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Social Security and Public Welfare

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made, for five years, become the property of the person to whom loaned unless reservation of a right to them is made to the lender in writing and recorded in the office of the county recorder or unless recorded as chattel mortgages or conditional sales.

Plaintiff sold nuts through vending machines which it leased to customers under written leases good for five years, and thereafter from year to year until lessee should give lessor 30 days written notice or lessor should give lessee six months notice of intention to terminate.

In an action by plaintiff lessor in replevin against a person who succeeded to the interest of plaintiff's original lessee of the machine and who refused to return it to lessor on demand, the court held that there was no "pretended loan," no fraud and no loss of title by plaintiff. Section 1335.03 did not apply to the transaction and did not require as between the parties that it be in writing or be recorded.

SAMUEL SONENFIELD

SOCIAL SECURITY AND PUBLIC WELFARE

Unemployment Insurance

Two of the cases reported during the past year involved the question of burden of proof in connection with unemployment benefit claims.

In *Orr v. Bureau of Unemployment Compensation,*[1] the record before the court contained no evidence respecting the claimant's availability for work aside from the claimant's own testimony that she had been seeking employment, as required by the express provision of the statute. The court held that in such circumstances the claim should have been allowed. The referee had partially disallowed the claim after benefits had been awarded by the administrator, on some basis not clear from the record itself, and the court ruled that this decision was against the manifest weight of the evidence.

Conversely, it was held in *Minnich v. State*[2] that the claimant's burden of proof had not been sustained where, on the basis of the evidence, he had failed to establish that occasional long hours which he was required to work as a poultry dresser constituted "just cause" for leaving his employment. The claimant testified that he had been required to work from 80 to 90 hours a week at the rate of $1.00 an hour, and there was definite evidence that his hands were cracked and scaled. The employer's records showed that he had worked 84¼ hours in at least one week, but

[1] 138 N.E.2d 678 (Ohio C.P. 1954)

[2] 138 N.E.2d 34 (Ohio C.P. 1956)

according to the employer, his average was only 54½ hours per week over the year. The claimant admitted that he had agreed to work overtime for the holiday season, and had not complained to the employer. The employer also testified that the hours worked were not unusual for this industry. The claimant said that he got tired but had not consulted a doctor about his condition.

The court expressed the opinion that occasional long working hours do not per se constitute "just cause" for quitting and overruled both the agency and the referee, by whom benefits had been allowed, holding that they should have been denied.

From the opinion itself, it is difficult to determine just what would justify quitting. In at least one earlier case it was held that overtime hours did justify voluntary leaving, where a woman testified that the overtime she was compelled to work was detrimental to her health, and no other evidence was presented.[3] Moreover, dissatisfaction with working conditions has been held to be just cause for quitting, even though the employee had endured the conditions complained of for approximately two years.[4] It seems fairly apparent that the view in these cases does not jibe with the conclusion in the instant case, notwithstanding certain distinguishing factors.

The claimant in the *Minnich* case was admittedly required to work substantially in excess of 40 hours a week with no provision for overtime pay. Although it is unlikely that the Federal Fair Labor Standards Act applied in this instance, the worker's decision to quit, particularly in view of the condition of his hands as shown by the record, would seem to be not entirely without justification. To say, under such circumstances, that the claimant has failed to meet the burden of proof required under the Unemployment Compensation Act is open to question. It is doubtful that the Act was intended to impose this strict a burden in view of the fact that few claimants can afford to retain counsel, and many of them are unfamiliar with the provisions of the law or the manner of proving their claim. The second ground for the court's decision appears more tenable.[5]

In *Moore v. Board of Review*,[6] the Ohio Supreme Court ruled that

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[3] Hoffer v. State, CCH U.I. SERV. (Ohio) ¶ 8454 (Licking C.P. 1954), referred to in 1954 Survey, 6 WEST. RES. L. REV. 291, 296 (1955). In this case, the court reversed a decision by the agency denying benefits.

[4] Redmond v. Harwood Screw Products, Inc., CCH U.I. SERV. (Ohio) ¶ 8453 (Clark C.P. 1954), referred to in 1954 Survey, 6 WEST. RES. L. REV. 291, 296 (1955).

[5] The claimant, in his original application, had reported that he was laid off due to lack of work, which was not actually the case. The court ruled that this was an additional ground for denying the claim since giving this erroneous information constituted a false statement of a material fact which required disqualification under a different section of the law.

[6] 165 Ohio St. 526, 138 N.E.2d 245 (1956).

payments of monthly installments of an annuity under the United States Civil Service Retirement Act were not sufficiently similar to payments under the Old Age and Survivors Insurance program to require charging against unemployment benefits pursuant to the terms of Revised Code Section 4141.31 (A) (3) As a result, the recipient of the Civil Service annuity payments was not precluded from receiving unemployment insurance benefits by reason of the fact that the former exceeded the latter.[7]

The Ohio race tracks made an effort during the past year to have their business declared seasonal so as to avoid being charged with unemployment occurring during periods when the tracks were not in operation. The application for such a determination was denied by the administrator, however, and this decision was upheld by the common pleas court on appeal.[8]

Under section 4141.33 of the Revised Code, an industry is to be considered seasonal if it is customary to operate, because of climatic conditions or because of the seasonal nature thereof, only during regularly recurring periods of less than 36 weeks duration. If such a determination is made, benefits are payable to workers engaged in such seasonal employment only during the longest seasonal periods which the practice of such industry will reasonably permit.

In the instant case, it was found that the majority of the tracks in Ohio retain many of their employees during a period of from 9 to 11 months, in excess of the period referred to in the statute. The court also pointed out that the periods during which the tracks operate are not based on weather or nature's vagaries, but are limited by statute enacted by the state legislature. Consequently, this is not one of the industries or employments contemplated by the seasonal provisions of the Unemployment Compensation Act.[9]

Two cases previously referred to in connection with the application

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[7] The decision was not unanimous, three of the judges (Taft, Weygandt and Stewart) being of the opinion that these were similar payments within the meaning of the Ohio law. The majority, however, relied upon such differences as the higher rate for Civil Service Retirement (6%), the available options for settlement, and the fact that the employee's contributions may be recovered with interest under certain circumstances. In other respects, of course, similarities do exist, the difference between the F.I.C.A. tax and the deductions imposed under the Federal Retirement System being fairly superficial. The Federal Retirement System has been amended in recent years and the benefit provisions are quite similar as the two laws are now written. "Social Security" is social insurance and not a poor man s pension as the court of appeals had seemed to imply.

[8] Application of Race Tracks of Ohio, 137 N.E.2d 211 (Ohio C.P. 1956).

[9] The only major industry to qualify thus far has been shipping on the Great Lakes.