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Grade or Class Provision as a Basis for Disqualification for Unemployment Compensation - Bethlehem Steel Co. v. Board

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Grade Or Class Provision As A Basis For Disqualification For Unemployment Compensation

Bethlehem Steel Co. v. Board[1]

The claimants, employees of Bethlehem Steel Company, worked in the latter stages of a continuous production line, their jobs consisting of finishing, shipping, and warehousing tin plate which was produced in earlier stages of the assembly line. The workers in two of the earlier stages were more skilled and received higher pay, although all of the workers were members of the same union and under the same union contract with the company. Some of the workers in the earlier stages who had become dissatisfied with the incentive pay provisions of the contract, began a deliberate slowdown of production and as a result, less work became available in the sections in which the claimants worked. The claimants, who were the most recently hired employees, were laid off in accordance with the contract which provided that those with the least amount of continuous service would be laid off first. None of the claimants worked in the stages engaged in the slowdown, nor were concerned with the incentive pay provisions as they were paid at a fixed hourly rate. The findings indicated that the claimants had not participated in, had not financed, or had not been directly interested in the dispute. They sought unemployment compensation, and the Superior Court of Baltimore City affirmed a decision of the Board of Appeals granting compensation. The Court of Appeals, in reversing the decision of the lower court, *held* that where the claimants belonged to the same union, the same collective bargaining unit, and were under the same employment contract as those engaged in the deliberate slowdown, and whose duties were part of a continuous integrated production line, they were in the same *grade or class* as those engaged in the slowdown and therefore were disqualified from receiving benefits under Sec. 6 (e) (2) of the Maryland Unemployment Compensation Act.

The appropriate part of the statute, Sec. 6 (e) (2),[2] provides that a claimant shall not be disqualified from re-

[1] 219 Md. 146, 148 A. 2d 403 (1959).

[2] 8 MD. CODE (1957), Art. 95A, § 6, provides:

"*Disqualification for benefits.* An individual shall be disqualified for benefits —

(e) *Stoppage of work because of labor disputes.* — For any week with respect to which the Executive Director finds that his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or

ceiving unemployment benefits, where his unemployment is due to a labor dispute, unless he belongs to a *grade or class* of workers engaged in the dispute.

Although the Court of Appeals has construed other parts of Sec. 6 (e),[3] the Court was afforded its first opportunity to interpret Sec. 6 (e) (2) in relation to the issue of whether the claimants were of the same *grade or class* of workers as those participating in the slowdown.

The Court, in holding the claimants to be of the same *grade or class,* relied mainly on *Brown Shoe Co. v. Gordon,*[4] an Illinois case involving a deliberate slowdown on the assembly line in a shoe factory. There the employees belonged to the same union, had the same employment contract, and worked in the same continuous production line. The claimants, who were laid off as a result of the slowdown, were paid at a different rate than that paid to those instigating the slowdown, and had no interest in the outcome of the particular wage rate dispute. Nevertheless, they were denied compensation on the basis of the Illinois *grade or class* provision,[5] which was substantially the same as that presently in force in Maryland. The Maryland Court, after weighing the factors in the instant case, com-

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other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the Executive Director that —

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a *grade or class* of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises."

[3] In Mitchell, Inc. v. Md. Emp. Sec. Bd., 209 Md. 237, 121 A. 2d 198 (1956), the Court interpreting § 5(e)(1) of the 1951 Code, the equivalent of § 6(e)(1) of the 1957 Code, *supra,* n. 2, upheld claimants' disqualification for benefits for refusal to cross picket lines, this constituting a participation in a labor dispute. See also Brown v. Md. Unemp. Comp. Board, 189 Md. 233, 55 A. 2d 696 (1947). In Tucker v. American S. & Ref. Co., 189 Md. 250, 55 A. 2d 692 (1947), the Court in construing Sec. 5(d) of the 1943 Code Supplement, the equivalent of Sec. 6(e) of the 1957 Code, *supra,* n. 2, determined that a Utah copper smelter plant which supplied copper to a Baltimore refinery owned by the same company did not constitute one *establishment* so as to disqualify claimants for benefits.

[4] 405 Ill. 384, 91 N.E. 2d 381 (1950).

[5] ILL. REV. STAT. (1947), Ch. 48, ¶ 223.

pared them with those in the *Brown* case.[6] Then, faced with the language of the provision, undefined by the legislature, as opposed to the potential harshness on the individual claimant, the Court reached its result in stressing the factor of the continuous production line.

In view of the broad purpose of unemployment compensation to protect involuntary unemployment, it is hard to rationalize the diversity of decisions which deal with the *grade or class* provisions which appear in the Unemployment Acts of all but two states.[7] Some courts base their determinations on membership in a union,[8] on the similarity of the work performed,[9] on the entire plant or establishment,[10] or on the same bargaining unit;[11] while many courts, basing each case solely on its own merits, consider a variety of factors, such as single or separate labor agreements, skills, and pay rates, in conjunction with those enumerated above.[12] The Court in the instant case indicates however, that the cases involving a continuous production line, where the later stages are dependent on the earlier, seem to hold uniformly that all the employees are in the same *grade or class.*[13]

The reasoning behind the *grade or class* provisions is three-fold: First, and foremost, use of the provision prevents a situation where a few *key workers* in key positions could by striking curtail production and cause a work stoppage, and fellow workers laid off as a result could conceivably augment the workers' fighting fund with their unemployment benefits. Second, use of the provision prevents the unemployment compensation system from being used as an inducement to those who might defect from a

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[6] *Supra*, n. 4.

[7] Only Vermont, 21 V.S.A. (1959), § 1344, and Louisiana, 23 L.S.A. — R.S. 1601 (1950), have no comparable *grade or class* provision.

[8] Copen v. Hix, 130 W. Va. 343, 43 S.E. 2d 382 (1947); In Queener v. Magnet Mills, 179 Tenn. 416, 167 S.W. 2d 1, 4 (1942), the court said: "We think that 'grade or class', as used in the statute, means a group more or less organized. Not necessarily a local CIO or AFL branch, nor a company union, but at least a cohesive group acting in concert. . . ."

[9] In re Deep River Timber Co.'s Employees, 8 Wash. 2d 179, 111 P. 2d 575 (1941).

[10] Westinghouse Elec. Corp. v. Unemployment Comp. Bd. of Rev., 165 Pa. Super. 385, 68 A. 2d 393 (1949).

[11] Johnson v. Pratt, 200 S.C. 315, 20 S.E. 2d 865 (1942).

[12] Byerly v. Unemployment Compensation Board of Rev., 171 Pa. Super. 303, 90 A. 2d 322 (1952); Unemployment Compensation Commission v. Lunceford, 229 N.C. 570, 50 S.E. 2d 497 (1948); Kieckhefer Container Co. v. Unemployment C. Com'n., 125 N.J.L. 52, 13 A. 2d 646 (1940).

[13] Brown Shoe Co. v. Gordon, *supra*, n. 4; Adams v. Review Board, Etc., 121 Ind. App. 273, 98 N.E. 2d 681 (1951); Unemployment Compensation Commission v. Martin, 228 N.C. 277, 45 S.E. 2d 385 (1947); Local No. 658 v. Brown Shoe Co., 403 Ill. 484, 87 N.E. 2d 625 (1949).

union which calls a strike by a promise of benefits to those who take no part in the dispute.[14] Third, use of the provision facilitates the administration of the system by classifying claims on a broad basis.[15]

The Court points out in the instant case:

> ". . . we think it is clear that the present statutory provision was deliberately aimed at discouraging 'key' workers in 'key' positions along a continuous production line from effectively tieing up (sic) the operations of a whole plant."[16]

The law writers have been critical of the *grade or class* provision and have called it the "vicarious guilt provision",[17] the "dragnet provision",[18] "guilt by association",[19] and "vicarious disqualification."[20] Generally, they have urged its abrogation for the reason that it actually thwarts the basic purpose of the law, that of giving benefits to those involuntarily unemployed. Thousands of workers throughout the country have been disqualified from receiving benefits without having the slightest connection with a dispute.

Perhaps the broadest criticism of the provision is that it doesn't effectively distinguish between voluntary and involuntary unemployment. The instant case exemplifies this. As was said in *Saunders v. Unemp. Comp. Board,*[21] "the purpose of the statute was to alleviate the consequences of involuntary unemployment." The *grade or class* provision cuts sharply into this purpose.

It would seem that the *direct interest* provision,[22] which provides that a claimant shall be disqualified unless he is not participating in or financing or directly interested in the dispute, in itself is an adequate web for disqualification and would eliminate to a great extent the reason for a *grade or class* provision. The more narrowly the courts construe *grade or class*, the more it tends to equate the worker under this provision with the worker who is *directly interested.* Such a construction, in effect, virtually elimi-

[14] Lesser, *Labor Disputes and Unemployment Compensation*, 55 Yale L.J. 167, 169 (1945).

[15] See Note 33 Minn. L. Rev. 758, 763 (1949); see also opinion of Queener v. Magnet Mills, *supra*, n. 8.

[16] 219 Md. 146, 154, 148 A. 2d 403 (1959).

[17] Shadur, *Unemployment Benefits and the "Labor Dispute" Disqualification*, 17 U. Chi. L. Rev. 294, 332 (1950).

[18] Williams, *The Labor Dispute Disqualification — A Primer and Some Problems*, 8 Vand. L. Rev. 338, 351 (1955).

[19] *Op. cit., supra*, n. 18, p. 355.

[20] See 49 Col. L. Rev. 550, 565 (1949).

[21] 188 Md. 677, 682, 53 A. 2d 579 (1947).

[22] 8 MD. CODE (1957), Art. 95A, § 6(e)(1), *supra*, n. 2.

nates the *grade or class* provision. This, however, should be the function of the legislature,[23] as the Court in the instant case indicates:

> "Understandably, the claimants argue that to deny them benefits makes them victims of a labor dispute in which they had no interest. On the other hand, if such argument was accepted by us, it would have the effect of equating the provisions of sec. 6 (e)(2) . . . with those of sec. 6(e)(1) . . . thereby virtually eliminating sec. 6(e)(2) from the statute."[24]

It must be kept in mind that the *grade or class* provision is an *exception* to disqualification. The statute says in effect that a claimant shall be disqualified, but if he does not belong to a *grade or class* of workers engaged in the dispute, he will be entitled to benefits.[25] Being an exception, it should not be construed so broadly as the courts tend to do.[26] Thus, we can see that if the provision is construed broadly, it frustrates the purpose of the Act, and if it is interpreted narrowly, it virtually eliminates the utility of it.

Under the provision, even claimants otherwise eligible for benefits will be disqualified if *one* fellow employee of their *grade or class* is himself disqualified by participating, financing, or being directly interested in the dispute.[27]

The irrationality and arbitrariness of the application of the provision is perhaps most clearly shown in a Pennsylvania case where a claimant received benefits under a statute with no *grade or class* provision, but when the statute was amended to include the provision, the claimant was held to be disqualified.[28]

It is not clear what the approach of the Maryland Court will be to a case lacking the element of a continuous integrated production process analogous to that of an assembly line. It is clear, however, that until the *grade or*

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[23] *Op. cit., supra*, n. 18, p. 375.
[24] 219 Md. 146, 154, 148 A. 2d 403 (1959).
[25] Sec. 6(e), *supra*, n. 21.
[26] *Op. cit., supra*, n. 18, p. 351; see also 49 Col. L. Rev. 550, 558 (1949).
[27] In Re Persons Employed at St. Paul & Tacoma L. Co., 7 Wash. 2d 580, 110 P. 2d 877 (1941). A picket line was set up and ten claimants were told not to return to work until called by the company. Eight others were told to report but refused to do so because of the picket line. By refusing to pass through the picket line, these eight became participants and were therefore disqualified. The other ten, being engaged in the same work as the eight who refused to pass through the lines, were disqualified because they were of the same *grade or class* as those participating; see also the illustration in 8 Vand. L. Rev. 338, 351 (1955).
[28] See 49 Col. L. Rev. 550, 565, n. 104 (1949).

class provision is abolished, the Court will dutifully adhere to it:

> "It may be that the statute should be amended, but whether the strikers, under circumstances similar to those present here, would be acting solely for themselves or would also be acting directly or indirectly for the claimants, is a decision the lawmakers must make."[29]

The most logical approach would be to eliminate the *grade or class* provision altogether. This would further the ultimate purpose of the statute, which seemingly should outweigh the more narrow justification for keeping the provision, that of preventing the *key-man* work stoppage.

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[29] 219 Md. 148, 154, 148 A. 2d 403 (1959). See a recent Pennsylvania case remarkably similar on the facts to the instant case and citing it with approval; U.S. Steel Corp. v. Unemployment Comp. Bd. of Review, 189 Pa. Super. 362, 150 A. 2d 361 (1959). And see cases collected in 28 A.L.R. 2d 287, 340-343.