

1962

Kennecott Copper Corporation Employees et al v. Department of Employment Security of the Industrial Commission of Utah : Defendants' Brief

Utah Supreme Court

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IN THE SUPREME COURT

of the STATE OF UTAH

MAY 2 1962

CLERK'S OFFICE

KENNECOTT COPPER CORPORATION EMPLOYEES who were members of, or represented by, OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL 286; BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL 844; INTERNATIONAL ASSOCIATION OF MINE, MILL AND SMELTER WORKERS, LOCAL 485,

Petitioners and Appellants,

vs.

DEPARTMENT OF EMPLOYMENT SECURITY OF THE INDUSTRIAL COMMISSION OF UTAH AND THE BOARD OF REVIEW,

Defendants and Respondents.

No.
9607

DEFENDANTS' BRIEF

Appeal from the Decision of the
Industrial Commission of Utah

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STATE OF UTAH

KENNECOTT COPPER CORPORATION EMPLOYEES who were members of, or represented by, OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL 286; BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL 844; INTERNATIONAL ASSOCIATION OF MINE, MILL AND SMELTER WORKERS, LOCAL 485,

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Defendants and Respondents.

No.
9607

DEFENDANTS' BRIEF

Appeal from the Decision of the
Industrial Commission of Utah

STATEMENT OF THE CASE

A representative of the Utah Department of Employment Security issued determinations to the appellants denying them unemployment compensation benefits for an indefinite period beginning August 13, 1961, on the grounds that their unemployment was due to a stoppage of work which existed because of a strike involving their grade, class, or group of workers at the factory or establishment where they were last employed. Timely appeal was made to the Appeals Referee who on September 21, 1961, conducted a hearing and who on the 27th day of September, 1961, affirmed the decision of the Department representative. On October 4, 1961, the decision of the Appeals Referee was appealed to the Board of Review of the Industrial Commission of Utah. On the 5th day of December, 1961, the Board of Review issued a decision affirming the decision of the Referee and the representative. The matter is now before this Court by reason of a Petition for Writ of Review which was filed on the 28th day of December, 1961.

STATEMENT OF FACTS

To the appellants' "STATEMENT OF FACTS" must be added the following: As of 7:00 A.M. on August 17, 1961, the Kennecott Copper Corporation, Utah Copper Division, did all those things consistent with the continuance of normal operations at the mine. Work schedules were posted, electric power was available, foremen had been instructed to put all men to work

who reported for work, men who reported for work were given their regular assignments, and there was work for those who chose to work, and substantial operations at the mine came to a halt only when the great majority of the members of the appellant groups did not report for work as scheduled and, therefore, failed to be available for their regular assignments.

STATEMENT OF POINTS

1 THE FINDINGS OF FACT OF THE APPEALS REFEREE AS AFFIRMED BY THE BOARD OF REVIEW WHICH ARE CLAIMED TO BE IN ERROR IN APPELLANT'S POINTS OF ARGUMENT 1 THROUGH 3 ARE SUPPORTED BY EVIDENCE AND ARE, THEREFORE, CONCLUSIVE.

2. THE CLAIMANTS REPRESENTED BY THE SUBJECT LOCAL UNIONS PARTICIPATED IN THE STRIKE OF THE ELECTRICAL WORKERS UNION OF AUGUST 17, 1961, BY CONCERTED WITHHOLDING OF THEIR SERVICES.

3. THE UNEMPLOYMENT OF THE CLAIMANTS WAS DUE TO A STOPPAGE OF WORK WHICH EXISTED BECAUSE OF A STRIKE INVOLVING THEIR GRADE, CLASS, OR GROUP OF WORKERS AT THE MINE.

ARGUMENT

POINT ONE

1 THE FINDINGS OF FACT OF THE APPEALS REFEREE AS AFFIRMED BY THE BOARD OF REVIEW WHICH ARE CLAIMED TO BE IN ERROR IN APPELLANT'S POINTS OF ARGUMENT 1 THROUGH 3 ARE SUPPORTED BY EVIDENCE AND ARE, THEREFORE, CONCLUSIVE.

Section 35-4-10(i), Utah Code Annotated 1953, second paragraph, provides in part:

“ . . . In any judicial proceeding under this section the findings of the Commission and the Board of Review as to the facts if supported by evidence shall be conclusive and the jurisdiction of said court shall be confined to questions of law . . . ”

This Court, following a long line of workmen's compensation cases involving similar language, has consistently from time to time ruled that where the findings of the Commission and Board of Review are supported by evidence they will not be disturbed. See *Ralph E. Child vs. Board of Review of the Industrial Commission of Utah, Department of Employment Security*, 332 P. 2d 928, 8 Utah 2d 239; *Creameries of America, Inc. vs. The Industrial Commission of Utah* and *Robert L. Foss*, 102 P. 2d 300, 98 Utah 36; *Employees of Lion Coal Corporation at Wattis, Utah vs.*

The Industrial Commission of Utah and the Lion Coal Corporation, 111 P. 2d 797, 100 Utah 207; Teamsters, Chauffeurs and Helpers of America vs. Orange Transportation Company, 296 P. 2d 291, 5 Utah 2d. 45. See also Outboard Marine and Manufacturing Company vs. Gordon, 403 Ill. 518, 87 N.E. 2d 619, in which the Supreme Court said that it would not disturb findings of fact of an administrative agency unless they are manifestly against the weight of evidence or unless there is no evidence to support them. See also Stillman vs. Board of Review, 161 Pa. Super 569, 56 A. 2d 380, in which the Court held that it could not disturb findings of fact of the unemployment compensation Board of Review where they were supported by evidence even though the record may contain other competent evidence which, had it been accepted by the Board, would have justified different findings, nor may the Superior Court substitute its findings for those of the Board.

Before we discuss the evidence and testimony which support the findings, we wish to point out that the record contains a stipulation of parties that the Kennecott Copper Corporation, Utah Copper Division, in Utah is an integrated operation. Therefore, the question of whether or not it is so integrated merits no argument on our part.

The findings that appellants withheld their services are amply supported by the stipulation of parties (R 0047) that for the most part the workers represented by the unions to which the appellants belonged did not re-

port for work on the shift commencing at 7:00 A.M., August 17, 1961. Witnesses for the appellants supported the stipulation as follows:

Testimony of Mr. Bentley (R 0070):

Answer: "To my knowledge there were very few people who went through the picket lines."
(R 0068)

Answer: " . . . There were some individuals who come and asked for passes.

Question: "Did you give them passes?"

Answer: "We told them we're on strike and we are advertising that we are on strike and that the purpose, that's the only legal thing we've got is to advertise we're on strike—a picket line advertises that you're on strike and we'd like everybody to abide by it."

Next, testimony of Mr. Flores (R 0073):

Question: "Why didn't you work?"

Answer: "Because I called my boss that morning when I heard there was a strike and asked if I'd go to work that day and he said that the day shift hadn't reported for work and he says if the strike isn't settled by 3:30 he says you won't be able to work either." (The day shift was the one starting at 7:00 A.M., August 17, 1961.)

Testimony of Mr. Weidner. He testified (R 0074, R 0075) that he saw pickets at the tunnel and the precipitation plant and decided to go home. He then testified as follows at R 0076:

Question: "Now, Mr. Weidner, you testified that you worked on the records of the precipitation plant.

Answer: "That's right.

Question: "As a matter of fact the precipitation plant operated during the strike, didn't it?

Answer: "I found that out, yes.

Question: "Do you recall the company asking the union to furnish some clerks to do some clerical work after the strike started?

Answer: "Will you state that again?

Question: "Do you recall a request coming from the company to the union for some clerks to work after the strike started? After the strike was going?

Answer: "Just clerks?

Question: "Yes.

Answer: "Yes.

Question: "Do you know what disposition was made of that request?

Answer: "None of them worked."

Testimony of Mr. Larsen (R 0078):

Answer: "I started to work. I went as usual and caught the work bus and rode up to the bus. We went up and got in the Bingham bus in the jam. The bus turned around and said they were going back down out of the jam, so I rode it back down and then I went home at that time."

(R 0079)

Question: "Mr. Larsen, prior to 7:30 or 8:00

o'clock, did you have any discussion with anyone about work?

Answer: "No, we didn't. In fact we didn't really think there would be a strike. We had heard rumors and one thing and another, but we didn't know anything about it until we got up to the picket line. In fact, we were quite surprised about it."

Next, testimony of Mr. Rawlings (R 0080):

Question: "Did you go to work that day?"

Answer: "I went with the anticipation of going but we were stopped just below the tram due to the congestion and we turned around and parked and waited around there oh, possibly for maybe an hour and we didn't see much activity so we turned around and went home."

Testimony of Mr. Goris (R 0084):

Answer: "You have to understand here that a country road leads to the entrance to the machine shop, it's on a hill, and the pickets were established at the bottom of the hill."

Question: "There were a few fellows down at the bottom of the hill and you didn't get up above there, did you?"

Answer: "No."

Testimony of Mr. Gaythwaite (R 0089):

Question: ". . . did any of the members of your local work after 7:00 a.m. on August 17?"

Answer: "Yes."

Question: "There were about nine that worked one or two days.

Answer: "One day, I think."

(R 0091)

The witness testifies:

Answer: "No, I got to correct you there. The nine men involved were men who have assignments to go to work at 5:45 in the morning in order to transport men in coaches to and from their respective places of work. Therefore, by going to work that early in the morning, they did not even know a strike was in progress, they did not see anyone, a picket sign or anything, therefore, they did render service to the company for that day."

Testimony of Mr. Dispenza (R 0099):

Question: "Did any of your group go through the lines and report to work?"

Answer: "Well, I think on the first day, I think there were a few."

In answer to a question as to whether or not he had been contacted by the company for arrangements for men to go to work at the precipitation plant on or about the time of the strike, Mr. Dispenza replied (R 0099):

Answer: "Subsequent to that time. If I might add, the only conversation on the day of the strike was with regards to the water switchers and this was a—I went to the company and I said as mayor of the town I was very interested in seeing that our people received water. They furnish us water, and I asked the company rep-

representatives if arrangements had been made for the water switchers to go to work, which has been the practice at all times in the case of a strike. The company said that they had not made any arrangements to get passes for those people and they weren't going to ask for any. However, if I wanted to ask them as mayor of the town that I could and I did this and I went to the IBEW and asked them as a spokesman of the city if they would allow these people to go to work so that we could have culinary water, which they did. At a later date the company, somebody in the company, I don't remember if it was Mr. Peterson or who it was, but he asked me if I would ask the IBEW for passes for the P.P. Plant workers to go to work. I told them that in the past it was always the—between the company and the striking unit to furnish the passes or who they would furnish the passes to. I have made mention to the company that if—I asked the company rather—if they wanted the guys to go to work at the plant. They said they did. Then I mentioned to the company that it should be their place, not mine, to go down and ask for passes for those people.”

Testimony of Mr. Kerr (witness for the Department) (R 0101):

Question: “Wait just a moment. There were more than nine reported for work?”

Answer: “Yes, quite a few.

Question: “They were given assignments?”

Answer: “As soon as they were given assignments, they left the property. There were others on the property.

Question: "Why? Did they say why?"

Answer: "I don't have their reasons why."

Question: "Now, what were their work assignments? Were they in their regular classification?"

Answer: "Yes."

The findings that regularly scheduled work was available to the appellants are substantially supported by the evidence.

The appellants argue that they failed to report for work because the company did not have work for them due to the fact that the electrical workers were on strike. Most of the witnesses for the appellants testified that in their opinion the company could not operate without the members of the IBEW and that there was no work for them. As we shall see from the following testimony, however, some of these same witnesses also testified that they could have worked at least for a day or two. At no time prior to the strike did the company commit any overt act or make any announcement which would indicate to the appellants that in the event of a strike the plant would be closed. To the contrary, the evidence supports the findings that work was available. Only after the 7:00 o'clock A.M. shift failed to report for work as scheduled were any of the appellants informed that the company could not operate as usual.

In the absence of an overt act on the part of the company which would lead appellants to believe that effective with the commencement of the strike the com-

pany would cease operations, we contend that the events following the appellants' refusal to report for work are not of particular importance. We hereafter set forth some of the testimony to support the findings that work was available and that no such overt act was committed.

Testifying for the appellants, Mr. Bentley, an officer of the IBEW, said (R 0053) :

“We have an open shop agreement.”

And later at R 0066 Mr. Bentley testifies:

“Well, we were well aware of the fact that when we went on strike that we were pitting our strength against Kennecott's strength. In other words, we were gambling. We were taking the calculated risk which we thought was a good risk that Kennecott would not be able to function without us. We realize that if they were able to replace us that they had the legal rights to go out and hire 200 official people to take our jobs, but we realized that due to the fact of the key positions that we held that Kennecott would not be able to operate without us. For that reason it would have been foolish for us to have went on strike if we weren't relatively certain that Kennecott would not be able to operate without us . . . ”

Mr. Kerr, mine operations superintendent, testified in cross-examination (R 0110) dealing with the question as to whether or not normal operations require the 200 electricians and said:

“Well, if we were without that group, we have as you well know, our supervisory force. We

also have the prerogative to contract out as much of this work as we please to maintain as near normal operation as we can, and we also may, if we have to, hire to replace that organization.

Question: "But you did none of these things here except for the amount of some work that you contract out.

Answer: "We contracted some out, yes.

Question: "Now during the period of this strike—let's get at it another way. You don't contend that normal operations could have been conducted with the 26 supervisors and the work that you contracted out.

Answer: "I won't contend one way or the other. All I can say is that it was our intention to maintain as near normal as we could.

Question: "What is your opinion as to how near normal you could come with those 26 supervisors?

Answer: "Well, we would have had to have been in the actual circumstances to be able to know, but my instructions from the management and my instructions to my supervisors were that we were going to maintain operations as best we could with whatever help we could get. And if we got a normal work force we'd have done our best to maintain as near normal operation as we could have, utilizing the three prerogatives that I just mentioned."

On direct examination of Mr. Kerr (R 0101):

Question: "Was there any production work done on the 17th?

Answer: "Yes, there was. When I got through

making assignments to those individuals who were on the property and reported for work, we had enough left over that extended work assignments to operate ore shovels and, I believe, seven trains.”

Question: “Then no men showed up for work that you didn’t provide work for?”

Answer: “That’s true.”

Mr. Kerr had previously testified supra that there were others who reported for work but when they were given assignments turned them down and left the job. At R 0103:

Question: “Was all necessary electrical work in view of the absence of actual operation crews done which could be done?”

Answer: “Yes.”

In light of the appellants’ contention that no work was available to them, let us examine the testimony of appellants’ witness, Mr. Dispenza, a member of the International Association of Mine, Mill and Smelter Workers Local 485. At R 0097 on direct examination:

Question: “How many men are covered by your contract of employment?”

Answer: “Between 1100 and 1200, I believe.”

Question: “If the—can the mine operate or function in the event that the electricians or any group are not available for work?”

Answer: “Can it function?”

Question: “Yes.

Answer: "For a short period of time it could. Not for very long.

Question: "How long would you say?"

Answer: "A matter of a couple of days."

The Referee and the Board of Review gave credence to the testimony of Mr. Kerr, the superintendent, that had the workers represented by Mr. Dispenza reported for work then the necessary electrical work would have been performed first by the use of the supervisors and then by contracting work out and hiring replacements for the members of the IBEW. Obviously the appellants by refusing to make themselves available for work were unwilling to put the matter of the company's ability to replace the electrical workers to an actual test. Instead, they preferred to support the strike of the electrical workers and then argue that the only reason they were not reporting to work was because work was not available. Certainly if such was their belief they would have worked the one or two days and then if the company had been unable to accomplish the electrical work as was necessary, their unemployment would actually have been then due to the fact that work was not available. In addition, working for the extra days would certainly have enabled the mill and smelter to continue working for an additional period of time before they ran out of ore. We call your attention to the testimony of the appellants' witness, Weidner, who testified that he worked on the records of the precipitation plant and respectfully call the Court's attention that the evidence in the record shows that the precipi-

tation plant operated during the strike. Mr. Weidner's work, therefore, as a matter of fact, continued but he was not available to do it.

Mr. Gaythwaite, a locomotive engineer, testifying for the appellants on cross-examination at R 0089:

Question: "As a matter of fact, some of the locomotives were operated during this strike, were they not?"

Answer: "Correct.

Question: "That meant the power was on.

Answer: "Correct.

Question: "It also meant, too, didn't it, that the Central Traffic Control System was operating?"

Answer: "By a supervisor, correct.

Question: "By a supervisor. Now after, did any of the members of your local work after 7 a.m. on August 17?"

Answer: "Yes.

Question: "There were about nine that worked one or two days.

Answer: "One day, I think.

Question: "Now these locomotives that you operate, they don't break down all at one time would they? As a matter of fact, they might not break down on any particular day. Isn't that true?"

Answer: "That's true, that's true.

Question: "They might run one day or two days.

Answer: "They might run a week or two weeks."

This was a strike by a maintenance group—only about 150 of 200 workers involved were doing skilled work. The company, according to the record, decided that it could replace them by the use of supervisors, new hires, and by the contracting of electrical work to concerns outside the plant.

The history of business is replete with instances where there are strikes of maintenance units or small production units and no work stoppages result inasmuch as the striking workers are replaced as is legally permissible under existing labor laws.

The preponderance of the testimony supports the findings that it was the nonavailability of the appellants for work rather than the nonavailability of work for the appellants which was the direct and impelling cause of the work stoppage. The Commission and the Board of Review drew the proper inferences from the evidence and testimony. In the case of *Ashwell vs. United States Seat Company*, 167 S.W. 2d 950, 952, the Court said:

" . . . If from the testimony two different conclusions may be drawn as to the ultimate fact at issue, each of such conclusions or inferences being consistent with the testimony and each inconsistent with the other, it remains for the triers of fact to draw the inference and it does not become a question of law . . . "

ARGUMENT

POINT TWO

2. THE CLAIMANTS REPRESENTED BY THE SUBJECT LOCAL UNIONS PARTICIPATED IN THE STRIKE OF THE ELECTRICAL WORKERS UNION OF AUGUST 17, 1961, BY CONCERTED WITHHOLDING OF THEIR SERVICES.

POINT THREE

3. THE UNEMPLOYMENT OF THE CLAIMANTS WAS DUE TO A STOPPAGE OF WORK WHICH EXISTED BECAUSE OF A STRIKE INVOLVING THEIR GRADE, CLASS, OR GROUP OF WORKERS AT THE MINE.

Because the separation of the argument on defendants' points of arguments 2 and 3 would necessarily lead to a considerable duplication of discussion and citations, we are presenting a single argument on the two points.

Section 35-4-5(d), Utah Code Annotated 1953, provides:

“An individual shall be ineligible for benefits or for purposes of establishing a waiting period:

“(d) For any week in which it is found by the Commission that his unemployment is due to a stoppage of work which exists because of a strike

involving his grade, class, or group of workers at the factory or establishment at which he is or was last employed.”

To a considerable extent the facts in the instant case correspond to those in the case of *Gus P. Lexes, et al vs. Industrial Commission of Utah*, 243 P. 2d 964, 121 Utah 551. In that case the Switchmen’s Union of North America established picket lines at the gates of the American Smelting & Refining Company plant and the morning shift of the American Smelting & Refining Company employees upon encountering the pickets standing outside the plant did not report for available work. No dispute of any kind existed between the Smelting Company and its employees either as to wages or any condition of employment. This Court voted with approval the language of a decision by the Oregon Appeals Referee in case No. 46-RA-144, quoted at paragraph 8059 of CCH Unemployment Insurance Service which held that even though claimant is not a member of a striking union, he expresses interest and participation in the dispute which creates his unemployment by his refusal to cross the picket line at the factory or establishment where he was last employed.

Justice Crockett in his decision which concurred in the result stated:

“Although the inquiry did not proceed upon the theory that claimants engaged in the strike, the undisputed facts show that this was the case. Neither the fact that there was no dispute with

the employer, nor that their work stoppage was not called a strike, are controlling. A strike is generally defined to be a concerted action of employees in withholding services from their employer. Any such concerted action in refusing to perform services is a strike, no matter what the action may be called, nor for whatever purpose it may have been initiated.

“ . . . There is no theory under which such concerted action in refusing to work can be interpreted and classified as anything other than a strike. The Legislature has expressly provided in Section 5(d) herein-above referred to that under such circumstances unemployment benefits shall not be awarded. The wisdom and purpose of that provision is not our present concern.

“It will be noted that the determination made in the case of *Bodinson Mfg. Co. v. Calif. Emp. Comm.*, 17 Cal. 2d 321, 109 P. 2d 921, 935, cited in the main opinion, was grounded on the fact that claimants left their work because of a trade dispute. The court said: ‘Fairly interpreted it [the statute] disqualified those workers who voluntarily leave their work because of a trade dispute. Co-respondents in this proceeding, in fact, left their work because of a trade dispute and are consequently ineligible to receive payments.’ In *American Brake Shoe Company v. Frank Annunzio, etc.*, 405 Ill. 44, claimants who did not cross a picket line set up by members of another union were held disqualified, the courts saying, ‘ . . . that they were either participating in the labor dispute . . . or voluntarily away from their employment . . . ’ The statutes of both California and Illinois include the term ‘trade dispute’ with ‘strike’ as a disqualification. Note

also the Oregon Appeals Referee case referred to in the prevailing opinion which states clearly that the basis of the holding is that the claimant honoring the picket line is participating in the dispute. It is submitted that most of the cases cited by defendants are actually decided on that ground, which as I have attempted to demonstrate, is the logical basis upon which the award is denied.”

In the case of Olof Nelson Construction Company, Vincent-Peterson Construction Company, Groneman & Company, Young & Smith Construction Company, Utah Construction Company vs. The Industrial Commission of Utah and the Board of Review, Appeals Referee and Claims Supervisor of its Department of Employment Security, 243 P. 2d 951, 121 Utah 525, this Court said:

“ . . . Whose conduct is really responsible for the work stoppage? Answering this question may have its difficulties but it seems to be the only logical means of getting at the heart of the matter and resolving the conflict.”

The Court continued:

“I think that principle is sound and should be squarely approved by us so that both labor and management will know that he who first resorts to the use of work stoppage as a means of putting on economic pressure to settle a dispute will be chargeable with the responsibility of having done so.

“Thus the critical fact to be determined is whether the conduct of labor or management is the primary and initiating cause of the work

stoppage, or as phrased by Mr. Justice Schauer in the McKinley case: ‘ . . . It was proper to relate responsibility for the work stoppage to the party who created its actual and directly impelling cause.’ ”

We have canvassed the leading cases in the unemployment compensation field which deal with situations similar to the one we have in this case. We feel that most of the cases place undue emphasis on the matter of the benefit claimants failing to appear for work because of the existence of a picket line. As pointed out by the witness, Bentley, *supra*, “A picket line advertises that you’re on strike and we’d like everybody to abide by it.” The picket line becomes, therefore, a formal request for support of the strike by nonstriking workers and not a barrier to reporting for work. Union principles require that support. We quote briefly from each case. We firmly believe, however, that for the purposes of disqualifying claimants who refused to report for work when another union is on strike, it is not necessarily important that we identify the primary reason for their withholding of their services. We are more concerned with the fact that claimants do withhold their services than we are with the basic underlying reason for such withholding when the employer makes work available.

In the case of *Brown vs. Maryland Unemployment Compensation Board*, 55 A. 2d 696, 701, the Court said:

“If the claimant participated in the strike at all by refusing to cross the picket line for one or

two days when work was available, they participated in the strike for its entire duration . . . and refusal to cross the picket line being a voluntary act . . . they must accept the consequences of that refusal.”

In the case of *Myer vs. Industrial Commission of Missouri*, 223 S.W. 2d 835, the Court concluded that an employee who voluntarily refuses to cross a picket line to go to work is participating in a stoppage of work within the meaning of the unemployment compensation law so as to be precluded from obtaining benefits thereunder regardless of the fact that he may not profit from the strike. See also *Urbach vs. Board of Review*, 83 A. 2d 392.

In the case of *Lloyd E. Mitchell, Inc. vs. Maryland Employment Security Board*, 121 A. 2d 198, the Court said:

“It is well settled that a voluntary failure or refusal by workers, members of a nonstriking union, to pass through a picket line established by members of another union at the place of employment, constitutes participation in the labor dispute. *Brown vs. Maryland Unemployment Compensation Board*, 189 Md. 233, 243, and cases cited. This rule is in accord with the great weight of authority.

“See also *Dante J. Cottini, et al, Appellees vs. Roy F. Cummins, Director of Labor*, 8 Ill. 2d 135, 133 N.E. 2d 263. See also *McGann vs. Board of Review*, 163 Pa. super 379, 62 A. 2d 87.”

In the case of *Bodinson Manufacturing Company*

vs. California Employment Commission, 17 Cal. 2d 321, 109 P. 2d 935, a strike was called by the welders' union. Machinists in the same plant who did not go on strike, refused to pass through the picket line which the striking welders had established around the plant. The Court said:

“In brief, disqualification under the Act depends upon the fact of voluntary action and not the motives which lead to it. The Legislature did not seek to interfere with union principles or practices. The Act merely sets up certain conditions as a prerequisite to receive compensation and declares that in certain situations the worker shall be ineligible to receive compensation. Fairly interpreted, it was intended to disqualify those workers who voluntarily leave their work because of a trade dispute. Correspondents in these proceedings, in fact, left their work because of a trade dispute and are consequently ineligible to receive benefit payments.”

In the case of American Brake Shoe Company vs. Frank Annunzio, etc., 405 Ill. 44, 90 N.E. 2d 83 to 84 referred to by Justice Crockett in the Lexes case *supra*, the Court stated:

“This case presents squarely for determination the question of whether the failure to cross a picket line established by other employees of the same employer precludes employees who fail to cross the picket line from unemployment compensation benefits when those employees are members of an entirely different labor organization and have no interest in or connection with the labor dispute resulting in the picketing of the employer's establishment.”

At page 85 the Court said:

“In this case it appears that the die sinkers could have entered their place of employment without sustaining bodily harm and this Court will not assume that picketing will normally bring violence; therefore, it appears to us that the die sinkers voluntarily remained away from their employment because they did not care to be classified as ‘scabs’ by fellow employees, since the fear of such classification appears to be their motivation for their failure to cross the picket line or voluntarily remaining away from their employment, either of which would disqualify them from compensation benefits. The die sinkers are unemployed solely because in accordance with their union principles they did not choose to work in a plant where certain employees from another plant of their employer were conducting picketing.”

CONCLUSION

In the instant case, most of the workers who testified stated that they approached the entrances to the mine, that they observed picket lines and traffic jams and turned around and went home. The evidence overwhelmingly shows that the claimants chose to involve themselves in the strike by withholding their services, even to the extent of walking off the job after they had been given their regular work assignments. It is our position that regardless of the reason which formed the basis for the appellants’ withholding of their services they involved themselves in a strike when they failed

to perform their regular available work. The fact of the matter is that those few who did report and who remained to work did work on their regular assignments in a plant where operations were below normal for the reason that the appellants refused to make themselves available for work. The appellants were involved in the strike which caused the work stoppage and were properly held to be ineligible for unemployment compensation benefits.

Respectfully submitted,

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