



DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

383-5032
- DECISION -

BOARD OF APPEALS

JOHN J. KENT
Chairman

HENRY G. SPECTOR
HAZEL A. WARNICK
Associate Members

SEVERN E. LANIER
Appeals Counsel

CLAIMANT: Carolyn K. Tasker

DECISION NO.: 0634-SE-80

DATE: June 13, 1980

APPEAL NO.: 259568

S. S. NO.:

EMPLOYER: Garrett Mfg. Co. , Inc.

L. O NO.: 14

APPELLANT: EMPLOYER

ISSUE: Whether the Claimant was unemployed within the meaning of Section 20(1) of the Law.

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITHIN LAWS OF MARYLAND. THE APPEAL MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE SUPERIOR 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 July 13, 1980

- APPEARANCES -

FOR THE CLAIMANT:

Alemeda B . Sweitzer - President Local 334
Connie Weaver
Anna Virts
Harold Burkholder -
International Union Rep.

FOR THE EMPLOYER:

Dwight Stover -
Attorney
Oma Everly
Witness

FINDINGS OF FACT

The Claimant is employed by Garrett Manufacturing Company of Deer Park, Maryland. She is a member of Local 334 of the International Ladies Garment Workers Union (I.L.G.W.U.).

The Employer closed the plant for the Christmas and New Year holidays from December 23, 1979, through January 5, 1980. The decision to close the plant was made by the president of the company and was not required by the collective bargaining agreement under which the company and the union were then operating.

The Claimant received holiday pay for Christmas day and for New Year's day. This payment was required by the existing collective bargaining agreement.

The Claimant also received a length of service payment of 3% of her yearly earnings for the previous year. This payment was made by a-check dated December 1, 1979, from the Health Fund of the I.L.G.W.U. The payment was received by the Claimant on December 4, 1979.

The money from which this length of service payment is made, is paid directly to the I.L.G.W.U. by customers of the Employer out of moneys due to the Employer for goods processed and delivered by the Employer.

The length of service benefit is paid to employees regardless of whether or not they work during the Christmas and New Year holiday. A length of service benefit was paid when the employees of the Garrett Manufacturing Company worked during the week of Christmas and New Year's approximately five years ago.

The Claimant was subsequently denied benefits by the Claims Examiner under Section 20(1) and 4 on the theory that the receipt of the length of service benefit payment constituted vacation pay attributable to the week of December 23, 1979, through December 29, 1979. This decision was made because the Employer had reported to the Claims Examiner that it was closed for vacation during the week of December 23, 1979, through January 5, 1980, and that the employees who worked three years or more had been paid vacation pay for the week ending December 29, 1979, out of the Health Fund.

COMMENTS

The Board of Appeals, after considering all of the evidence in the case, finds that the length of service payment which was made to the Claimant on December 4, 1979, was a bonus and as such, constituted wages within the meaning of Section 20(n) of the Maryland Unemployment Insurance Law. Wages within the definition include all remuneration for personal services, including commissions and bonuses. The fact that the money was paid to the Claimant by the Health Fund, does not change the fact that it is money paid to her by reason of her personal services to the Employer throughout the previous year.

The Board finds that the Claimant was unemployed within the meaning of Section 20(1) and 4 of the Maryland Unemployment Insurance Law, for the two week period. The decision to close down the plant was made by the president of the company and was not required by any contract between the union (on behalf of the Claimant) and the Employer. The Board further finds that the money received by the Claimant as pay for regularly scheduled holidays of Christmas and New Year's, should be deducted from any unemployment insurance paid to the Claimant for these two weeks, and any overpayment is recoverable by the agency under Section 17(d) of Article 95A.

DECISION

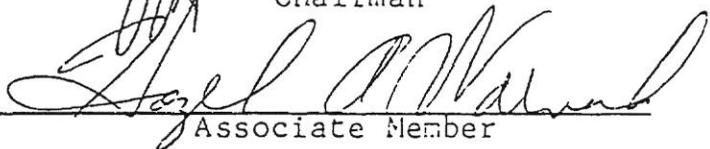
The Claimant was partially unemployed within the meaning of Section 20(1) of the Maryland Unemployment Insurance Law for the weeks ending December 29, 1979, and January 5, 1980. She is entitled to partial unemployment insurance benefits for each of those weeks, less the amount of the holiday pay.

The Claimant was overpaid unemployment insurance benefits for each of the weeks ending December 29, 1979, and January 5, 1979, which is recoverable under Section 17(d) of the Maryland Unemployment Insurance Law.

The decision of the Appeals Referee is modified to this extent.



 Chairman



 Associate Member

dh
 (Williamson)
 K:W

DATE OF HEARING: April 25, 1980

COPIES MAILED TO:

CLAIMANT

EMPLOYER.

Harold Burkholder, Union Rep.
 1 N. Howard St.
 Baltimore, Maryland 21201

Dwight Stover

UNEMPLOYMENT INSURANCE - OAKLAND



DEPARTMENT OF HUMAN RESOURCES
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BOARD OF APPEALS
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 GARY SMITH
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STATE OF MARYLAND
 HARRY HUGHES
 Governor
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 Secretary

- DECISION -

CLAIMANT: Carolyn K. Tasker
 DATE: Mar. 5, 1980
 APPEAL NO: 259568
 S.S.NO.:
 EMPLOYER: Garrett MFG. Company Inc.
 L.O.NO.: 14
 APPELLANT: Claimant
 ISSUE: Whether the claimant was unemployed within the meaning of Section 20(1) 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 511, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON Mar. 14, 1980

- APPEARANCES -

FOR THE CLAIMANT:

Almeda B. Sweitzer
 Connie Weaver
 Anna Virts
 Harold Burkholder-International Union Rep.
 (I. L. G. W. A.)

FOR THE EMPLOYER:

Oma Everly
 Mildred Dillie

FINDINGS OF FACT

The claimant is one of a number of employees of Garret Mfg. Company Inc., who is a member of Local #334 of the International Ladies Garment Workers of America. Pursuant to the employer employee agreement, individuals who have met certain criteria, primarily having achieved three years of service, are eligible for a length of service bonus check. This check represents a percentage of the previous years earnings for that individual

The bonus is determined after December 1, of the year and in the instance of this claimant, was issued on December 4, 1979, by check dated December 1, 1979.

Subsequent to this bonus and issuance of the check, the employer closed for a two week period of time because of the holidays. The close down began December 23, and continued until January 5, 1980. There was work available but work was curtailed because of the holiday close down.

The individual checks "were not issued as representing any specific pay period or allocation aside from having been determined on the longevity and length of service qualification; vacation pay checks issued prior to other, regularly scheduled vacations had been allocated to the vacation period it self. The individual involved would have received the benefit check whether or not there was a subsequent curtailment of employment and shut down.

The claimant was considered as not unemployed within the meaning of Section 4 and 20(1) of the Maryland Unemployment Insurance Law by the Local Reporting Office far the first of the two week period shut down, based upon the receipt of the above bonus payment.

COMMENTS

In considering the determination on appeal, Section 20(1) of the Maryland Unemployment Insurance Law, the Referee notes that " an individual shall be deemed unemployed in any week during which he performs no services, and with respect to which no wages were payable to him...". Since the benefits were earned or accumulated to the credit of the individual, if the benefits were to be considered as vacation or holiday pay, such could be considered wages (since the unemployment resulted from a vacation or holiday shut down and) pursuant to section 20(N) of the Maryland Unemployment Insurance Law, bonuses can be considered as wages.

In considering the testimony and evidence closely, and in the thoughtful application of the cited sections of the Maryland Unemployment Insurance Law, coincidental with the appropriate sections of the Code of Maryland Regulations (primarily Section 07.04.02.09 B1, which indicates that vacation pay is wages and therefore deductible,) the Referee finds that the payment of the longevity bonus was not vacation pay and therefore not deductible wages under the above Sections. Additionally, in considering the "lack of allocation of the benefits and the receipt of such prior to the individual separation from employment and prior to the individuals being in, claim status, the Referee concludes" that even if the bonus were to be considered wages, the issuance and receipt by the claimant prior to the unemployment or separation (prior to the being in claim status) would not be disqualifying during the subsequent period of unemployment and entry into claim status following the application for benefits, but would be deductible as earned.

DECISION

The claimant was unemployed within the meaning of Section 20(1) of the Maryland Unemployment Insurance Law, for the period time beginning December 23, 1979, through December 29, 1979, inclusive.

The claimant shall be entitled to the receipt of Unemployment insurance Benefits beginning December. 23, 1979, if she is otherwise qualified under the Law.

The Claims Examiner's determination is reversed.


Arthur S. Novotny Jr.
Appeals Referee

Date-of Hearing: 2/20/80
rc/Williamson
Cassette No. 869
copies mailed to:

Claimant
Employer
Unemployment Insurance - Oakland