STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

JAMES J. CIESZYNSKI,

Plaintiff, Case No. 156-320

vs.

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS, THE HEIL COMPANY and HANDICABS INTERNATIONAL,

MEMORANDUM DECISION

Defendant.

BEFORE: HON. GEORGE R. CURRIE, Reserve Circuit Judge

This is an action by the plaintiff employee to review a decision of the defendant department dated March 3, 1977, entered in an unemployment compensation proceeding which adopted the appeal tribunal's findings of fact and affirmed the appeal tribunal's decision. The appeal tribunal's decision determined that the employee was ineligible for benefits beginning in week 39 of 1975, until he had again been employed within 4 weeks in each of which he worked at least 20 hours, and required the employee to repay to the Unemployment Reserve Fund $1,787.00 covering the benefits he had received for weeks 39 through 52 of 1975, and weeks 1 and 2 of 1976.

The material findings of fact of the appeal tribunal read:

> "The employe worked approximately two years as an electrician for the employer, a manufacturing company (T.5). His last day of work was January 10, 1975 (week 3) (T.5). He worked at various times for approximately four months as a driver for the subsequent employer, a transportation service (T.5). His last day of work was September 26, 1975 (week 39), when he voluntarily terminated his employment (T.7, 10; Ex. 1).
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> As reasons for quitting the employe contended that he was having marital difficulties and that he went to the army reserves during the day (T.8; Ex. 1). However, he could have gone to the army reserves with the rest of his unit in the evening and there would have been no conflict with his job (T.8; Ex. 1).
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> The statutes provide that if an employe terminates his employment with an employing unit, he 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

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at least 20 hours unless it is determined that such termination was: (1) with good cause attributable to the employer; (2) because he was physically unable to do his work; or (3) because the health of a member of his immediate family left him no reasonable alternative.

Under the circumstances, the employe's quitting was not with good cause attributable to the subsequent employer, nor for any other reason that would permit the immediate payment of unemployment benefits.

The appeal tribunal therefore finds that in week 30 of 1975, the employe terminated his employment with a subsequent employer within the meaning of section 108.04(7)(a) of the statutes, and that such termination was not within any of the exceptions to said section."

The subsequent employer referred to as a "transportation service" in the above findings of fact was Handicabs International and the employee's employment with that employer was only part-time employment.

The plaintiff's brief states the issue to be resolved to be:

"Did plaintiff's voluntary termination of his part-time employment at Handicabs make him ineligible to receive compensation from his full-time employer The Heil Company?"

The answer to this question is that under the provisions of sec. 108.04(7), Stats., the plaintiff's quitting of such part-time employment made him ineligible to receive unemployment compensation based on his prior employment with The Heil Company until he had again been employed within at least 4 weeks in each of which he worked at least 20 hours.

Section 108.04(7), Stats., provides in part:

"VOLUNTARY TERMINATION OF EMPLOYMENT. (a) If an employe terminates his employment with an employing unit, he 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.

(c) Paragraph (a) shall not apply if the department determines that the employe terminated his employment but had no reasonable alternative because he was physically unable to do his work or because of the health of a member of his immediate family; but if the department determines that he is

physically unable to work or substantially unavailable for work, he shall be ineligible while such inability or unavailability continues."

The plaintiff does not claim he quit his employment with Handicabs for good cause attributable to that employer or for any other reason that would permit the immediate payment of unemployment benefits specified in sec. 108.04(7), Stats. This statute does not distinguish between quitting part-time employment from that of quitting full-time employment. The court has no power to read into the statute an exception that is not stated therein.

There would seem to be a very good legislative reason for not excepting quitting part-time employment from the provisions of sec. 108.04(7)(a), Stats. Such reason is that it is better to have an employee employed part-time rather than have him unemployed. He is free at any time to quit the part-time job to accept a full-time one.

The provisions of sec. 108.05(3)(a) and (b), Stats., insure that an employee drawing unemployment compensation shall not incur a pecuniary loss by accepting and continuing part-time work. If the wages from the part-time work are less than one-half his benefit rate, he will continue to receive his full benefit rate; and if the wages are at least half of, but less than his benefit rate he will receive half his benefit rate.

Let judgment be entered confirming the department's decision which is the subject of this review.

Dated this 6th day of February, 1978.

By the Court:

George B. Currie

Reserve Circuit Judge