A.D. No. B77-2254-56841
S.S. No. [redacted]
B.O. No. 74
DI PG 10.54
V.L.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

CHARLES M. KMIEC,

CLAIMANT-APPELLANT

-VS-

OLE TACOS,

FILE No. 78 4545 AV

EMPLOYER-APPELLEE

AND

MICHIGAN EMPLOYMENT SECURITY COMMISSION

APPELLEE

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ATTORNEYS FOR APPELLEE-MICHIGAN EMPLOYMENT SECURITY COMMISSION

OPINION

CLAIMANT APPEALS FROM A MAJORITY DECISION OF THE EMPLOYMENT SECURITY BOARD OF REVIEW ENTERED OCTOBER 27, 1978, WHICH AFFIRMED A REFEREE'S DECISION ENTERED AUGUST 24, 1977, DETERMINING CLAIMANT TO BE DISQUALIFIED FROM CERTAIN UNEMPLOYMENT COMPENSATION BENEFITS UNDER § 29(1)(A) OF THE MICHIGAN EMPLOYMENT SECURITY ACT BECAUSE CLAIMANT LEFT HIS WORK "VOLUNTARILY AND WITHOUT GOOD CAUSE ATTRIBUTBLE TO THE EMPLOYER."

THE CASE WAS SUBMITTED TO THIS COURT ON THE RECORD AND ON BRIEFS SUBMITTED BY OPPOSING COUNSEL.

CLAIMANT-APPELLANT CONTENDS THAT HIS SEPARATION FROM WORK WAS INVOLUNTARY; THAT IS, THAT CLAIMANT WAS FIRED BY HIS EMPLOYER.

APPELLEES OLE TACOS AND THE MICHIGAN EMPLOYMENT SECURITY COMMISSION CONTEND THAT CLAIMANT WAS PRIMARILY RESPONSIBLE FOR CLAIMANT'S SEPARATION FROM EMPLOYMENT WITH OLE TACOS.

UNDER THE PROVISIONS OF MSA 17.540, A CIRCUIT COURT, IN REVIEWING AN ORDER OR DECISION UNDER THE MICHIGAN EMPLOYMENT SECURITY ACT, MAY REVERSE ONLY IF THE COURT FINDS THAT SUCH ORDER OR DECISION: (1) IS CONTRACT TO LAW, OR (2) IS NOT SUPPORTED BY COMPETENT MATERIAL AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD.

CLAIMANT AND HIS EMPLOYER AGREE THAT CLAIMANT ANNOUNCED HIS INTENT TO LEAVE OLE TACOS UPON TWO WEEKS NOTICE AFTER CLAIMANT LOCATED ANOTHER JOB. CLAIMANT'S SUPERIOR, AFTER SOME CONSIDERATION, BECAME DISSATISFIED WITH SUCH ARRANGEMENT, AND ASKED CLAIMANT TO PICK ONE OF SEVERAL SUGGESTED DATES OF SEPARATION. EVIDENCE WAS IN CONFLICT AS TO WHETHER THE DATE OF OCTOBER 13, 1976 AS THE DATE OF SEPARATION WAS THE PRODUCT OF AN AGREEMENT BETWEEN THE PARTIES, OR WAS IN FACT AN IMPOSED DECISION OF TERMINATION BY CLAIMANT'S SUPERIOR. THERE ALSO WAS EVIDENCE THAT CLAIMANT WOULD NOT HAVE BEEN DISCHARGED HAD CLAIMANT NOT RESIGNED. (EXHIBIT 10)

I

CLAIMANT URGES THAT THE REFEREE APPLIED AN ERRONEOUS RULE OF LAW; NAMELY, THAT WHOEVER STARTED THE CHAIN OF EVENTS LEADING TO THE SEPARATION IS THE PERSON WHO CAUSES THE SEPARATION. CLAIMANT ARGUES THAT ALL FACTS AND CIRCUMSTANCES MUST BE VIEWED TO DETERMINE WHETHER EMPLOYER OR EMPLOYEE ACTUALLY CAUSED THE SEPARATION.

OUR READING OF THE REFEREE'S OPINION LEADS US TO CONCLUDE THAT THE REFEREE EXTENDED HIS CONSIDERATION OF FACTS AND CIRCUMSTANCES TO THOSE EVENTS OCCURRING AFTER CLAIMANT'S ORIGINAL NOTICE TO HIS EMPLOYER THAT HE INTENDED TO QUIT AT SOME UNDETERMINED DATE IN THE FUTURE, AND PRIOR TO THE ACTUAL SEPARATION ON OCTOBER 13, 1976. THE REFEREE'S OPINION REFERS TO THE INTERVENING DISCUSSION AS TO DATE OF SEPARATION, AND DETERMINES THAT CLAIMANT DID RESIGN ON OCTOBER 13, 1976.

THE REFEREE RECOGNIZED THAT HE WAS OBLIGED TO DETERMINE WHETHER OR NOT CLAIMANT WAS "PRIMARILY RESPONSIBLE" FOR HIS UNEMPLOYMENT. WE BELIEVE THAT SUCH LANGUAGE IS SUBSTANTIALLY SYNONYMOUS WITH "PROXIMATE CAUSE" OR "PRINCIPAL CAUSE", AND THAT IT GOES BEYOND ONE WHO MERELY INTRODUCES THE TOPIC OF A POSSIBLE FUTURE SEPARATION.

FURTHERMORE, THE WORD "RESIGN" CONNOTES AN EMPLOYEE'S VOLUNTARY DECISION TO QUIT. THE REFEREE IN EFFECT FOUND AN AGREED UPON RESIGNATION EFFECTIVE AS OF OCTOBER 13, 1976.

UNLIKE THE CASE RELIED UPON BY CLAIMANT, (LARSON V EMPLOYMENT SECURITY COMMISSION, 2 MICH APP 540), CLAIMANT WAS UNDER NO OVERWHELMING ECONOMIC PRESSURE SUCH AS A CONDITIONAL WORKMAN'S COMPENSATION SETTLEMENT THAT WOULD RENDER A RESIGNATION INVALID AS BEING UNDER LEGAL DURESS. IF CLAIMANT HAD REFUSED TO AGREE ON A DATE OF SEPARATION, HIS EMPLOYER EITHER COULD HAVE CONTINUED HIS EMPLOYMENT OR FIRED HIM. IN EITHER EVENT, CLAIMANT'S ECONOMIC BENEFITS FOR THE PERIOD IN QUESTION WOULD HAVE BEEN GREATER THAN IF HE VOLUNTARILY QUIT HIS JOB. URGING OR DEMANDS BY ONE PARTY TO AN AGREEMENT DO NOT ARISE TO THE LEVEL OF LEGAL DURESS SO AS TO NEGATE AN AGREEMENT TO RESIGN AS OF A SPECIFIC DATE.

WE DETERMINE THAT THE OPINION AND DECISIONS OF THE REFEREE AND THE AFFIRMING DECISION OF THE APPEAL BOARD ARE NOT CONTRARY TO LAW.

II

WE NEED NOT CONSIDER WHETHER THIS COURT MIGHT HAVE REACHED A DIFFERENT RESULT ON THE RECORD, OR WHETHER A REFEREE'S DECISION THAT THE SEPARATION IN THIS CASE WAS INVOLUNTARY, WOULD HAVE BEEN SUSTAINABLE UPON APPEAL. THE TRIER OF FACT RENDERED A DECISION AS TO A FACTUAL ISSUE. HE CONCLUDED THAT CLAIMANT'S SEPARATION WAS VOLUNTARY. HE HAD THE OPPORTUNITY TO OBSERVE WITNESSES AND TO WEIGHT THE CREDIBILITY OF WITNESS' TESTIMONY, AS WELL AS THE WEIGHT TO BE GIVEN TO EXHIBITS.

A REVIEW OF THE WHOLE RECORD INDICATES THAT THE REFEREE'S FINDINGS OF FACT AS AFFIRMED BY THE APPEAL BOARD'S DECISION WERE SUPPORTED BY COMPETENT MATERIAL AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD, AND THAT SUCH DECISIONS ARE NOT CONTRARY TO THE GREAT WEIGHT OF THE EVIDENCE.

THE DECISIONS OF THE REFEREE AND OF THE EMPLOYMENT SECURITY BOARD OF REVIEW BE AND THE SAME HEREBY ARE AFFIRMED.

DATED: AUGUST 22, 1979

/s/ JAMES E. TOWNSEND
JAMES E. TOWNSEND, CIRCUIT JUDGE