

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1191

Reversed
Disqualification

PROCEDURAL HISTORY: On October 3, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was disqualified from receiving unemployment insurance benefits from September 11 through September 24, 2022 (weeks 37-22 through 38-22) and until the reason for the disqualification ended, because claimant was unemployed due to a labor dispute (decision # 71112). Claimant filed a timely request for hearing. On September 20, 2023, ALJ Mott conducted a hearing, and on October 4, 2023 issued Order No. 23-UI-237678, reversing decision # 71112 by concluding that claimant was not disqualified from receiving benefits from September 11 through October 8, 2022 (weeks 37-22 through 40-22) because claimant was unemployed due to a lockout. On October 24, 2023, the Department filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the Department's argument in reaching this decision.

FINDINGS OF FACT: (1) Weyerhaeuser Company employed claimant as a forklift driver beginning in February 2021. Claimant worked for the employer at a mill located in Lebanon, Oregon. Claimant was represented by a union, the International Association of Machinists and Aerospace Workers (IAMAW), Local 246. Claimant's wages and benefits were governed by the terms of a contract between the employer and IAMAW.

(2) On May 31, 2022, the contract between claimant's union and the employer expired. Thereafter, the union and the employer attempted to negotiate a new contract regarding the wages and benefits of the employer's union-represented employees.

(3) Negotiations between the employer and the union were unsuccessful, and on September 13, 2022, the union began a strike against the employer. A union representative notified claimant of the strike, as claimant was not on-shift when it began.

(4) After the strike began, the employer locked the gates of the mill and did not allow union-represented employees on the premises, with the exception of pre-arranged visits to retrieve personal property such as tools. The employer did not allow any union-represented employee to cross the picket line and work. The employer did not use any “temporary replacement employees” during the strike. Transcript at 15–16.

(5) During the strike, at the direction of the union, claimant spent time picketing at the entrance of the mill.

(6) If the employer had allowed claimant to cross the picket line and work during the strike, he would have refused their offer. Transcript at 22.

(7) On September 15, 2022, claimant filed an initial claim for benefits. Claimant subsequently claimed benefits from September 11 through October 8, 2022 (weeks 37-22 through 40-22). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(8) On October 28, 2022, the union concluded its strike against the employer, and the employer ended its lockout. On October 31, 2022, claimant resumed working for the employer.

CONCLUSIONS AND REASONS: Claimant was unemployed due to a labor dispute under ORS 657.200(1) and therefore was disqualified from receiving benefits for the weeks at issue.

ORS 657.200(1) provides that “[a]n individual is disqualified for benefits for any weeks with respect to which [the Department] finds that the unemployment of the individual is due to a labor dispute that is in active progress at the factory, establishment or other premises at which the individual is or was last employed or at which the individual claims employment rights by union agreement or otherwise.” Under OAR 471-030-0097 (January 11, 2018), “The term ‘labor dispute’ as used in the Employment Department law means any concerted or deliberate action by two or more individuals or by an employing unit resulting in either a strike or lockout in which wages, hours, working conditions or terms or employment of the individuals are involved.”

Although ORS 657.200(1) has the effect of disqualifying an individual from receiving benefits for weeks of unemployment for which the elements of ORS 657.200(1) are met, ORS 657.200(3)(a) provides as follows:

(3) This section does not apply if it is shown to the satisfaction of the director that the individual:

(a) Is unemployed due to a lockout, as defined in ORS 662.205, at the factory, establishment or other premises at which the individual was last employed[.]

ORS 662.205(4) defines “Lockout” to mean “any refusal by an employer to permit employees to work as a result of a dispute with such employees affecting wages, hours or other terms or conditions of their employment.”

The order under review concluded that claimant’s unemployment during the weeks at issue was caused both by the union’s strike and the employer’s lockout under ORS 657.200(3)(b), such that the disqualifying effect of ORS 657.200(1) was inapplicable, and claimant therefore was not disqualified from receiving benefits for the weeks at issue. Order No. 23-UI-237678 at 3–4. However, the record does not support the conclusion that claimant’s unemployment during the weeks at issue was caused by the employer’s lockout.

The record shows that after claimant’s union began to strike, the employer engaged in conduct that amounted to a lockout within the meaning of ORS 663.205(4). After the strike began, following unsuccessful contract negotiations over wages and benefits, the employer locked the gates of the mill, denying union-represented employees access to work. This action is sufficient to meet the ORS 662.205(4) definition of “any refusal” by an employer to permit employees to work as a result of a dispute affecting, among other things, employee wages.

The Oregon Court of Appeals has held that, for purposes of ORS 657.200(1), the words “due to a labor dispute” means “caused by a labor dispute.” *Barrier v. Employment Division*, 29 Or. App. 387, 391, 563, P.2d 1230, 1232 (1976) (citing *Skookum Co. v. Employment Division*, 24 Or. App. 271, 545 P.2d 914 (1976)). Under these precedents, it is not sufficient to meet the disqualifying provision of ORS 657.200(1) “if the unemployment merely occurred during the course of a strike.” *Barrier*, 29 Or. App. at 391.

The order under review relied on this line of cases, including *Cropley v. Employment Division*, 72 Or. App. 93, 694 P.2d 1025 (1985), to support its conclusion that claimant’s unemployment during the weeks at issue was caused by the lockout in addition to the strike. Citing *Cropley*, the order under review reasoned that “even though the union struck the employer, the employer would not have allowed any union employee to work during the strike period. Therefore, the union strike was not the only cause of claimant’s unemployment. Their unemployment was due to both the union strike *and* the employer lockout.” Order No. 23-UI-237678 at 4.

This reliance is misplaced. In *Cropley*, the claimant-petitioners were union-represented members of an employer who had laid them off due to a lack of work. While they were on layoff status, the applicable collective bargaining agreement expired, and the union subsequently struck the employer. EAB had held that because the employer recalled some of the claimants to work based on seniority once the strike began, but those claimants refused to cross the picket lines and return to work, the labor dispute ultimately became the cause of the claimants’ unemployment even though it had initially been caused by the layoff. The record in that case further showed that on the day of the hearing, while the strike continued, the employer may have “continued to lack work”—i.e., may not have had sufficient work available to allow all of the claimants to return to work. 72 Or. App. 93, 98. The Court of Appeals remanded the matter to EAB, holding there was not “substantial evidence in the record that all of [the claimants] could have been working,” and that “if any one could not have, he is entitled to benefits.” *Cropley* at 97–99.

Thus, in *Cropley*, whether the claimants' unemployment was due to a labor dispute—and therefore whether they were ineligible for benefits—turned on whether, but for the strike, they could have returned to work. The factual basis upon which the Court of Appeals remanded the matter to EAB was whether, for each individual claimant, a position to which they could return once the strike had concluded still actually existed. A lockout, rather than the availability of work, is at issue in this case. However, unlike in *Cropley*, there is no factual dispute regarding whether it was the strike, or the other intervening issue, which caused claimant's unemployment.

The record here shows that the employer's lockout was a direct response to the union's decision to strike, which was reversed when the strike resolved. As a result of the lockout, the employer would not have allowed claimant to work during the strike. Had claimant been willing to work during the strike, it would have been the employer's decision, rather than the union's, which kept claimant from work. However, because the record shows that claimant was *not* willing to work during the strike, and in fact actively participated in it by picketing the employer, the strike remained the cause of claimant's unemployment. In other words, even if the employer had reversed the lockout and allowed employees to work during the strike, claimant would have remained unemployed because he was striking.

Accordingly, claimant's unemployment was due to a strike, which amounted to a "labor dispute" within the meaning of OAR 471-030-0097 because it involved a concerted action by two or more individuals resulting in a strike in which wages and other terms of employment were involved. The labor dispute that caused claimant's unemployment during the weeks at issue was in active progress at the premises at which claimant was employed. Therefore, ORS 657.200(1) applies, and claimant was disqualified from receiving benefits for the weeks at issue. Because claimant's unemployment during the weeks at issue was not due to the employer's lockout, ORS 657.200(3)(b) does not apply to render the disqualifying effect of ORS 657.200(1) inapplicable.

For these reasons, claimant is disqualified from receiving unemployment insurance benefits for the weeks at issue.

DECISION: Order No. 23-UI-237678 is set aside, as outlined above.

D. Hettle and A. Steger-Bentz;
S. Serres, not participating.

DATE of Service: December 12, 2023

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymzmo.com/s3/5552642/EAB-Customer-Service-Survey>.

You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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