DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
383-5032

– DECISION –

DECISION NO.: 252-BH-83

DATE: February 24, 1983

CLAIMANT: Hezekiah Jefferson

APPEAL NO.: 07684

S.S.NO.:

EMPLOYER: Overnite Transportation

L.O NO.: 7

APPELLANT: CLAIMANT

ATTN: Joseph Humberson
Personnel Manager

ISSUE: Whether the Claimant was discharged for gross misconduct connected with the work within the meaning of §6(b) of the 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 MAY BE TAKEN 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 26, 1983

– APPEARANCES –

FOR THE CLAIMANT:

Hezekiah Jefferson

FOR THE EMPLOYER:

Joseph Humberson-
Personnel Manager

EVIDENCE CONSIDERED

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced into this case, as well as the Employment Security Administration's documents in the appeal file.

FINDINGS OF FACT

The Claimant worked from March of 1976 until April 26, 1982 as a tractor-trailer driver.

Over the six years of his employment, the Claimant had nine accidents with company trucks. His last accident occurred on his last day of work, when the truck, which he had parked on a hill, rolled down the hill, striking three parked buses and causing extensive damage to them and to the truck itself.

The Employer's policy required that when a truck is parked on a hill, its air brakes be set, its wheels be chocked and the transmission be left in gear. The Claimant left the truck in gear, but he neither set the air brakes nor chocked the wheels. He was aware of the policy regarding setting the air b-rakes and chocking the wheels, but he deliberately did not follow it because he was in a hurry.

The Employer's policy provided for termination of a driver after three accidents in one year. The Claimant had had only two accidents at the time he was fired.

CONCLUSIONS OF LAW

The Board of Appeals concludes that the Claimant was discharged for gross misconduct within the meaning of §6(b) of the Law.

The Claimant's deliberate failure to either set the air brakes or chock the wheels was a willful disregard of standards of behavior which his Employer had a right to expect, showing a gross indifference to his Employer's interest. After eight previous accidents, the Claimant should have been well aware of the dangers involved in operating a tractor trailer. When he chose to take a short cut on the procedures, he showed a gross indifference to the financial risk he was imposing on his Employer, not to mention the safety risk to the general public.

The fact that the Employer's policy may have allowed some drivers to have three accidents in one year is not significant. In Randall v. Nationwide Mutual Insurance Company, 1641-BR-82, the Board ruled that violation of an employer's policies is not always misconduct; and where a claimant missed one more day of work than was allowed by the employer's absenteeism policy, solely because of illness, the claimant actions did not meet the definition of misconduct.

In this case, the Claimant, by showing that the Employer usually, (or often, or sometimes,) allowed drivers to have three accidents per year before firing them, seeks to invoke this policy to protect himself from a charge of gross misconduct. The Board concludes, however, that the procedural policies of the

Employer do not, by themselves, define, whether the act committed by the Claimant is gross misconduct or not. Just as, in the Randall case, the Board held that an Employer's policy could not always and automatically make otherwise innocent conduct into misconduct, the Board holds here that the Empolyer's deviation from its own policy here does not relieve the Claimant from the fact that he actually committed gross misconduct.

DECISION

The Claimant was discharged for gross misconduct, connected with the work, within the meaning of §6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning October 10, 1982, and until he becomes reemployed, earns at least ten times his weekly benefit amount ($1,530.00) and thereafter becomes unemployed 'through no fault of his own.

The decision of the Appeals Referee is affirmed.

Thomas W. Keech
Chairman

Hazel A. Walnick
Associate Member

DISSENT

In find that the accident for which the Claimant was discharged was brought about by oversight in his haste to serve his employer. I conclude that the accident resulted from ordinary negligence which is not "misconduct," and certainly not "gross misconduct," within the meaning of Unemployment Insurance Law. I would allow benefits.

Maurice E. Dill

K:W
gm

(RLB)

DATE OF HEARING: September 28, 1982

COPIES MAILED TO:

CLAIMANT

EMPLOYER

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UNEMPLOYMENT INSURANCE - SALISBURY