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Unemployment Compensation--Disqualification--Voluntary Idleness

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beyond the donor's control and within the exclusive control of the donees. Whether the gift would endure was entirely up to the donees. Without the donees' default, the donor could do nothing, and there had been no such default through the time of the compromise settlement.

CIR v. Allen, supra, declared that a gift would be incomplete if subject to recall either by express reservation or by implication of law. Did the alleged undue influence render this gift subject to recall by implication of law? The court thought not. The *Allen* case is clearly distinguishable. There the donor was an infant, and consequently the gift was incomplete. But infancy is certain, and the implication of law is only the application of determinate consequences to a determined fact. While the undue influence here alleged by the donor was steadily denied by plaintiffs, its existence as a fact could not properly be assumed nor established independently of a determination by a court of competent jurisdiction. Though a suit was instituted, it never came to trial and so it was never determined whether undue influence existed. Had it been so determined, the gift would have been incomplete, through the implication of law subjecting it to recall because of the undue influence, but the mere contested allegation could not support that implication of law.

The compromise settlement whereby the donor recovered a portion of the stock, and plaintiffs retained the rest free from all claims of the donor, did not undo the completed gift. Return of a part of the stock to the donor, if it tended to show such were subject to recall, was, the court remarked, countered by retention of a part by donees which was just as logically indicative that the gift was final. The subsequent agreement of the parties was a new and separate transaction amounting in legal effect to another separate and distinct gift from the original donees to the original donor, or perhaps to a conveyance if consideration be given therefor, but in neither event qualifying the rights established by the original transfer.

B. E. B.

UNEMPLOYMENT COMPENSATION — DISQUALIFICATION — VOLUNTARY IDLENESS.—Certain employees of three companies, as a result of plant shutdowns for the purpose of giving two-weeks vacation, filed claims for unemployment compensation benefits under W. VA. CODE c. 21A (Michie, 1949). The employees of all three companies

were members of the same union. As a consequence of a contract entered into by that union and the employers, certain workers were excluded from paid vacations, others were only entitled to one week of vacation with pay, while a third received a two-weeks paid vacation. The latter group made no claim for benefits here. The contract, in addition to providing for the requisite qualifications for such vacations, gave the employers an option of either staggering vacations or giving them en masse. The *X* company met with representatives of its workers, discussed the matter of a vacation, published a notice setting forth the dates thereof and suspended operations for two weeks. The *Y* company followed a like procedure. No criticism of this action was expressed by the employees of either company. Representatives of the *Z* company and its employees' agents met and expressly agreed on a mass vacation, and set the time during which the plant would be closed. *Held,* affirming the trial court, one judge dissenting as to *Z* company only, that the workers' rights to unemployment compensation benefits rested solely upon W. VA. CODE c. 21A, art. 6, § 4 (8) (Michie, 1949). The court further held that this section of the act superseded that part of the contract between the union and the companies which gave to the latter the option of giving mass or staggered vacations, and the right to fix the time thereof. Consequently, the case came within the provisions of section 4 (8), *supra.* The burden was on the employer to show that its employees agreed to a mass vacation at a specified time, thereby becoming voluntarily unemployed. The court concluded that the *Z* company had, but that the *X* and *Y* companies had not, sustained the burden imposed. *Bennett v. Hix,* 79 S.E.2d 114 (W. Va. 1954).

The instant case is one of first impression in this state and is the first to be decided under this section of the law which reads as follows:

> "Upon the determination of the facts by the director, an individual shall be disqualified for benefits. . . for each week in which he is unemployed because of his request or that of his duly authorized agent for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations."

The difficulty arises, not because the statute is ambiguous, but from its application. A statute should be applied so as to attain the purposes for which it was promulgated. The West Virginia act was adopted "for the promotion of social and economic security by reducing as far as practicable the hazards of unemployment."

W. VA. CODE c. 21A, art. 1, § 1 (Michie, 1949). The court, in *Krauss v. A. & M. Karaghausian,* 24 N.J. Super. 277, 94 A.2d 339 (1953), noted that the purpose of the act is to minimize the burdens of involuntary unemployment, not to "furnish a welcome sedative to those who prefer to drift more comfortably on the tides of indolence." Broadly then, the problem becomes one of determining whether one is to be denied relief as a drifter "on the tides of indolence, or whether one should be relieved of his predicament because of the undesirability of unemployment. Such being the case, all states deny unemployment compensation benefits to one who is voluntarily idle. *Abercrombie v. Ford Motor Co.,* 81 Ga. App. 690, 59 S.E.2d 664 (1950); *Mattey v. Board of Review,* 164 Pa. Super. 36, 63 A.2d 429 (1949).

The interpretation of the various acts has led to a divergency of opinion as to the test to be used in determining what constitutes voluntary unemployment and, in some instances, the basic purpose of this particular legislation has been lost in technical distinctions. Courts are generally in harmony in holding that the beneficial provisions of such legislation should be liberally construed and applied, and that doubt should be resolved in favor of coverage rather than exclusion. *Ewing v. McLean,* 189 F.2d 887 (9th Cir. 1951); *Minor Walton Bean Co. v. Michigan,* 308 Mich. 636, 14 N.W.2d 524 (1944). However, one court has held that since such acts are in derogation of the common law, they should be strictly construed. *Trinity Bldg. Corp. v. Compensation Board,* 76 R.I. 408, 71 A.2d 505 (1950). The difficulty in making a comparative study of the cases decided under the acts lies in the fact that special features have been incorporated into most statutes. The instant case was decided under a provision which is, insofar as this writer was able to ascertain, unique in that it expressly covers vacations. Most states have been content to settle this particular problem under a general disqualifying provision which covers all voluntary idleness. This has proved unsatisfactory in many instances as a review of the conflicting decisions indicates.

The interesting feature of the present decision is that the act was held to supersede the collective bargaining agreement. Once this was decided and the contract placed in the background, the court seemed to experience little difficulty in finding that the employees of the *X* and *Y* companies were involuntarily unemployed. The general rule that exclusionary provisions of remedial legislation should be narrowly construed was favorably received by the court. *Alabama Power Co. v. Director,* 36 Ala. App. 218, 54 So.2d

786 (1951). A more relaxed application would have disqualified all of the claimants. The court recognized that, absent the statutory provision, implied consent to the shutdowns could be found as to the employees of the *X* and *Y* companies as well as those of the *Z* company. The court made reference to several decisions from other jurisdictions, particularly *Moen v. Director,* 324 Mass. 246, 85 N.E.2d 779 (1949), and In re *Buffelen Lumber & Mfg. Co.,* 52 Wash.2d 205, 201 P.2d 194 (1948). Both of these cases dealt with situations similar to the one presented here. However, the statutes in those states were not as specific on this problem as the West Virginia act. They provided, in effect, that one would be disqualified from receiving benefits if it were found that he voluntarily left work without good cause connected therewith. Each court held the claimants voluntarily idle. The decisions were made on the basis of contracts comparable to the one negatived in the instant case, wherein the legal agents of the employees consented to mass vacations. The result was the passage of overriding legislation in both states. 4A MASS. ANN LAWS c. 151A, § 1 (r) (2) (Michie, 1949), and RCW 50:20:115 (1952). The operational effect of this legislation is that, irrespective of any union contract permitting the employer to shut down his place of business for the purpose of vacations, those employees ineligible for paid vacations would not be deemed voluntarily idle, but would be unemployed within the meaning of the compensation act. Generally, however, without express enactment, or a statute susceptible of a construction similar to the one in the instant case, it has been held that employees consent to shutdowns through their legal representatives, *Naylor v. Shuron Optical Co.,* 117 N.Y.S.2d 775 (1952); *Kelly v. Adm'r,* 136 Conn. 482, 72 A.2d 54 (1950), although, as observed in *American Bridge Co. v. Review Board,* 121 Ind. App. 576, 585, 98 N.E.2d 193, 197 (1951), it is a harsh rule which sanctions the concept that "the very purpose and spirit of our unemployment compensation statutes can be brought to naught by the negotiations of a contract of a labor union which may be the legal, but unacceptable, representative of many employees who voted against it as a bargaining agent."

Another question that has been raised in this connection concerns itself with the extent of the consent given under the contract. The agreement in the principal case gave the employer the right to decide whether vacations "by all qualified employees" should be taken en masse or staggered. The argument that those employees who received no paid vacation, and those who were

compensated for only one week of a two-week suspension of operations, did not consent to the subsequent time, has received support in at least one court. *Schettino v. Adm'r,* 138 Conn. 253, 83 A.2d 217 (1951). The court said that, although the company exercised its right to declare a shutdown pursuant to a contract, "to say that this action of the company was, in effect, the voluntary act of the plaintiff because the contract which his union made with the company empowered the company to take that action, gives a very strained interpretation to the agreement. . . . Certainly the employees who where not eligible for vacation have not, by any reasonable interpretation to be placed upon the terms of the bargaining agreement, consented to any action by the company which would permit the designation of a period of vacation without pay for them."

The principal case does not stand for the proposition that a worker cannot give consent to the cessation of operations through his legal agent. However, the statute, as interpreted in this case, requires that the consent be unequivocal and explicit in its terms. The act does not permit implied consent and informal agreement. The literal language of section 4 (8), *supra,* must be complied with in each of its particulars before one can be considered voluntarily unemployed under it. This means that the consent must be clearly shown and the dates upon which the vacation is to be given must be specified and not left to the discretion of the employer.

R. H. R.

VENUE—NONRESIDENT MOTORIST STATUTES AND ACTIONS IN FEDERAL COURTS.—*D,* a resident of Indiana, while driving a truck upon a highway of Kentucky, collided with a railroad overpass owned by *P,* an Illinois corporation. Action was brought in the United States District Court for the Western District of Kentucky. Jurisdiction was based on diversity of citizenship. Process was served upon *D* in accordance with the Kentucky nonresident motorist statute which in substance provides that a nonresident motorist who operates his automobile on the state's highway makes the secretary of state his agent for service of process in any civil action arising out of such operation. There is also set up a procedure for serving the summons on the secretary of state, who in turn is to notify the nonresident defendant by registered mail. KY. REV. STAT. §§ 188.020-188.030 (Baldwin, 1943). *D* entered a special appearance and moved that the case be dismissed on the ground of im-