VIRGINIA EMPLOYMENT COMMISSION

DECISION OF COMMISSION

---oOo---

Decision No.: UI-74-96

Date: February 15, 1974

MISCONDUCT: 475.35
Union relations - Labor Dispute, participation in

ISSUE

Was the claimant discharged for misconduct in connection with his work within the meaning of § 60.1-58 (b) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant appealed from a determination of the Deputy which disqualified him effective December 2, 1973, for having been discharged for misconduct in connection with his work.

Celanese Fibers Company, Narrows, Virginia, was the claimant's last employer, for whom he worked as a scale man from February 29, 1960, through November 17, 1973. In this employment the claimant was paid at the rate of $3.53 per hour, and worked rotating shifts.

According to the employer representative, on November 18, 1973, at 3:00 p.m. in the afternoon an unauthorized wild cat strike took place. This was contrary to the provisions of the contract which the employer had with the Textile Workers Union of America, AFL-CIO, Local 2024. This contract contained a no-strike provision. The claimant, by participating in the unauthorized strike, was discharged from his employment in accordance with the terms of the contract.

According to the claimant, during the latter part of his employment he was also serving as a union steward; however, he was not aware of the provisions of the contract. Following his last day of work, on November 17, 1973, he was on a long break and had gone on a hunting trip in the mountains. It was not until he returned on the afternoon of November 19th, that he was aware that the strike had commenced. When he reported to work on his next shift on Thursday of that week, he was then asked to participate in the picket line which had been established, and this he did.

According to a representative of the union, they did not feel that the claimant should be denied unemployment compensation benefits inasmuch as his discharge had been submitted to arbitration in accordance with the contract, and no decision should be made until a decision on the arbitration case was rendered. The union representative further submitted into evidence a copy of the contract between the union and the company which was effective June 19, 1973, for a period of three years. Article 3. of this contract provides as follows:

> Since this agreement provides for the orderly and amicable settlement of any grievance, dispute, or disagreement (1) rising out of the meaning or application of the terms of this Agreement, or (2) concerning wages or hours of working conditions and not involving revisions, renewal or renegotiation of this Agreement, there shall be no resort to strikes which includes stoppages or slowdowns of work for any reason by any employees or any lockout by the Employer of any employees. In view of the foregoing, the Union agrees that it will not authorize any strike. It is understood and agreed, however, that any strike not expressly authorized or ratified in writing by the General President of the International Union to Local 2024, a copy of which shall be sent the Employer, shall be deemed for all purposes an unauthorized strike for which there shall be no liability on the part of the International Union, its Local Unions, Joint Boards.
>
> In the event of an unauthorized strike, the Union will endeavor to secure an immediate return of the strikers to work to the end that the dispute may then be settled peaceably in accordance with the procedures set up herein. In such cases, the Employer may impose disciplinary measures upon or discharge any employee involved, in accordance with and subject to the grievance and arbitration provisions of this Agreement as to the facts of participation by the employee, and whether the discipline was fair, appropriate, and justified under all circumstances.

OPINION

Section 60.1-58 (b) of the Code of Virginia provides a disqualification if it is found an individual was discharged for misconduct in connection with work.

The Commission has stated on numerous occasions that the object of all the disqualification provisions of the Act is to provide a penalty against those who seek benefits for a period of unemployment which would not exist if the person had not, by his own improper or negligent act, contributed to the cause of his unemployment.

In the case before the Appeals Examiner the claimant, through his union, had entered into a contract with the employer which contained provisions that any dispute which might arise on the conditions of the contract must be handled through the grievance procedure and by arbitration. It was further agreed that there was to be no strike against the employer or a lockout on the part of the employer, and the employer had the right to discipline or discharge any employee who took part in an unauthorized strike. In spite of these conditions the claimant, who was a union steward, failed to report to work on his next regular schedule working day following the commencing of the strike. In addition, he participated in the picketing which was established at the employer's premises. Certainly, such action on the part of the claimant was improper under the circumstances, and showed a complete and substantial disregard of his duties and obligations to his employer, and were not the actions which an employer has the right to expect of an employee under the circumstances as provided by the contract. Failing to report for work certainly constitutes misconduct in connection with employment, and the Appeals Examiner is of the opinion that the claimant was discharged for reasons which would constitute misconduct within the meaning of the term as used in the Act. (underscoring supplied)

DECISION

The determination of the Deputy, disqualifying the claimant effective December 2, 1973, for having been discharged for misconduct in connection with his work is hereby affirmed and remains in effect for any week benefits are claimed until he has performed services for an employer during thirty days, whether or not such days are consecutive.

NOTE: The decision was affirmed by the Commission in Decision No. 6257-C, dated April 16, 1974.