STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

DOUGLAS ALBERTS,

Plaintiff, DIRECTIONS FOR JUDGMENT

vs.

WISCONSIN DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS and W.B.I.Z., INC.,

Defendants. Case No. 156-368

BEFORE HON. RICHARD W. BARDWELL, CIRCUIT JUDGE, BRANCH #1

This is an action by the plaintiff-employee, Douglas Alberts, to review a decision of the Industry, Labor and Human Relations Commission (commission) dated March 9, 1977, which determined that the claimant had terminated his employment without good cause attributable to his employer, and therefore suspended his eligibility for unemployment compensation benefits.

The claimant worked for several years as a technician and broadcaster for radio station W.B.I.Z. in Eau Claire on a full-time or near full-time basis. Sometime in February of 1976, he was informed by the station manager that due to budget constraints he would have to be reduced from working six shifts per week to three shifts per week. After considering the matter for a few days, the claimant was asked by the employer whether he would accept the reduced hours. The claimant stated that he could not accept such a reduction, and that he quit his employment.

The claimant applied for unemployment compensation benefits in the week of his termination. A department deputy determined that the claimant voluntarily terminated his employment under sec. 108.04 (7) (a), Stats.; that none of the exceptions of that subsection applied; and therefore his eligibility for benefits was suspended. The claimant appealed this determination, and a hearing was held before an examiner acting as appeal tribunal. The examiner affirmed the substance of the initial determination.

The findings of fact read, in pertinent part:

> "On approximately February 4, 1976, the employer told the employe that the employer would be required to temporarily reduce his hours of work from 36 hours per week to approximately 18 hours per week. The reduction was necessary because of unexpectedly high operating expenses in the employer's establishment. He told the employer that he did not think he would be able to accept such a reduction in his work hours, but that he would consider the employer's proposal. On February 10, 1976, the employer again asked the employe whether he would accept the reduction in his work hours. He then told the employer that he would not accept such a reduction in his work hours and that he quit his employment."
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> * * * *
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> "The employer's reduction of the employe's work hours was for a legitimate business reason and was not for the purpose of inducing him to terminate his employment. Also, it was a temporary change in his conditions of employment..."

The following conclusion of law was also included in the findings of fact:

> "Under the circumstances, the actions of the employe were inconsistent with a continuing employer-employe relationship and constituted a quitting..."

The commission adopted the findings and conclusions of the examiner in the order under review. The relevant statute under which the examiner made his conclusions is sec. 108.04 (7), Stats., which, at the time of the determination, provided:

> "(a) If an employe terminates his employment with an employing unit, the employe shall be ineligible for any benefits for the week of termination and thereafter until he has again been employed within at least 4 weeks in each of which he worked at least 20 hours, except as hereinafter provided."
>
> "(b) Paragraph (a) shall not apply if the department determines that the employe terminated his employment with good cause attributable to the employing unit."

The claimant does not contend on review that his actions did not constitute a quitting. Rather, it is argued that his quitting was justified as a reasonable response to the actions of the employer, and the quitting was therefore with good cause attributable to the employer. This standard was defined in Kessler v. Industrial Comm'n., 27 Wis. 2d 398, 401 (1965):

> "Good cause attributable to the employer as a basis for unemployment compensation under sec. 108.04 (7) (b), Stats., has been the subject of prior decisions of this court. In Western Printing & Lithographing Co. v. Industrial Comm. (1951), 260 Wis. 124, 50 N.W. (2d) 410, we stated the resignation must be occasioned by 'some act or omission by the employer' constituting a cause which justifies the quitting. Good cause for quitting attributable to the employer as distinguished from discharge must involve some fault on his part and be real and substantial ..." (Emphasis supplied)

If it is determined that the employer has taken some action involving substantial fault on his part, it is still relevant whether the employee's response to the employer's action, i.e., quitting, was for good cause. See Piortrowski v. DILHR and City of Milwaukee, Dane County Circuit Court Case No. 141-186, memorandum decision by the Hon. George R. Currie, Reserve Circuit Judge, April 30, 1974; and Bauernfeind v. DILHR and Wisco Hardware Co., Dane County Circuit Court Case No. 144-391, memorandum decision by the Hon. Michael B. Torphy, Jr., Circuit Judge, June 5, 1975. For example, the employer may, for a justifiable business reason, reduce an employee's wages below the minimum hourly wage, and the employee will be justified in quitting for good cause attributable to the employer.

Such a case is not presented here, however. The employer testified that local economic conditions and various large capital expenditures associated with the radio station had made it necessary for him to reduce the claimant's work hours, although not his hourly wage (T. 25-26, 29). This credible evidence was accepted by the finder of fact, and is conclusive on this court on review. The claimant attacks the finding that the employer informed the employee that the reduction in his hours would be temporary, and that he would be given more work as the situation improved. Not only is this finding supported by the employer's testimony (T.26), but it is not material to the issue of good cause. Even if the reduction in hours were permanent, this would not affect the employer's legitimate business reason for reducing claimant's hours. The facts as found by the department, which are supported by the record, do not permit a finding of real or substantial fault on the part of the employer.

Nor can it be said, as a matter of law, that the employee's action of quitting was justifiable given the reduction in his work hours. The claimant testified that he quit rather than accept a reduction in hours because he could not live on the income he would receive working only three days a week, and he wanted to stay in the radio business. Of course, he could have stayed in the radio business by accepting the reduction in hours. He would also have been eligible for benefits for partial unemployment, viz, at least one-half of his weekly benefit rate under sec. 108.05 (3), Stats.

The department's decision accords with case law. In Dentici v. Industrial Comm'n., 264 Wis. 181 (1953), it was held that a transfer in jobs involving a reduction in salary and no loss of seniority necessitated by a decrease in demand for production is not good cause for quitting. Similarly, in Roberts v. Industrial Comm'n., 2 Wis. 2d 399 (1957), a transfer made necessary by lack of work in a welding department which involved a reduction in pay was not good cause for quitting. Under this record, it cannot be said that the claimant terminated his employment with good cause attributable to the employer by refusing to accept a reduction in his work hours. As noted in Kessler v. Industrial Comm'n., 27 Wis. 2d at 401, the unemployment compensation law is not intended to provide relief when reasonable work is available which the claimant can but will not do.

Counsel for the commission may prepare a judgment confirming the order under review in all respects. A copy of the proposed judgment should be furnished counsel for the claimant before it is submitted to the court for signature.

Dated March 15, 1978.

BY THE COURT:

Richard W Bardwell
Circuit Judge