

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF VAN BUREN

36TH JUDICIAL CIRCUIT

STATE OF MICHIGAN,
UNEMPLOYMENT AGENCY,
DEPARTMENT OF CONSUMER
& INDUSTRY SERVICES formerly
known as Michigan Employment
Security Agency and MESC,
Appellant,

vs

Case # 98-44-392-AE-B

YGNACIO BERNABE
and
CORNERSTONE AG ENTERPRISES,
Appellees.

M.E.S. BOARD OF REVIEW
FILED: SEP 23 1998
R. DOUGLAS DALIGGA
DIRECTOR

OPINION AND ORDER ON APPEAL

FACTS

In 1997 Ygnacio Bernabe was employed by Cornerstone Ag Enterprises commencing July 17, and ended his employment October 7, 1997. He was notified that he was considered a seasonal worker, and that the employer expected him to return to work for the following season. The employer had applied for and was determined to be entitled to status as a seasonal employer, with a normal seasonal work period for 1997 from June 14 through September 27, 1997. The determination was posted by the employer. A February 9, 1998 redetermination of Bernabe's claim for unemployment benefits, which found he was not ineligible to receive such benefits because he was a seasonal employee, was timely appealed by the employer. On March 18, 1998, Administrative Law Judge William J. Farmer affirmed that redetermination, concluding that claimant Bernabe was not ineligible for benefits under the seasonal worker denial period provisions of Section 27(o) of the Michigan Employment Security Act.

That decision was reversed by a divided Board of Review on May 27, 1998. The majority, although concluding that the employee had in fact worked ten days beyond the "normal seasonal work period" as defined by the act, held "we do not believe it was the intention of the Legislature in enacting these provisions to penalize the employer by allowing 26 weeks of benefits to the claimant for the employer giving the claimant ten more days of work."

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The dissenting member opined that the word "only" in the definition of "seasonal worker" was meaningful, and when the worker was paid wages other than "only" during the "normal seasonal work period" (MCL 421.27(o)(9)(e)) they are not seasonal workers ineligible to receive benefits.

From this reversal of the Board of Review the Appellant Agency has filed a timely appeal on June 25, 1998 by authority of MCL 421.38(3).

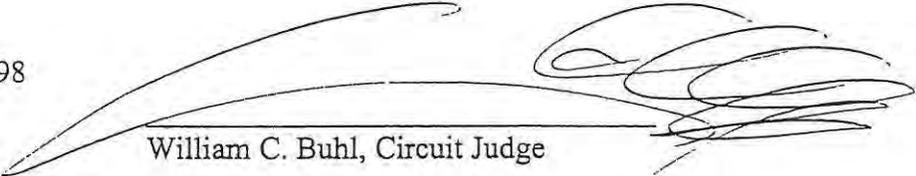
OPINION

The facts are not in dispute. The employee in this case did not receive wages only for the normal seasonal work period as defined by the Act (MCL 421.27(o)(9)(b)). He received wages for ten more days beyond that period, hence he does not fit the definition of "seasonal worker" set forth in MCL 421.27(o)(9)(e). The majority of the Board of Review sees the results as harsh, penalizing the employer. The Court has to agree with the dissenting member and the Administrative Law Judge. Judge Farmer stated in his conclusions on page 3 of his opinion "The provisions of the seasonal worker denial period are clear and require no interpretation." The employee is not ineligible for benefits thereby and the redetermination should be affirmed.

ORDER

THEREFORE, IT IS ORDERED, that the determination of the Board of Review be REVERSED, and the Administrative Law Judge Affirmed and his determination reinstated.

Dated: September 14, 1998


William C. Buhl, Circuit Judge