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Unemployment Insurance: Effect of Receipt of Dismissal Payments at Time of Discharge from Employment Upon Eligibility for State Unemployment Insurance Benefits

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of the motorist to use the highway unobstructed by obstacles. Viewing this situation from a different plane, as if literally turning the highway over on its side, the problem is still the same and the substitution of an aircraft for the automobile does not present a new factor. The duty of each party should remain constant.

With the development of extensive modern air travel over heavily populated areas, the duties of the aviators and the landowners should be clearly defined. The aviator aloft in his aircraft is no longer considered an interloper as to the normal social and business activities of those on the ground. He is no longer a trespasser as a matter of law for operating below certain altitudes.[19]

The duty of the landowner to the aircraft above is not an unbearable burden. The principles of reasonable care analogous to those applied to travel on the ground could be applied.[20] This is the air-age, an era where the aircraft will soon be as familiar and common-place as the family automobile, and the owners and occupiers of land should have a definite duty not only to those around them, but also to those *above* them.

Frank S. Kim

UNEMPLOYMENT INSURANCE: EFFECT OF RECEIPT OF DISMISSAL PAYMENTS AT TIME OF DISCHARGE FROM EMPLOYMENT UPON ELIGIBILITY FOR STATE UNEMPLOYMENT INSURANCE BENEFITS

The primary object of unemployment insurance is to "cushion the impact of such impersonal industrial blights as seasonal, cyclical, and technological idleness."[1] This object is usually accomplished by the payment of a specified percentage of his former wage to the worker, such payments usually being limited to what is considered an appropriate length of time.[2]

Bradshaw v. California Employment Stab. Comm.,[3] decided by the Supreme Court of California, is a recent case involving the problem of unemployment insurance. It is the purpose of this article to discuss whether the decision in that case was consistent with the primary object of unemployment insurance, as pointed out above.

The issue in the *Bradshaw* case was whether the receipt of dismissal pay from the former employer, in an amount dependent upon the petitioner's length of service, and in compliance with a labor contract entered into by the petitioner and his employer, rendered the petitioner ineligible for state unemployment insurance benefits for the length of time covered by such dismissal pay.

The petitioner, Mr. Bradshaw, was discharged from his job for reasons of company economy, and through no fault of his own. Pursuant to a collective bargaining contract between his union and his employer, he received (along with other severance benefits) "dismissal pay" in an amount dependent upon his length of service.

When the petitioner filed for state unemployment insurance benefits, the claims examiner of the Department of Employment decided that he was not eligible for state benefits during the period covered by the dismissal pay (i.e. if the dismissal pay was equivalent to petitioner's salary for fourteen working days, petitioner

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[19] Antonik v. Chamberlain, 81 Ohio App. 465, 78 N.E.2d 752 (1947).

[20] Read v. N.Y. City Airport, 145 Misc. 294, 259 N.Y.S. 245 (1932).

[1] California Comp. Ins. Co. v. Ind. Acc. Com., 128 Cal.App.2d 797, 276 P.2d 148 (1954).

[2] For California benefits, see CALIF. UNEMPLOYMENT INSURANCE CODE §§ 1280–81.

[3] 46 Cal.2d 608, 297 P.2d 970 (1956).

would not be eligible for unemployment insurance benefits until fourteen days had elapsed.) The Unemployment Insurance Appeals Board affirmed this holding. The petitioner then appealed to the Supreme Court of California, which held that the petitioner was ineligible for the period of time covered by his dismissal. The court said:

> "This case calls for an interpretation of section 1252 of the Unemployment Insurance Code. In part, that section provides: 'An individual is "unemployed" in any week during which he performs no services and with respect to which no wages are payable to him.' Section 1251 provides that unemployment compensation benefits are payable to 'unemployed individuals.' It is conceded by the petitioner that dismissal payments under the contract are 'wages' within the meaning of that term as used in section 1252. The question then is whether dismissal payments are payable 'with respect to' a period before the employee's date of discharge or 'with respect to' a period after that date."[4]

The court concluded that the dismissal payments were wages payable "with respect to" a period after the date of petitioner's discharge.

It would seem that this was a reasonable holding in view of the primary object of unemployment insurance,[5] and in view of the state's purpose in providing for it.[6] It is true that need, or actual indigency, is not a requirement for eligibility for compensation,[7] but in this case to award unemployment benefits to the petitioner would seem to be a duplication of the dismissal payments he had already received. It is also true that the primary purpose of unemployment compensation is to cushion the shock of such unemployment as the petitioner's, but where petitioner has already been given money upon becoming unemployed, there would seem to be no need for a further cushion.

However, Mr. Justice Carter did not find the holding of the majority of the court reasonable. He claimed that:

(a) The dismissal pay was not "wages."

(b) Even if it was wages, it was not payable "with respect to" a period after petitioner's discharge.

I. Was it Unreasonable to Hold That the Dismissal Pay Was Wages?

In his dissenting opinion, Justice Carter stated that:

> "The sum payable under the agreement is in effect compulsory savings from the petitioner's past wages where the employer acts as banker. He is not, therefore, being paid double; for the payment under the agreement is from his own money."[8]

This does not appear to be a sound analysis of the nature of the dismissal payment. In point of fact, the sum was not a "savings" account, nor was it petitioner's own money. It was compensation which the petitioner's employer had agreed to give him if he was discharged because of reasons of economy or technological changes. Had the petitioner voluntarily terminated his employment or been discharged because of bad conduct, he would not have been entitled to the dismissal payments under the terms of his collective bargaining contract.[9] Obviously, then, this was not the petitioner's own money which his employer was holding for him.

Mr. Justice Carter based his dissent mainly on the strength of a Minnesota

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[4] *Id.* at 610, 297 P.2d at 972.

[5] See note 1 *supra.*

[6] Calif. Unemployment Insurance Code section 100: To reduce involuntary unemployment *and the suffering caused thereby* to a minimum. (Emphasis added.)

[7] Burns, *Unemployment Compensation and Socio-Economic Objectives,* 55 Yale L.J. 2 (1945).

[8] Bradshaw v. California Employment Stab. Comm., 46 Cal.2d at 615, 297 P.2d at 975.

[9] Bradshaw v. California Employment Stab. Comm., 134 Cal.App.2d, 286 P.2d 574 (1955).

case[10] in which the facts[11] were similar to the *Bradshaw* case, and the governing statute[12] was identical to section 1252 of the California Unemployment Insurance Code. In that case, the petitioner was held to be eligible for state unemployment benefits. The decision of the Minnesota Supreme Court held that the dismissal pay was not wages in the first place, and therefore, there was no need in that case to determine whether or not it was payable "with respect to" a period before discharge or after discharge.

This view seems less reasonable than that of the California Supreme Court. The Minnesota court summarily dismissed a Minnesota statute[13] which read:

> Wages . . . shall not include dismissal payments which the employer *is not legally required to make.*[14] (Emphasis added)

The only logical inference which one could derive from such wording is that those dismissal payments which the employer *is* legally required to make are wages. There being a valid contract in the Minnesota case, the employer was legally bound to make the dismissal payments. It seems that, under the statute, the most reasonable conclusion would be that the dismissal payment did constitute wages in the Minnesota case. California has the same statute, and the same argument applies in California.

II. Having Established that it Was Reasonable to Interpret the Dismissal Pay as Wages, Was it Reasonable to Interpret it as Wages "With Respect to" a Period *After* Discharge Rather Than "With Respect to" a Period *Before* Discharge?

If the dismissal pay was wages with respect to a period before discharge, then petitioner could have received it under any circumstances; he could have received it even if he had quit voluntarily. Such was not the case. Petitioner (under the terms of his collective bargaining agreement)[15] became entitled to the dismissal benefits only if discharged under certain circumstances, i.e. for technological or economic reasons and through no fault of his own. Therefore, it would seem more reasonable to hold that the dismissal payment was intended to be wages "with respect to" a period following petitioner's discharge.

Accepting the court's decision here, the question arises as to whether an employee in the future can avoid such conflict. The Attorney General of California suggests a possible answer: Place the dismissal benefits in a trust fund, in which the employee does not have a vested interest.[16] Under this arrangement, the employee could derive dismissal benefits only under certain conditions of discharge, and would not be entitled to them under any other circumstances. On the other hand, the money, being in the form of a trust fund, could not be considered wages and thereby defeat the employee in his quest for state unemployment benefits.

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[10] Ackerson v. Western Union Tel. Co., 234 Minn. 271, 48 N.W.2d 338 (1951).

[11] The claimant was discharged because of technical changes in the employer's business. Upon her discharge she received a dismissal payment in accordance with an existing contract between the employer and its employees, computed on the basis of the length of service of the employee, payable in a lump sum upon dismissal, and not dependent upon the employee's employment status after discharge.

[12] Minn. Stat. Ann. § 268.04 (23). It provides: Unemployment—An individual shall be deemed unemployed in any week during which he performs no services and with respect to which no wages are payable to him.

[13] *Id.* at section 268.04 (25) (4).

[14] California has an identical statute; Calif. Unemployment Insurance Code § 938.

[15] See note 9 *supra.*

[16] 27 Ops. Cal. Att'y. Gen. 71 (1956).