

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Brewster v. Rutledge, 176 W. Va. 265

342 S.E.2d 232 (1986) · No. No. 16775 · Decided April 3, 1986

SUMMARY

The Supreme Court of Appeals of West Virginia held that an employee was not disqualified from receiving unemployment compensation after quitting in response to substantial unilateral changes in his working conditions. The court determined that increased duties without additional compensation, together with a prior wage reduction, constituted good cause involving fault on the employer's part under West Virginia Code § 21A-6-3(1). The court reversed the circuit court and remanded with instructions to award unemployment benefits.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	April 3, 1986
DOCKET	No. 16775
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Claimant appealed from a judgment of the Circuit Court of Kanawha County affirming the Board of Review's final order disqualifying him from unemployment compensation benefits because he allegedly quit voluntarily without good cause involving fault on the part of the employer.
STANDARD OF REVIEW	The Board of Review's factual findings are not set aside unless plainly wrong. The plainly wrong doctrine does not apply to the Board's conclusions of law, which are reviewed as legal questions.
PRECEDENTIAL VALUE	Published, precedential decision of the Supreme Court of Appeals of West Virginia.
PARTIES	Floyd H. Brewster v. Phyllis J. Rutledge, Clerk, Sayer Brothers, Inc., Employer, Department of Employment Security appellees

TOPICS

PRACTICE AREAS

Unemployment compensation

Administrative law

Employment law

QUESTIONS PRESENTED

1. Whether Brewster's resignation was voluntary without good cause involving fault on the part of the employer under W. Va. Code § 21A-6-3(1).
2. Whether substantial unilateral changes in compensation and job duties may constitute good cause for quitting and prevent disqualification from unemployment benefits.
3. Whether the plainly wrong standard governs the Board of Review's legal conclusion that Brewster was disqualified from benefits.

HOLDINGS

1. A substantial unilateral change in the terms and conditions of employment, including increased duties without increased compensation and a substantial wage reduction, may constitute good cause involving fault on the part of the employer and justify an employee's resignation without disqualification from unemployment compensation benefits.
2. The plainly wrong doctrine applies to the Board of Review's factual findings but not to its conclusions of law.
3. Brewster did not quit voluntarily without good cause involving fault on the part of the employer within the meaning of W. Va. Code § 21A-6-3(1), and he was entitled to unemployment compensation benefits as provided by law.

KEY QUOTATIONS

"[S]ubstantial unilateral changes in the terms of employment furnish 'good cause involving fault on the part of the employer' which justify employee termination of employment and preclude disqualification from the receipt of unemployment compensation benefits." (233)

"Unemployment compensation statutes, being remedial in nature, should be liberally construed to achieve the benign purposes intended to the full extent thereof." (234)

"[T]he plainly wrong doctrine does not apply to conclusions of law by the Board of Review." (234)

FACTUAL BACKGROUND

Brewster worked as a night watchman for Sayer Brothers-Super S from August 24, 1980, through November 1, 1983, averaging approximately seventy hours per week. His hourly pay was reduced from \$3.35 to \$2.25 in February 1983, and the employer later added janitorial duties without increasing his compensation. After being told that an additional janitorial task would become part of his duties, Brewster quit, believing he could no longer tolerate the working conditions.

PROCEDURAL HISTORY

The administrative law judge found that Brewster voluntarily left his employment without qualifying cause, and the Board of Review adopted those findings. The Circuit Court of Kanawha County affirmed the Board's final order. The Supreme Court of Appeals of West Virginia reversed and remanded with directions to award unemployment compensation benefits.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Commissioner of the Department of Employment Security with instructions to enter an order awarding Brewster unemployment compensation benefits as provided by law.

CASES CITED

- Murray v. Rutledge, 327 S.E.2d 403 (W. Va. 1985)
- Ross v. Rutledge, 338 S.E.2d 178 (W. Va. 1985)
- Davis v. Hix, 140 W. Va. 398, 84 S.E.2d 404 (1954)
- Bailey v. Rutledge, 327 S.E.2d 456 (W. Va. 1985)
- Perfin v. Cole, 327 S.E.2d 396 (W. Va. 1985)
- Kisamore v. Rutledge, 276 S.E.2d 821 (W. Va. 1981)
- Cumberland & Allegheny Gas Co. v. Hatcher, 147 W. Va. 630, 130 S.E.2d 115 (1963)
- Lee-Norse Co. v. Rutledge, 291 S.E.2d 477 (W. Va. 1982)

OPINION

PER CURIAM.

342 S.E.2d 232 (1986) Floyd H. BREWSTER v. Phyllis J. RUTLEDGE, Clerk, et al. and Sayer Brothers, Inc., Employer. No. 16775. Supreme Court of Appeals of West Virginia. April 3, 1986. Pamela Lynn Dalton, Logan, for appellant. Fred Holroyd, Charleston, for Sayer Bros., Inc. Jack O. Friedman, Dept. of Employment Sec., Charleston, for appellees. PER CURIAM: This is an appeal by Floyd H. Brewster who was disqualified from receiving unemployment compensation benefits on the *233 ground that he quit work voluntarily without good cause involving fault on the part of the employer.

W.Va.Code, 21A-6-3(1). For the reasons that follow, we reverse and remand with directions. The facts as found by the administrative law judge, and adopted by the Board of Review, indicate the claimant was employed by Sayer Brothers-Super S in the City of Logan from August 24, 1980, until November 1, 1983. He was hired as a night watchman and worked seventy hours per week as a salaried employee averaging \$2.25 per hour.

During the course of his employment, his pay rate increased to \$3.35 per hour, but in February, 1983, his rate of pay was reduced to \$2.25 per hour, his original hourly rate of pay. In September, 1983, the employer began requiring the claimant to perform janitorial work as additional job duties.

The claimant testified that in November, 1983, he was telephoned at his home by his employer and asked if he had performed a particular janitorial task on his previous shift. The claimant told the employer that he had not and was advised that from now on this task would be a part of his duties.

The claimant testified, just as he said in a statement made at the time of his application for benefits, that this was all he could take and that he was not a slave and was not going to be treated like one. We conclude the evidence does not support the Board of Review's legal determination that the claimant is disqualified from receiving unemployment compensation benefits under W.Va.Code, 21A-6-3(1).

This case is strikingly similar to our decision in *Murray v. Rutledge*, ___ W.Va. ___, 327 S.E.2d 403 (1985), where we held the employee's resignation was justified by a substantial change in her working conditions. In Syllabus Point 2, in part, of *Murray*, we held: "[S]ubstantial unilateral changes in the terms of employment furnish 'good cause involving fault on the part of the employer' which justify employee termination of employment and preclude disqualification from the receipt of unemployment compensation benefits."

In *Murray*, the claimant after having been employed as a full-time restaurant manager for a few months was required, in addition to her managerial duties, to work in the kitchen. The result of this change was a significant increase in the claimant's duties and working hours with no increase in compensation.

After reviewing similar cases from many other jurisdictions, we concluded that a substantial unilateral change in the terms and conditions of employment can constitute "good cause" under W.Va.Code, 21A-6-3(1), justifying resignation from employment.

Here, as in *Murray*, the claimant's occupational duties were increased without any accompanying increase in remuneration. In addition, the claimant's wages for an average seventy-hour workweek had already been substantially reduced.

The claimant testified that at the time his wages were reduced he was told his wage reduction might be temporary. He requested the employer to lay him off work, but the employer refused on the basis that his services were needed. He was sixty-one years of age, needed a job, and believed he had little, if any, real economic alternative but to continue working, since his employer had refused to lay him off.

The fact that he continued working after his wages were reduced is not dispositive of the legal issue. Furthermore, in *Ross v. Rutledge*, ___ W.Va. ___, 338 S.E.2d 178 (1985), we held that an employer's decision to move a plant to another location could constitute a substantial unilateral change in the conditions of employment furnishing good cause for quitting employment, where the claimant could demonstrate that transportation problems or other hardships created compelling reasons to cease employment.

Contrary to the legal conclusion reached by the Board of Review, *Ross* clearly illustrates that the absence of "fault on the part of employer" does not necessarily mean that the employee cannot establish "good cause" for quitting. *234 We have also long recognized that "[u]nemployment compensation statutes, being remedial in nature, should be liberally construed to achieve the benign purposes intended to the full extent thereof."

Syllabus Point 6, *Davis v. Hix*, 140 W.Va. 398, 84 S.E.2d 404 (1954); *Bailey v. Rutledge*, ___ W.Va. ___, 327 S.E.2d 456 (1985); *Perfin v. Cole*, ___ W.Va. ___, 327 S.E.2d 396 (1985). We do not believe our decision in this case is contrary to legislative intent. Given the totality of the circumstances, we conclude as a matter of law that the claimant did not quit his work "voluntarily without good cause involving fault on the part of the employer" within the meaning of W.Va.Code, 21A-6-3(1).

While we recognize the findings of fact by the Board of Review should not be set aside unless plainly wrong, the plainly wrong doctrine has no application to conclusions of law. Syllabus Point 1 of *Kisamore v. Rutledge*, ___ W.Va. ___, 276 S.E.2d 821 (1981), states, in part: "[T]he plainly wrong doctrine does not apply to conclusions of law by the Board of Review."

See *Cumberland & Allegheny Gas Co. v. Hatcher*, 147 W.Va. 630, 130 S.E.2d 115 (1963), overruled, in part, on other grounds, *Lee-Norse Co. v. Rutledge*, ___ W.Va. ___, 291 S.E.2d 477 (1982). Accordingly, we reverse the judgment of the Circuit Court of Kanawha County affirming the final order of the Board of Review, and we remand the case to the Commissioner of the Department of Employment Security with instructions to enter an order awarding the claimant unemployment compensation benefits as provided for by law.

Reversed and Remanded, With Directions.