation for 112 hours totaling \$761.60, and, in lieu of advance notice of layoff, pay for 120 hours totaling \$816. His last date of employment was October 25, 1968, at which time he received the foregoing sums.

The employer submitted an affidavit to which it attached a copy of a portion of its "Personnel Policy" concerning termination of employees. The portion of the policy pertinent herein reads as follows:

"C. Reduction in Force: When economic conditions or technological changes within the Earth Sciences Company require a reduction in the work force.

"5. Employees who are terminated involuntarily because of reduction in force will be given advance notice when time permits. In the event time does not permit an advance notice an employee will receive severance pay in lieu of the advance

notice, or a combination of advance notice and severance pay. Employees who have been employed continuously for a period of less than six months by the Earth Sciences Company or another Teledyne organization will receive no notice. Employees who have been employed more than six months but less than 12 months by Earth Sciences Company or another Teledyne organization will receive one week notice or severance pay. Employees who have been employed continuously for a period in excess of 12 months, but less than two years, by the Earth Sciences Company or another Teledyne organization, will receive two weeks notice or severance pay. Employees who have been employed continuously by Earth Sciences or another Teledyne organization in excess of two years, but less than five years, will receive three weeks notice or severance pay. Employees who have been employed by Earth Sciences or other Teledyne organization for five or more years will receive one month notice or severance pay."

The issue before us is the proper allocation of the \$816, and the resulting effect, if any, on the claimant's entitlement to benefits.

REASONS FOR DECISION

Section 1251 of the code provides that unemployment compensation benefits are payable from the Unemployment Fund to unemployed individuals who are eligible therefor.

Under section 1252 of the code, "An individual is 'unemployed' in any week during which he performs no services and with respect to which no wages are payable to him"

In Benefit Decision No. 6779, upon termination of employment the claimant received \$127.30 from the employer under an employer policy which provided for such pay upon a termination of employment where advance notice of such termination is not given to the employee by the employer. We held that such pay was pay in lieu of advance notice of layoff, and not severance pay, and therefore such pay was "wages" allocable to a period following termination of employment.

In Powell, et al. v. California Department of Employment, et al. (1965), 63 Cal. 2d 103, 45 Cal. Rptr. 136, 403 P. 2d 392, the court held that in light of

the passage of section 1265 of the Unemployment Insurance Code, severance or dismissal pay was not "wages" and therefore such pay has no effect on a claimant's entitlement to benefits under the code. (We followed this reasoning in Benefit Decision No. 6771.) In reaching this conclusion the Supreme Court reasoned that in making a determination concerning the effect of a monetary payment by an employer upon the benefit rights of a claimant, the substance of the payment must be examined and that the mere label given to the payment is not controlling.

A reading of the cases so far cited, and also Bradshaw v. California Employment Stabilization Commission, et al. (1959), 46 Cal. 2d 608, 297 P. 2d 970 and Appeals Board Decision No. P-B-4, show that the substance or purpose of the payment of pay in lieu of notice and dismissal or severance pay is different.

The amount of pay in lieu of notice that is paid upon termination of employment is based upon length of service and the amount the person was being paid by the employer. The purpose of the pay is to compensate the employee for the employer's failure to give the employee any (or only partial) advance notice of the termination of the employment relationship.

The amount of dismissal or severance pay that is paid upon termination of employment is also based upon length of service and the amount the person was being paid by the employer. The purpose of such pay is "to tide the discharged employee over until he could secure employment" (Bradshaw case), or possibly, the purpose is to be a "partial compensation for the loss of anticipated future earnings, the present necessity to retain and acquire new skills, and the need to seek and acquire new jobs without seniority rights." (This was the position of the claimants in the Powell case, which position was not passed upon by the court.)

We must determine the substance or purpose of the payment involved herein in light of the above principles. Under these principles the pay involved herein is pay in lieu of advance notice of layoff. The fact that the words "severance pay" are used is not controlling.

In the instant case the required notice of the termination was not given by the employer and the payment was made in lieu of the required advance notice. The payment is therefore "wages" allocable to a period following termination of employment, and the claimant is ineligible for benefits for that period under section 1252 of the code.

DECISION

The decision of the referee is reversed. The claimant is ineligible for benefits under section 1052 of the code.

Sacramento, California, April 10, 1969.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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