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Social Security and Public Welfare

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SOCIAL SECURITY AND PUBLIC WELFARE

The only cases reported for Ohio under this heading during the past year concerned the unemployment insurance program. One of the most interesting of these involved the interpretation of Section 4141.29 (C)(8) of the Ohio Unemployment Compensation Law, which contains the disqualification relating to attendance at an educational institution. In *Acierno v. General Fireproofing Co.*,[1] the Ohio Supreme Court held that a part time student attending Youngstown College was not disqualified from receiving unemployment benefits because of such attendance.

The employee in question had been working at night. He had registered and actually started attending classes before he was laid off by his employer. The courses he was taking involved three hours of instruction on Monday, Wednesday and Friday mornings, with an additional hour on Wednesday, and for this he was to receive 9 semester hours of college credit. His layoff occurred shortly after his courses began, and his claim for benefits was first allowed but subsequently disallowed by the administrator. The disallowance was upheld by the referee, the board of review, and the common pleas court. The court of appeals, however, reversed and ruled that benefits should have been allowed. The Supreme Court affirmed the decision of the court of appeals, upholding the right to benefits.

Under the disqualification in question, no individual may receive benefits for the duration of any period of unemployment where he has left his most recent work for the purpose of attending an established educational institution, "or is a student regularly attending an established educational institution during the school term." According to the majority opinion the court felt that the state legislature hardly could have intended to penalize an unemployed person who sought an education as a secondary, part-time activity. The case at hand was carefully distinguished from that of a full time student, the court pointing out that the nine semester hours credit was far short of the sixteen hours of credit carried by the normal full time student. Three lower court cases[2] were distinguished at least partly on the basis that the claimant in each instance had enrolled after the layoff; and also, apparently, on the ground that in one case the student was carrying a full time schedule, and in another, he was taking thirteen semester hours, which was close to a full

[1] 166 Ohio St. 538, 144 N.E. 2d 201 (1957).

[2] Cornell v. Schroeder, 94 Ohio App. 75, 114 N.E.2d 595 (1952); Rafferty v. Bureau of Unemployment Comp., 6 CCH, UNEMP. INS. REP. ¶ 8267 (Ohio); Connell v. Bureau of Unemployment Comp., 6 CCH, UNEMP. INS. REP. ¶ 8333 (Ohio).

time schedule. No question of availability was involved in the instant case.

Judge Stewart wrote a dissenting opinion insisting that the worker should have been disqualified since he was regularly attending classes at stated times. This position was anticipated by the majority opinion wherein Judge Herbert pointed out that even one hour a week at a night school would operate to disqualify a student under this interpretation.[3] To this writer, also, it seems unlikely that the legislature would have intended to completely discourage continuing education for working people by forcing them to drop their courses of study immediately upon being laid off, on pain of losing their unemployment benefits. Such a policy would run head-on into the national policy embodied in the G.I. Bill, under which the claimant in question was receiving his tuition.

The majority held that the phrase "regularly attending" referred to normal attendance at the particular educational institution for a student who contemplated completion of the studies necessary for graduation under the customary and usual schedule, i.e., a regular full-time student. The phrase chosen by the legislature is not as clear as the dissent professes, and the suggestion that the majority view amounts to judicial legislation does not appear to be well founded.

Another important decision involves the seasonal classification of racetracks. In *Racetracks of Ohio v. Bureau*,[4] it was held that the operation of racetracks in Ohio is a seasonal business within the meaning of Sec. 4141.33 of the Ohio law. According to the court, the seasonal nature of this sport is common knowledge.

The provision in question defines as seasonal any employment in an occupation or industry which, because of the climatic conditions or because of the seasonal nature thereof, is customarily operated only during regularly recurring periods of less than 36 weeks in the year. The advantage of having the seasonal character determined, of course, is that benefits then become payable to the workers engaged therein, in the event of unemployment, only during the longest seasonal period which the best practices of the particular industry will permit. Any unemployment occurring outside of this seasonal period is neither compensable under the law, once determination has been made, nor chargeable to the particular employer engaged therein.

The court pointed out that under a separate statute, the race tracks in

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[3] The minority view would probably even disqualify an individual who might choose to attend one of the adult education courses now being offered by many of the high schools in Ohio. The high school undoubtedly is an established educational institution, and under such a program is conducting a regular course of study for a limited period of five, ten, or fifteen weeks.

[4] 143 N.E.2d 144 (Ohio App. 1956).

Ohio may meet only after April 1 each year and must close not later than October 31, and there may not be more than 44 running days during the season. Some tracks, according to the evidence, have kept small working forces from 9 to 11 months during the calendar year,[5] but this, the court held, should not prevent a finding that this sport is as seasonal as baseball. The tracks, therefore, have been placed in the same category as the Cleveland and Cincinnati baseball clubs, as well as the Great Lakes shipping industry.

In *Kendall v. Administrator*,[6] the failure of a claimant to make his base period employer a party appellee, on appeal to the common pleas court, and to mail such employer a copy of the notice of appeal within 30 days after receiving the decision of the board of review,[7] was held to be jurisdictional, and the common pleas court, therefore, had no jurisdiction in the matter even though the employer was made a party on its own motion and filed an answer challenging the court's jurisdiction.

In *Tichenor v. Board of Review*,[8] the claimant quit his job with an employer who was subject to the Ohio Unemployment Compensation Law in order to secure a better job with a railroad, which was subject to the federal Railroad Unemployment Insurance Act. Thereafter, the claimant was laid off by the railroad and filed a claim for benefits under the Ohio law, since he had not worked a sufficient amount of time for the railroad to qualify for federal benefits. The court held that no charge could be made against the original Ohio employer's account, under these circumstances, and that no benefits were payable under the Ohio law.

Under Section 4141.29 (C)(1) of the Ohio Revised Code, a worker is disqualified if he has "quit his work without just cause." There is a special exception where the worker quits to enter the Armed Forces, but the court ruled that quitting to take a better job does not constitute "just cause" within the meaning of this disqualification.

The claimant had contended that the saving clause in Section 4141.30 (E) applied, and that benefits should have been paid. Under the terms of this Section, a disqualification for quitting without just cause results in the exclusion of base period wages paid by the employer involved, in determining the total benefits payable under Section 4141.30 (D), with the result that no benefits may thereafter be paid on the basis of any such wages. However, there is a proviso that this exclusion shall not

[5] The lower court had relied on this fact in holding that the business was not seasonal. See Racetracks of Ohio v. Bureau, 137 N.E.2d 211 (C.P. 1956) and the report of this case in the 1956 Survey, 8 WEST. RES. L. REV. 362 (1957).

[6] 145 N.E.2d 415 (Ohio App. 1957).

[7] As expressly required by the last paragraph of OHIO REV. CODE § 4141.28.

[8] 141 N.E.2d 180 (Ohio App. 1957).

apply where the worker quits to accept full time *employment* pursuant to an actual bona fide offer from another employer and thereafter receives wages equal to 10 times his weekly benefit amount. The court noted that the definition of "employment" in Section 4141.01(B)(j) specifically excludes service performed after June 30, 1939, with respect to which benefits are payable under the Railroad Unemployment Insurance Act. It was therefore held that the proviso had no application in this case, even though the claimant had earned wages from the railroad exceeding 10 times his weekly benefit amount.

Literally speaking, this is undoubtedly the correct application of the statute. Whether the legislature actually intended to use the word "employment" in its defined sense in the proviso in question, may be open to some doubt, but the safe course is the one which the court followed. It is conceivable that the permanent cancellation of these wage credits actually was intended to apply unless the worker changed to a job in which additional wage credits under the Ohio law might be earned. In the charging of benefits for experience rating purposes, the employers during the worker's base period are reached in inverse chronological order, i.e., the most recent employer is charged first.[9]

Apart from the special question of cancellation of wage credits, the court also has precedent for holding that leaving one job to accept another which offers better pay amounts to quitting without "just cause," and such action normally has been held to result in disqualification.[10] The courts have generally considered moves of this type to be at the worker's own risk.

In *Cornell v. Board of Review*,[11] it was held that where the employee was laid off and a benefit year established, on the basis of which benefits were paid until the employee was rehired shortly thereafter by the same employer, and the employee quit without just cause a week after such rehiring, no benefits were payable for the balance of the benefit year previously established.

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[9] OHIO REV. CODE § 4141.24. In this connection, however, the court's opinion seems to place undue emphasis upon the charging of benefits to the employer's account. The provisions for the payment of benefits and those governing charging for experience rating purposes are not necessarily the same, and where benefit rights are involved, only the former govern.

[10] See, Teple, *Disqualification: Discharge for Misconduct and Voluntary Quit*, 10 OHIO ST. L.J. 191, 202-203 (1949).

[11] 139 N.E.2d 97 (Ohio App. 1955).