



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032

—DECISION—

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

DECISION NO: 188-BH-84

DATE: February 24, 1984

CLAIMANT: Alan B. Patterson

APPEAL NO: 01074

S. S. NO.:

EMPLOYER: Mack Trucks

LO. NO: 1

APPELLANT: Remand from court
Reopened case
Claimant appeal

ISSUE: Whether the claimant was discharged for misconduct connected with the work within the meaning of §6(c) of the Law; and whether the claimant was discharged for gross misconduct, connected with the work, within the meaning of §6(b) of the Maryland Unemployment Insurance Law-

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT March 25, 1984

—APPEARANCE—

FOR THE CLAIMANT:

Alan B. Patterson, Claimant
Patrick Curran, Warehouseman
Michael W. Moody, 3rd Shift Super.
Charles Jeffra, Witness
Joan Reece, Witness
Robert Hornfeck, Warehouse Foreman
Thomas L. Jankowski, Witness
Luther Taylor, Witness

FOR THE EMPLOYER:

Represented by
James E. Frick,
Inc. by Joseph
Fogarty and W.
Slade Blanchard;
Joan Reece, Sec.

EVALUTION OF THE EVIDENCE

The Board of Appeals has considered all the evidence in this case, including the hearing before the Appeals Referee, the hearing held before the Board of Appeals on July 19, 1983, and the continued hearing held before the Board of Appeals on January 31, 1984. The Board has also considered the documentary and other evidence submitted in this case.

FINDINGS OF FACT

The claimant was a material handler who worked for the employer for approximately 2½ years. He was paid \$12.65 per hour. The claimant operated machines called "cherry pickers," which were similar to forklift trucks, but with forks protruding from the machine behind the operator. The claimant also put together cardboard cartons from a stock which the employer had on hand, nailed the cartons on skids, picked up materials in the cartons, and delivered the cartons on the skids to the loading dock. The claimant's job also encompassed transporting (on the cherry pickers) skids loaded with boxes.

Some of the equipment used by the claimant and others was faulty and in need of repair. There was a prohibition against throwing skids in the warehouse. This prohibition was occasionally violated by the claimant and others when a skid could be thrown in such a way that there was no danger to it and where the procedure would save time. There was a prohibition against straightening boxes piled on skids by backing against the wall or against other boxes. This prohibition was -occasionally broken by an operator who would gently back the boxes against the wall to realign them.

On November 23, 1981, the claimant was angry at some actions that management had taken which are not at issue in this case. During that shift, the claimant violently threw skids down from a height high enough so that some of the skids were splintered. He deliberately smashed a cardboard carton of the employer's with a nailer. He also deliberately drove a cherry picker repeatedly and forcefully against a concrete block wall until he had put a hole in the wall. The claimant was fired for this malicious destruction of company property.

CONCLUSIONS OF LAW

The claimant, by deliberately damaging company property, committed a deliberate and willful disregard of standards of behavior which his employer had a right to expect, showing a gross indifference to his employer's interest. This is gross misconduct within the meaning of §6(b) of the Maryland Unemployment Insurance Law.

DECISION

The claimant was discharged for gross misconduct connected with his work within the meaning of §6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning November 22, 1981 and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$1,400) and thereafter becomes unemployed through no fault of his own.

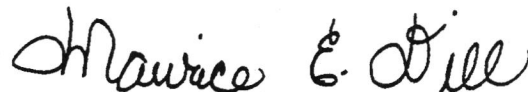
The previous decision of the Board of Appeals is affirmed. The decision of the Appeals Referee is reversed.

K:W

DISSENT

Upon a review of the entire record in this case, I am not convinced that the claimant's actions on November 23, 1981, for which he was discharged, constituted gross misconduct. The thrust of the claimant's case was that he inadvertently damaged some of the employer's property, and that similar damage was frequently incurred because of the nature of the work. Indeed, one witness adverse to the claimant testified that he thought the claimant's behavior was an isolated incident that day. There is also evidence that the claimant advocated organized labor and the employer was opposed to that.

For these reasons and others in the record, I conclude that the evidence of gross misconduct is insufficient.



Associate Member

D

kbm

Dates of Hearings: July 19, 1983 & January 31, 1984

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CLAIMANT

EMPLOYER

James E. Frick, Inc.
Corporate Headquarters

James E. Frick, Inc.
Corporate Headquarters

UNIT ~~Number~~ ~~hard~~

UNEMPLOYMENT INSURANCE - BALTIMORE