

STATE OF WISCONSIN

CIRCUIT COURT FOR DANE COUNTY

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JOE D. CULP,

Plaintiff,

-vs-

MEMORANDA DECISION

CONSUMERS STEEL AND SUPPLY CO.,  
Employer, a Wis. Corp., and  
INDUSTRIAL COMMISSION OF  
WISCONSIN,

Defendants.

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Before Justice Edward T. Fairchild, Acting Circuit Court Judge:

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APPEARANCES: The Plaintiff appeared by Black and Brown, by Manny S. Brown.  
The Defendant Industrial Commission of Wisconsin appeared by Arnold J. Spencer.

This is an action to review a decision of the Industrial Commission which reversed a decision of an appeal tribunal.

The commission decided that the plaintiff, an employee of the Consumers Steel and Supply Company, was discharged for misconduct connected with the employment, and that he was therefore ineligible to receive unemployment benefits based on the Statute.

Plaintiff last worked for the defendant on June 29, 1956. He filed a claim for unemployment benefits. The employer objected because there was work available and plaintiff was unavailable. The defendant duly discharged the plaintiff. In the brief filed by the Industrial Commission the following statement of employer's available work and the continued unavailability of the employee appears "in jail - unable to work - it was apparent that he was unable to work, we dismissed him.

"He was in jail for alleged felony. We dismissed him after he was unable to appear for work for three days, which is in accordance with our contract with the Union."

There is no dispute as to the facts in this case. The practical question which presents itself is: Does the course of conduct now disclosed by the employer constitute a willful and substantial disregard of the employer's interest, or was the employee discharged for a valid reason within the meaning of Section 108.04 (5) (a) of the Wisconsin Statutes? At the time he was in jail he was charged with committing a felony. He later pleaded guilty. The Industrial Commission had to determine, as we do now, whether an employee who failed to report for duty, can maintain his relation with the employer

merely by notifying the employer that he is held waiting trial on a felony charge to which he later pleads guilty.

An employee who wilfully and intentionally starts the chain of events which created circumstances making him unavailable is certainly the defaulting actor. In determining the question of availability, the end result must be directly related to the beginning of the course of conduct. In this and in similar cases he is acting inconsistently with the continuation of the employee-employer relationship. It would be contrary to the policy and purpose of the legislation providing for unemployment compensation to cast that burden of a self-created disadvantage of and by the employee onto the shoulders of the employer, by leaving him with work to be done and no available employee to do it. The work was present July 1st and continued to be. On July 6th the employer notified the Union, of which the employee was a member, and the plaintiff of the discharge. In the Memorandum Decision of the Industrial Commission, it is said:

"(MEMORANDUM: Although prior appeal tribunal and Commission decisions have held that employees who were arrested and incarcerated for an appreciable period of time because of off-job conduct were not discharged for misconduct connected with their employment, we feel that such decisions were in error.

"Many of our decisions regarding absenteeism from work hold that employees who absent themselves from work, with or without prompt notice to the employer, were discharged for misconduct connected with their employment if the absences were for invalid reasons.

"The arrest of an employe for off job conduct is not per se misconduct connected with employment. Depending upon the reason for the arrest and the nature of the employe's duties, it may be considered misconduct connected with employment if, under the circumstances, it directly affects his suitability for his work. This would be so even if no appreciable absence from work resulted. However, if the nature of the arrest does not affect an employe's suitability for work, then the question is resolved by considering the resulting absence from work. If it does not affect suitability and does not result in an appreciable absence from work, it is not considered misconduct connected with employment.

"In the instant case the crime for which the employe was arrested was not connected with his employment. However, the result of his being arrested and incarcerated made it impossible for him to work for a period of at least three weeks, and his absence is deemed to be connected with his employment and is for an invalid reason.)"

The doctrine followed by the commission prior to 1956 was never wholly settled. There have been contrary interpretations and valid precedents exist which now have been accepted in this case. The reasoning which is to be followed is set forth in the Commission's brief and it refers to the case of Howes Bros. v. Unemployment Compensation Com., 296 Mass. 275. It reads as follows:

"Reasoning:

"To grant an employee's benefits where his employment has been terminated as a result of imprisonment for consequence of his own crime is against public policy. The failure of the respondent to report to work was due to the criminal failure of respondent to perform his obligations under the law. The law will not assist a person to gain alleged rights where there has been a criminal failure to perform his legal obligations. By his own conduct the employee voluntarily placed himself in jeopardy. The Legislature of this State, I believe, never intended that a man who was sent to prison for a wilful criminal act should be entitled to unemployment compensation benefits without reservation. 'Unemployment compensation differs from relief in that payments are made as a matter of right . . . payment of compensation is conditional upon continued involuntary unemployment . . . The design of the Act is to afford relief to those who have been . . . thrown out of work through no fault of their own.' To insure a man who has been sentenced to jail for the commission of a crime against the resultant loss of his job would appear to subvert the purposes for which the unemployment compensation law was enacted."

The rule of stare decisis does not control so as to prevent the action of the Commission. Rights are not so involved as to make the misinterpretation a rule of property. Reiter v. Grober, 173 Wis. 493.

The Statute creates a relation of employment which affords an employee the privilege based on his availability to render services. This opportunity exists under prescribed conditions and the benefits are not to be claimed when an employee fails to perform his part. There is a positive relation between the work opportunity and the availability of the employee. If he, the employee, places himself so as to be unable to do his share in maintaining the relationship, the failure is his. He cannot tear the relationship to pieces and offer his guilt of a felony as a reason to excuse his default.

I am, therefore, of the opinion that the employee was discharged for misconduct related to and connected with his employment. The employee, by his conduct off the job, set in motion, as the Commission contends, a series of events which prevented him from reporting for work for an extended period, resulting from his off-the-job conduct. It resulted in his incarceration and prevented him from performing his duties for the employer. It must be regarded and treated as an intentional and substantial disregard for the employer's interest, violating the standard of behavior which the relation requires of an employee. The decision of the Commission is affirmed in all respects.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 11th day of December, 1958.

Edward T. Fairchild  
Acting Circuit Court Judge.