# DEPARTMENT OF EMPLOYMENT AND TRAINING


**BOARD OF APPEALS**
**1100 NORTH EUTAW STREET**
**BALTIMORE, MARYLAND 21201**

**(301) 383-5032**

**STATE OF MARYLAND**
HARRY HUGHES
Governor




## — DECISION —

Decision No.: 580 -BH-86

Date: July 25, 1986

Claimant: Forrest Wilson

Appeal No.: 8603085

S. S. No.:

Employer: CSY Finance Inc

L.O. No.: 1

Appellant: EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with the work, within the meaning of Section 6(b) or Section 6(c) 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 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 ON August 24 , 1986

## — APPEARANCES —

FOR THE CLAIMANT:

Forrest Wilson - Claimant
Paul Schwab - Attorney
Edward Weber - Witness
Lewis Carr - Local 1429

FOR THE EMPLOYER:

Maynard Huddleston - Manager
Stanley Strauss - Attorney

APPEARANCES

FOR THE EMPLOYER:

David Harris - Superintendant
John Pauling - Supervisor
Harold Malson - Superintendant
Richard Strong - Personnel Service Manager

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence introduced in this case, including the testimony and evidence presented at the hearing before the Hearing Examiner as well as the testimony and evidence presented before the Board of Appeals on July 1, 1986.

The findings of fact in this case depend to a great extent upon the credibility findings by the Board. The claimant's testimony on the crucial issues could be found credible only if four of the employer's witnesses were giving false testimony. In addition, the claimant's testimony was somewhat self-contradictory, in that he originally stated that he was not allowed to conduct union business as a shop steward on work time in January of 1986. After the employer introduced overwhelming evidence that the claimant was acting as a shop steward during working hours in January of 1986, the claimant admitted that he had done so on at least one occasion. For all of these reasons, and based upon the appearance and demeanor of the witnesses, the Board finds the claimant's testimony with respect to the crucial issues in this case less than credible.

FINDINGS OF FACT

The claimant was employed for 21 years by CSY Finance. He held various jobs; his last job was as a dump operator. The claimant had also be elected a union steward.

In January of 1986, the claimant was allowed to receive his vacation pay and work at the same time, thus receiving double pay. There was no agreement or arrangement whereby the claimant had to cease operating as a union steward in order to collect this double pay, nor was there any arrangement by which the claimant would be required to perform union duties outside of work time during January in return for receiving

this double pay. Some restrictions had been placed upon the claimant's methods of representing union members as a steward in the past, but these restrictions had nothing to do with his request to work during his vacation in January of 1986; they were not mentioned when he was given permission to work through his vacation in January of 1986 and they did not diminish his capacity to act as a union steward for any purposes that would be relevant to this case.

The union members working for CSY Finance were working under a collective bargaining agreement between the International Longshoreman's Association, Local 1429 and CSY Finance, Inc. Under Article XII, Section 1 of that contract, the union agreed that, should any dispute or controversy arise between the employees and the company, the union members would continue to work pending an adjustment of the problem through the grievance procedure. The claimant and another union shop steward, Mr. David Beverage, were the only union officials working at that location of CSY Finance, Inc.

In January, the claimant had brought to the attention of the company his serious concern that company officials were violating another provision of the contract (Article XIV, Section 2) by having supervisors performing work that was reserved for union members. The claimant brought this to the attention of management during January of 1986, but he was not satisfied with the answer he had received. On January 21, 1986, the claimant explicitly threatened the company that, if the matter was not resolved to his satisfaction, the union members would stop working. At this time, the claimant was advised that the contract required that all disputes be settled through the grievance procedure rather than through a work stoppage.

The matter was not resolved to the claimant's satisfaction. On January 24, 1986, the union members did begin a work stoppage. The employer then began to attempt to perform its work using supervisory personnel.

The employer's work at this point consisted of loading grain onto a ship which was waiting at its dock. In order to load the grain, the company needed the cooperation of the stevedores working on the ship for another company, the Ceres company. The claimant walked alongside the ship and spoke to the highest present official of the union working for the Ceres company on the ship. The claimant advised this official that his men had begun a work stoppage and requested the stevedores working for the Ceres company to honor the work stoppage and stop work themselves. The stevedores did so, at least for most of the day.

The employer then called a meeting of the workers and demanded that both the claimant and the other shop steward advise the workers to return to work. The other shop steward did so, but the claimant refused to say anything to the men. The claimant was then discharged for refusing to urge the men to return to work and for inciting a work stoppage and secondary boycott among the stevedores who were to load the grain stored by the employer.

## CONCLUSIONS OF LAW

The Board concludes that the claimant's conduct was gross misconduct within the meaning of Section 6(b) of the law. The claimant's conduct was a deliberate violation of standards the employer had a right to expect, showing a gross indifference to the employer's interest. This is the definition of gross misconduct under Section 6(b) of the law.

The claimant personally requested another union to begin a secondary boycott of the employer's business which had the effect of shutting down the employer's operations. This is a blatant violation of an employees duty to an employer, and the significant economic detriment to the employer is obvious.

The refusal to advise the men to return to work was also gross misconduct. The claimant's alleged reason for doing so, that he had no union steward status, is rejected as a smokescreen. The claimant, one of the two highest union officials on the job, had a duty to honor the employment contract. As a union member, he also had a duty to at least advise his fellow workers to conform to the requirements of the contract. The employer's order that he so advise the men, was emminently reasonable. His refusal to do so was a deliberate act which clearly showed a gross indifference to his employer's interest, not to mention the interest of his fellow union members.

## DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from the receipt of benefits for the week beginning January 19, 1986 and until he becomes reemployed and earns at least ten times his weekly benefit amount ($1,750.00).

The decision of the Hearing Examiner is reversed. The decision of the Claims Examiner is reinstated.

Thomas W. Keech
Chairman

Associate Member

K:W

DISSENTING OPINION

For twenty-one years the claimant was employed by this employer in various capacities. He last worked as a dump operator on January 23, 1986. He was discharged shortly thereafter.

At the time of discharge, the claimant was a union shop steward of Local 1429 International Longshoremen's Association, which had a collective bargaining agreement with the employer. The claimant was elected to the shop stewardship by the union members, and had been an active and effective advocate for employees with grievances. As a result, the claimant incurred the hostility of the employer's Plant Manager, Maynard Huddleston.

On Friday, January 24, 1986, all the employees who worked with the claimant, numbering between 20-25 employees, engaged in an employee stoppage of work alleged to have been unauthorized under Article XII of the Collective Bargaining Agreement.[1] The employee work stoppage was further supported by another Local which instituted a "secondary boycott" at the employer's premises. Huddleston requested the claimant, as shop steward, to order the employees back to work. There was no obligation under the collective bargaining agreement for the shop steward to order the employees back to work. When the claimant refused, he, and he alone, was fired. The employees returned to work on the following Monday.

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[1] The pertinent language of Article XII provided:

"Section 1
Should any dispute or controversy arise between the employees and the company, then the men will continue to work pending an adjustment of the trouble as resolved through the grievance procedure."

After discharge, the claimant filed a complaint with the Maryland Commission on Human Relations alleging that he was unlawfully discriminated against on the basis of race (black) and age (47).

In Birdsboro Corporation v. Unemployment Compensation Board of Review, 59 Pa. Cmwlth. 462, 430 A.2d 361 (1981), four claimants for unemployment compensation had organized an employee Guild and had served as the Guild's president, vice president, and two of its directors. When the employer refused to recognize the Guild as a labor organization, those claimants led an illegal strike by approximately forty-six Guild members which lasted for twenty-six days and was accompanied by picketing. Since the claimants were regarded as the leaders of the Guild, and the leaders of the strike, they were discharged while 40 other employees who participated in the strike were retained.

The Commonwealth Court of Pennsylvania held that although the illegal strike by the claimants constituted willful misconduct, they could not be denied unemployment compensation under the doctrine of Woodson v. Unemployment Compensation Board of Review, 461 Pa. 439, 336 A.2d 867 (1975), holding that an employer's standards must be applied to all employees without discrimination before the State may deny unemployment compensation based upon a violation of such standards. The Court held, therefore, that the employer's discharge of the four claimants who led the illegal strike, while retaining 40 other employees, who participated in the strike, fell within the area of discrimination and, thus, the discharged employees were not rendered ineligible for unemployment compensation on willful misconduct grounds. The Court noted that although the claimants were officers in their own organization, they had no obligation toward the employer apart from the obligation which all the employees owed to the employer. Finally, the Court distinguished its holding in Moran v. Unemployment Compensation Board of Review, 42 Pa. Cmwlth. 195, 400 A.2d 257 (1979), where a union shop steward was discharged for participating in an illegal strike in violation of a no-strike clause in the collective bargaining agreement, while other strikers were retained. In Moran, the Court upheld the employer's distinction on the grounds that the union steward, as a union officer, had an express contractual obligation to the employer to prevent illegal strikes.[2] The collective bargaining

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[2] Nevertheless, an Administrative Law Judge declared that the Moran claimant's discharge was an unfair labor practice.

agreement in Moran provided, in part:

> In the event of an illegal unauthorized or uncondoned strike, work stoppage, interruption or impeding of work, the Local and International Union and its officers shall immediately take positive and evident steps to have those involved cease such activity. [Emphasis in original]
> 400 A.2d at 259

Here, although the claimant was an officer in his own labor union, he had no obligation toward the employer in the event of an illegal strike apart from the obligation which all employees owed to the employer. The employer knew how to write a collective bargaining agreement and to provide therein for illegal strikes, but there was no provision requiring this claimant to order the employees back to work. The employer's order that he do so after the job action began, therefore, was selective and the discharge while 20-25 other employees who participated in the strike were retained, fell within the area of discrimination. Standards of behavior which are not uniformly and consistently applied to all are not standards of behavior adherence to which an employer has a right to expect. Thus, in my view, the State may not deny unemployment benefits to the claimant on the grounds of misconduct or gross misconduct. Indeed, the employer's failure to discharge other employees who participated in the job action is evidence that the employer did not consider it to be a dischargeable offense, and that it was not the primary reason for the claimant's discharge.

For these reasons, I would affirm the decision of the Hearing Examiner that the claimant was discharged but not for misconduct or gross misconduct under the unemployment insurance law.

Maurice E. Dill
Associate Member

D
DATE OF HEARING: July 1, 1986
COPIES MAILED TO:

CLAIMANT

EMPLOYER

COPIES MAILED TO: (CONT'D)

Paul Schwab, Esquire

Lewis Carr, President

UNEMPLOYMENT INSURANCE - BALTIMORE

# DEPARTMENT OF EMPLOYMENT AND TRAINING

**STATE OF MARYLAND**
**1100 NORTH EUTAW STREET**
**BALTIMORE, MARYLAND 21201**

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**STATE OF MARYLAND**
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**BOARD OF APPEALS**
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Appeals Counsel
MARK R. WOLF
Chief Hearing Examiner

## — DECISION —

Date: Mailed: 4/22/86

Claimant: Forrest Wilson

Appeal No.: 8603085

S. S. No.:

Employer: CSY Finance, Inc.

L.O. No.: 1

Appellant: Claimant

Issue: Whether the claimant was discharged for gross misconduct connected with the work, within the meaning of Section 6(b) of the Law.

## — NOTICE OF RIGHT OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, **ROOM 515,** 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON 5/7/86

## — APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present
Paul Schwab, Esquire
David Beverage, Shop Steward
Lewis Carr, President of Local Union #1429

FOR THE EMPLOYER:

Not Represented

### EVIDENCE PRESENTED

The employer submitted documentation asserting that the claimant illegally encouraged employees of CSY Finance, Inc. to go out on strike; that all the employee were engaged in an unauthorized work stoppage and that the claimant refused to order these workers back to their jobs and to follow the grievance/abritration procedure. It was also alleged that the

claimant supported a secondary boycott work stoppage by another local union.

The claimant had been a shop steward under the terms of an agreement between management and the International Longshoremen Association. Further, he was employed by this employer for twenty-one years as a Car Dump Operator at a pay rate of $10.29 per hour. During the month of January 1986, the claimant was eligible for four weeks paid vacation. He opted to work during this period of time and to receive his vacation pay simultaneously. The claimant agreed that during the month of January he would not act as shop steward, but that a new steward would be appointed. This person was David Beverage. The claimant also agreed that during this time he would give up his seniority in order to receive the vacation pay and work simultaneously. When the unauthorized strike began, the claimant did not directly participate in the strike which lasted only one day. He made no recommendations to the men as to whether they should strike or continue working. The claimant directed all requests from the employer to the acting shop steward, David Beverage. Fourteen employees of CSY Finance, Inc. certified in writing that the union took a vote to stop working, because it believed the company was in violation of the contract, and that in no way did Forrest Wilson influence their vote or tell them how to vote; that Forrest Wilson stated that he would say nothing on the matter until Lewis Carr, the president of the local arrived on the job to settle the matter.

The company asserted that the claimant failed to exercise his responsibilities under the contract in failing to order the men to return to work and follow the grievance arbritation process.

## FINDINGS OF FACT

The claimant was employed by CSY Finance, Inc. for a period of twnety-one years as a Car Dump Operator at a pay rate of $10.29 per hour. He last worked on January 23, 1986. On January 24, 1986, the local union voted to strike against the company for what it considered to be violations of the contract. The claimant had been the shop steward. But, as a result of an agreement between himself and the company, in exchange for the opportunity to receive vacation pay and work during this vacation period, he withdrew from the position of shop steward, which was turned over to David Beverage. The claimant did not participate or attempt to influence the men in any way with respect to their consideration of stoppage of work. The company ordered the claimant to exercise

his responsibility as shop steward and order the men to return to work. The company was advised by the claimant that he was not shop steward, and that the company would have to take the matter up with David Beverage, or with the president of the local union, Lewis Carr.

I find as fact that the claimant did not actively influence the actions of fellow workers in their decision to strike against CSY Finance, Inc, and that the claimant did not fail to exercise his responsibilities as a shop steward under the union contract, because that responsibility had been transferred to another person so that the claimant could work during the vacation period and receive double pay.

## CONCLUSIONS OF LAW

The claimant was discharged but not for gross misconduct connected with his work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law, because the claimant was not exercising his responsibilities as a union representative at the time of the illegal work stoppage which occurred at CSY Finance, Inc. The evidence further shows that the claimant in no way attempted to influence the outcome of the vote and the resultant strike. Since the claimant had no authority or responsibly under the contract to recommend or persuade the workers to return to work, as someone else was shop steward at the time, there was no basis for the employer to take the disciplinary action which it has taken in this instance. Accordingly, the determination of the Claims Examiner shall be reversed.

## DECISION

It is held that the claimant was discharged, but not for gross misconduct connected with his work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. Benefits are allowed for the week beginning January 26, 1986 and thereafter, provided the claimant is otherwise eligible and is meeting the requirements of the Maryland Unemployment Insurance Law.

The determination of the Claims Examiner is reversed.

Robin L. Brodinsky
Hearings Examiner

Date of hearing: 3/31/86
rc
(1907)-Merryman
Copies mailed on 4/22/86 to:

Claimant
Employer
Unemployment Insurance - Baltimore

Paul Schwab, Esquire