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Unemployment Compensation—Quitting Work for Good Cause—Question of Law or Fact

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F. 2d 340 (C.A. 7th 1942) (ransom money); *National City Bank v. Helvering*, 98 F. 2d 93 (C.A. 2d 1938) (illicit bonus); *Droge v. Commissioner*, 35 BTA 829 (1937) (Irish sweepstakes); *U.S. v. Sullivan*, 274 U.S. 259 (1927) (bootlegging); or because the funds are not subject to recovery by the owner under applicable law, *Chadick v. U.S.*, 77 F. 2d 961 (C.A. 5th 1935) (graft); *Greenfeld v. Commissioner*, 165 F. 2d 318 (C.A. 4th 1947) (receipt of stolen bonds).

Although the *Rutkin* case is discussed by the court as being an example of the "claim of right" group, it is a very weak case for such a theory. Under the modified claim of right theory as exemplified in this case, it would seem that any funds received by a gangster would be taxable no matter how weak or untenable his claim, as long as some claim was found to exist in however minuscule degree. The case weakens the stringent rule given by the *Wilcox* case which required a bona fide claim of right plus an absence of obligation to repay in order to hold the funds taxable. By so doing, the *Rutkin* case goes a long way toward extending the claim of right doctrine farther into the income of the underworld. Through it, the road may be opened to finding some of the incomes derived from larceny and embezzlement to be taxable which, prior to this case had been held not taxable, *McKnight* case, *supra* and *Wilcox* case, *supra*, respectively. It should be noted that the case could easily have been decided on the alternative doctrine of "voluntary" passage of title. Rutkin did not take the money; it was given to him, albeit under pressure, and just as the ransom money in the *Humphreys* case, *supra*, was taxable because title had passed, so the Rutkin funds could be held taxable. Alternatively, the case could have been determined on the theory of *Greenfeld, supra*, which held that, even if no title had passed, the money is taxable in the hands of the racketeer if the true owner cannot recover it under state law. This theory would be applicable in the *Rutkin* case because the statute of limitations had run on the extortion although the court did not emphasize that fact.

The theoretical fallacy inherent in the cases which hold the funds taxable is that the one who should have all the money is the true owner; while the extortioner has no right to any of the money and, *a fortiori*, the United States has less right to taxes levied thereon. Since such theoretical niceties run into the practical consideration that the owner actually will not get it back, the cases sometimes result in hair splitting. The practical argument by the government is that at least the gangsters should be taxed (and jailed for income tax evasion if they persist in nonpayment of taxes), while the countervailing argument is that, as such jailing is a subterfuge used to punish gangsters for violation of the state criminal law, it is therefore an invasion of the criminal jurisdiction of the state.

Regardless of the above variance in theoretical bases it would seem that there are now three circumstances in which the courts plug the illegal income tax evasion gap or punish for failure to pay such taxes: (1) when money is obtained under neither claim of right nor title but the owner has no remedy so that the funds are irretrievably passed to the gangster; (2) when money is obtained by transfer of voidable title by the owner; and (3) when money is obtained under any semblance of a claim of right from the owner. Until Congress amends the Internal Revenue Code to cover specifically all illegal income with provision for refund in case of recovery by the owner, such patchwork by the courts is a necessity.

ELEANOR H. EDWARDS

Unemployment Compensation—Quitting Work for Good Cause—Question of Law or Fact. *A* was working on an "inside job" for $1.63 per hour plus $.10 for working the second shift when he was told that he was to be transferred to an "outside job" at $1.43 per hour without an opportunity for the shift differential. *A* refused to accept the

transfer and quit work. When making application for unemployment benefits, *A* signed a statement which read in part, "I quit mainly because I was transferred to an outside job. I had been ill last winter and did not want to work outside again. . . . However I would have stayed on the job had not my pay been cut." The Appeal Tribunal found that *A* voluntarily left work without good cause and was therefore disqualified for benefits by RCW 50.20.050 [RRS § 9998-211]. After an adverse finding by the Appeal Tribunal, the Commissioner of Unemployment Security adopted the fact findings of the Appeal Tribunal, and without making any findings of his own, held that *A* did have good cause for terminating his employment and that he was entitled to benefits. The superior court took jurisdiction under RCW 50.32.120 (RRS §9998-266) which provides than on ". . . such appeal only such issues of *law* may be raised as were properly included in the hearing before the appeal tribunal." (Italics added). Trial court reversed the Commissioner. Appeal. *Held:* Affirmed. In re *Anderson,* 39 Wn. 2d 356, 235 P. 2d 303 (1951).

Our court has previously stated that it would only take jurisdiction on questions of law in appeals from the Commissioner of Employment Security. In re *St. Paul & Tacoma Lumber Co.,* 7 Wn. 2d 580, 110 P. 2d 877 (1941). In the instant case the supreme court found *good cause* to be a question of law. In support of this position the Court cited *Montreal Mining Co. v. Industrial Commission,* 225 Wis. 1, 272 N.W. 828 (1937), as observing that a finding of an *employer-employee relationship* is a conclusion of law rather than a finding of fact. Another court, in a workman's compensation case, has said that the determination of "good cause" is a question of *fact. Texas Employers' Ins. Ass'n. v. Wright,* 118 S.W. 2d 433, 439 (Tex.Civ.App. 1938). Neither court gave any reason for its conclusion.

The legislature did not draw the line between matters of fact and law. However, RCW 50.20.100 (RRS §9998-216) provides, ". . . in determining. . . whether or not an individual has left work voluntarily without good cause, the *Commissioner* shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training. . . and such other factors as the *Commissioner* shall deem pertinent." (Italics supplied). RCW 50.20.110 (RRS §9998-217): ". . . no work shall be deemed to be suitable . . . (b) if the remuneration, hours, or other working conditions of the work offered are substantially less favorable." The legislature, by RCW 50.32.150 (RRS §9998-269), made all of the Commissioner's decisions prima facie correct; and the supreme court, in interpreting RCW 50.32.120 (RRS §9998-266), said, ". . . we are constrained to hold that the administrative determination of facts is conclusive on the court unless it be wholly without evidential support or *wholly dependent upon a question of law,* or clearly arbitrary and capricious." In re *St. Paul & Tacoma Lumber Co., supra* at 593, 110 P. 2d at 883. (Italics supplied.) In re *Employees of Buffelen Lumber & Mfg. Co.,* 32 Wn. 2d 205, 201 P. 2d 194 (1948). The court, by assuming jurisdiction over this question, has defeated what seems to be the legislative purpose to allow a flexible standard of many variables to be determined by the Commissioner according to the individual facts of each case. Since the Commissioner's determination of good cause applies only to a particular case, as contrasted with setting a general standard, it appears to have a factual nature. See Brown, *Fact and Law in Judicial Review,* 56 HARV. L. REV. 899,911 (1943). If this argument is sound, then the determination of good cause in the particular case is not wholly a question of law.

In this case, in addition to a wage reduction, there was a change of hours and a change of working conditions which affected health. The change in hours and working conditions were given little attention by the Commissioner and were apparently not considered by the courts. This decision is likely to result in a tendency

in future cases to ignore the "other factors" which the legislature included for consideration, as well as a tendency to decide the issue of good cause solely upon the basis of wage reductions.

Our court has said, in speaking about the department of social security, "This court has expressed the view that courts should let administrative boards and officers work out their problems with as little judicial interference as possible. One of the primary reasons for the creation of administrative agencies is to secure the benefit of special knowledge acquired through continuous experience in difficult and complicated fields. To unduly restrict the operations of administrative bureaus would defeat the very purpose for which they have been established." *Robinson v. Olzendam,* 38 Wn. 2d 30, 37, 227 P. 2d 732, 736 (1951). It must be recognized that the determination of "good cause" does not peculiarly require the mind of an expert. Neither does it require a "legal mind" for an accurate decision; yet, if this were a question wholly of law special legal training would be necessary. See Brown, *supra,* at 921.

If this case does decide a pure question of law, the holding must be that a wage reduction of slightly more than twelve per cent is, as a matter of law, not good cause for voluntary termination of employment so as to qualify a person for unemployment benefits. The holding of our court is not in terms of percentage of income which could have set a general standard and been a guide to a considerable body of future cases. To hold that a wage reduction of twenty (or perhaps thirty) cents per hour is not good cause for voluntary termination of employment in a particular fact situation, is neither decisive nor illuminating. Futhermore, the decision results in an invitation to a large body of litigation into already crowded courts. Perhaps a better solution would have been to remand and require the Commissioner to list the facts to which he gave weight and to state precisely the reasons for his decision. Then, in the event of court review, any issues wholly of law could be clearly segregated by the court. However, the court did hear and decide this case but gave no reasons for its holding. It appears that the court decided a question of fact while purporting to decide an issue of law.

THOMAS E. SMAIL, JR.

Labor—Picketing—When Enjoinable. At a previous trial *P* was granted an injunction against picketing by *D* union after it was found that a labor dispute existed but that one of the objectives of the union was unlawful. The decree was affirmed in *Ostroff v. Laundry & Dye Works Local 566,* 37 Wn. 2d 595, 225 P. 2d 419 (1950). The basis for the finding of a labor dispute was in the existence of an employer-employee relationship between *P* and one member of *D* union. The illegal objective was that *P* sign a contract with *D* that he employ only union members in his plant, and only members of *D* union in the pick-up and delivery of his work. The court said that if the illegal objective were eliminated the injunction would be dissolved. Subsequently, the union eliminated the illegal objective, but *K,* the only union employee working for *P* at the time the picketing began, discontinued his picketing duties against *P* over a year before the present action and has not been actively employed through *D* union since. *Held: K* is still to be regarded as an employee of *P* for the purposes of the case, and since a labor dispute therefore still exists, the injunction is dissolved. *Ostroff v. Laundry & Dye Works Local 566,* 39 Wn. 2d 693, 237 P. 2d 784 (1951).

In considering where this case fits into the picture of picketing in this state a number of problems in the field of picketing become evident. Peaceful picketing will not be enjoined if it is found that a labor dispute exists and the objectives are not unlawful. *Ostroff v. Laundry & Dye Works Local 566, supra* (1951); *Isthmian Steamship Com-*