

SUPREME COURT OF NEBRASKA

Wadkins v. Lecuona, 274 Neb. 352

740 N.W.2d 34 (2007) · No. S-06-1008 · Decided October 19, 2007

SUMMARY

The Supreme Court of Nebraska held that unemployment insurance payments received by Richard A. Wadkins after a temporary layoff were deferred compensation for compensatory time earned before the layoff. The payments were therefore attributable to the weeks in which they were earned, rather than the weeks in which they were paid, and did not constitute vacation pay disqualifying Wadkins from benefits. The court reversed and remanded with directions to reverse the determination that Wadkins had been overpaid.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Gerrard, J.; Heavican, C.J.; Wright, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.; Connolly, J. participating on briefs
JURISDICTION	Nebraska
DECIDED	October 19, 2007
DOCKET	S-06-1008
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Wadkins appealed under the Nebraska Administrative Procedure Act from a district court judgment affirming a Nebraska Appeal Tribunal determination that he had received unemployment insurance benefits to which he was not entitled and was required to repay \$2,016.
STANDARD OF REVIEW	Under the Administrative Procedure Act, the appellate court reviews the district court's judgment for errors appearing on the record and asks whether the decision conforms to law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Statutory interpretation is reviewed independently as a question of law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Richard A. Wadkins v. Fernando Lecuona III, Commissioner of Labor, State of Nebraska

TOPICS

unemployment benefits

administrative law

statutory interpretation

judicial review of agency action

appellate procedure

PRACTICE AREAS

Unemployment benefits

Administrative law

Employment law

QUESTIONS PRESENTED

1. Whether payments for compensatory time earned by working before a temporary layoff were wages payable with respect to the weeks in which the payments were received under Nebraska's Employment Security Law.
2. Whether those compensatory-time payments constituted paid vacation leave that disqualified Wadkins from receiving unemployment benefits.
3. Whether the possibility that Wadkins would be recalled to work prevented him from being unemployed under Nebraska law.

HOLDINGS

1. Payments for compensatory time earned before a layoff are payable with respect to the weeks in which the work was performed and the compensation was earned, not the weeks in which the employer actually paid the compensation.
2. Compensatory-time payments for days actually worked before a layoff are not vacation pay or paid vacation leave under Nebraska's Employment Security Law.
3. A temporary layoff remains involuntary unemployment when the claimant performs no services and has no wages payable with respect to the relevant weeks; the possibility of recall does not change that result absent a specific statutory provision.

KEY QUOTATIONS

"Generally speaking, wages are tied to the week of work and not to the week in which they are paid." (740 N.W.2d at 40)

"We specifically reject the Department's assertion that comp time, at least under the facts of this case, is "vacation pay" under the Employment Security Law." (740 N.W.2d at 41)

"The payments for Wadkins' comp time were deferred compensation for time Wadkins had actually worked and were not "vacation pay" within the meaning of the Employment Security Law." (740 N.W.2d at 43)

FACTUAL BACKGROUND

Wadkins was temporarily laid off by Americana Shopping Carts, Inc., effective December 11, 2004, and received unemployment benefits from January 22 through March 5, 2005. During that period, Americana paid him amounts representing compensatory time he had earned by working extra days before the layoff, along with

some sales commissions earned on earlier sales. The Department treated the post-layoff payments as earnings attributable to the weeks in which they were paid, resulting in an asserted \$2,016 overpayment.

PROCEDURAL HISTORY

The Nebraska Department of Labor determined that payments Americana made to Wadkins after his layoff were unreported earnings and that he had been overpaid unemployment benefits. The Nebraska Appeal Tribunal affirmed. The district court, reviewing the tribunal decision under the Administrative Procedure Act, also affirmed. The Nebraska Supreme Court reversed and remanded with directions to reverse the tribunal's determination.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the district court judgment and remand with directions to reverse the Nebraska Appeal Tribunal's determination affirming the Department of Labor's decision that Wadkins had been overpaid unemployment benefits.

CASES CITED

- Chase 3000, Inc. v. Nebraska Pub. Serv. Comm., 273 Neb. 133, 728 N.W.2d 560 (2007)
- Ottaco Acceptance, Inc. v. Larkin, 273 Neb. 765, 733 N.W.2d 539 (2007)
- Lecuona v. McCord, 270 Neb. 213, 699 N.W.2d 403 (2005)
- Vlastic Foods International v. Lecuona, 260 Neb. 397, 618 N.W.2d 403 (2000)
- Board of Regents v. Pinzon, 254 Neb. 145, 575 N.W.2d 365 (1998)
- Transportation Dept. v. LIRC, 122 Wis. 2d 358, 361 N.W.2d 722 (Wis. Ct. App. 1984)
- Matter of Giandomenico, 77 A.D.2d 294, 433 N.Y.S.2d 267 (1980)
- In re Wil-Low Cafeterias, 111 F.2d 429 (2d Cir. 1940)
- Suastez v. Plastic Dress-Up Co., 31 Cal. 3d 774, 647 P.2d 122, 183 Cal. Rptr. 846 (1982)
- Mathewson v. Westinghouse Elec. Corp., 394 Pa. 518, 147 A.2d 409 (1959)
- City of Dallas v. Massingill, 737 S.W.2d 334 (Tex. App. 1987)
- Mtr. of Walker (Reader's Digest), 28 A.D.2d 256, 284 N.Y.S.2d 584 (1967)
- Dillard Dept. Stores v. Polinsky, 247 Neb. 821, 530 N.W.2d 637 (1995)
- McIlravy v. Kerr-McGee Coal Corp., 204 F.3d 1031 (10th Cir. 2000)
- Sanders v. Donovan, 786 F.2d 920 (9th Cir. 1986)
- State ex rel. Ausburn v. Seattle, 190 Wash. 222, 67 P.2d 913 (1937)
- GMC v. Erves, 399 Mich. 241, 249 N.W.2d 41 (1976)
- Goodyear Tire & Rubber Co. v. Employment Security Board of Review, 205 Kan. 279, 469 P.2d 263 (1970)

