

IN THE SUPREME COURT

STATE OF FLORIDA

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CASE NO.: 66,663

TALLAHASSEE HOUSING AUTHORITY,

Employer/Appellant,

vs.

FLORIDA UNEMPLOYMENT APPEALS
COMMISSION and CONNELL BARRON,

Claimant/Appellees.

APPELLANT'S REPLY BRIEF

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INDEX

TABLE OF AUTHORITIES i

ISSUE I

ABSENTEEISM AS MISCONDUCT PER SE IS
IN PERFECT KEEPING WITH THE STATUTORY DE-
FINITIONS OF MISCONDUCT. 1

ISSUE II

BECAUSE OF THE PIECEMEAL PATTERN OF
MR. BARRON'S ABSENCES OVER SO MANY DATES
AND SO MANY HOURS, HE WOULD HAVE HAD DIFFI-
CULTY IN RESPONDING IRRESPECTIVE OF THE
FORMAT IN WHICH THE EVIDENCE OF THOSE AB-
SENCES WAS PRESENTED. 3

CERTIFICATE OF SERVICE 6

TABLE OF AUTHORITIES

Cases:

Boynton Cab Co. v. Neubeck,
237 Wis. 249, 296, N. W. 636 (1941) 1

Other:

American Heritage Dictionary of the
English Language, 1976 1

Webster's Third New International
Dictionary, 1971 1

Webster's Seventh New Collegiate
Dictionary, 1963 1

ISSUE I

ABSENTEEISM AS MISCONDUCT PER SE IS IN PERFECT KEEPING WITH THE STATUTORY DEFINITIONS OF MISCONDUCT.

Both Amicus and the Appeals Commission argue that Appellant's position that excessive absenteeism is misconduct per se is in conflict with the statutory definitions of misconduct and with seminal case law. With all respect, Appellant strongly disagrees. Appellant has never argued that vacation leave or sick leave represent absenteeism. Those hours are quoted to show that Mr. Barron lost 118 hours of work in addition to his 95 hours vacation leave and 85 hours sick leave. Absenteeism is defined in Webster's Third New International Dictionary, 1971, as "continual interruption of attendance". Webster's Seventh New Collegiate Dictionary, 1963, defines it as "chronic absence from work or other duties". Finally, the American Heritage Dictionary of the English Language, 1976, defines absenteeism as "habitual failure to appear, esp. for work". Absenteeism refers then to a pattern of behavior. Mr. Barron's pattern shows that the majority of his absences occurred on Fridays, Mondays, or following a holiday. In perfect keeping with the Appellee's quote from Boynton Cab Co. v. Neubeck, 237 Wis. 249, 296 N. W. 636 (1941), there is no suggestion from Mr. Barron that these absences were mere mistakes, were inadvertent errors in judgment or unintentional carelessness. Further, Mr. Barron was asked at every stage of these proceedings if he had some reason for his absences. He offered no explanation. Each of the decision-

makers at every stage in these proceedings concluded that Mr. Barron had no justifiable reason for his absences and that this pattern of behavior was, in fact, a wanton disregard of the interests of his employer. As stated by the Appeals Referee "the overall attendance record of the claimant reflects an apparent indifference to his duty and responsibility to the employer to work the hours required of him on a regular basis, without regard to authorized sick and vacation leave". (R. at 67.) "The claimant's actions were in substantial disregard of the employer's interests and, therefore, his discharge was for misconduct connected with work." (R. at 68.) Absenteeism, by definition, is a pattern of unexcused absences. Such unexcused absences are misconduct per se, a wanton disregard of the interests of an employer. No violence is done to the statutory definition of misconduct by the statement that absenteeism is misconduct per se.

ISSUE II

BECAUSE OF THE PIECEMEAL PATTERN OF MR. BARRON'S ABSENCES OVER SO MANY DATES AND SO MANY HOURS, HE WOULD HAVE HAD DIFFICULTY IN RESPONDING IRRESPECTIVE OF THE FORMAT IN WHICH THE EVIDENCE OF THOSE ABSENCES WAS PRESENTED.

The Appeals Commission seeks to diminish the importance of the claimant's appearance at a pre-determination hearing and an appeal from that hearing, both of which resulted in the claimant being fired from the Tallahassee Housing Authority for excessive absenteeism. This hearing and appeal are important because Mr. Barron's appearance before the Unemployment Compensation Appeals Referee to contest his denial of unemployment benefits occurred within the context of his dismissal for excessive absenteeism. Had he not been fired for misconduct, he would not have been denied benefits by the Claims Adjudicator and would not have been before the Appeals Referee; that hearing did not occur in a vacuum. Because of the hearing and appeal at the Tallahassee Housing Authority, and the exchange of letters initiated by the Claims Adjudicator when Mr. Barron applied for unemployment compensation benefits, Mr. Barron had actual notice of the Housing Authority's reason for firing him, excessive absenteeism, and actual notice of the evidence of those absences, including the dates of each absence, not once, but several times before he appeared before the Appeals Referee.

Respondent's assertion at page 2 of the Answer Brief that Mr. Barron indicates that he was unaware of the summary of his absences until it was presented at the referee's hearing, is completely unsupported by the record. The affidavit attached to the summary indicates that it was prepared for the pre-determination hearing which occurred months before Mr. Barron's appearance before the Appeals Referee. The evidence to be used at that hearing was sent to Mr. Barron and his attorney prior to the pre-determination hearing. (R. at 65.) It might be noted that Mr. Barron's attorneys at the pre-determination hearing, amicus here, have chosen not to address the evidentiary issue and have accepted appellant's statement of the case and of the facts. In actuality, the whole evidentiary issue is little more than a smokescreen raised by the Appeals Commission. Neither Mr. Barron nor his former attorneys ever questioned the evidence of his absenteeism at any stage of these proceedings. One must presume that Mr. Barron's difficulty in contesting the specific entries on the summary would have occurred no matter what format they were presented in -- whether the Housing Authority presented the original documents or a summary of those documents.

Mr. Barron's problem was that there were so many hours missed from work on so many dates, and for no good reason, that there was little Mr. Barron could say. It is the very piecemeal nature of Mr. Barron's absences which indicates his total disregard for his employer's interests and makes it difficult for him to respond. We are not confronted with a single extended absence because of illness or family responsibilities, this is a pattern of behavior over a year's time.


Whatever Mr. Barron's faults, he never claimed as the Appeals Commission now claims in his stead that there was some justifiable reason for his absences. To the contrary, Mr. Barron candidly admits that he had a bad attendance record, but is nevertheless incredulous at the total number of his absences. (R. at 51.) Like a credit card shopper out on a spree receives a shock at the end of the month when all of those "small" purchases add up to a whopping balance due, Mr. Barron squandered his time and was brought up short when faced with the total hours that had been lost. Both circumstances suggest a form of irresponsibility. The credit card shopper will have to pay for his own spree, but the Tallahassee Housing Authority and the taxpayers that help support that public authority will have to pay for Mr. Barron's squandered time unless the decision of the Appeals Referee is reinstated.

Respectfully submitted,


PAULA L. WALBORSKY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief of Appellant was forwarded by U. S. Mail this 27 day of October, 1985 to: Mrs. Geri Atkinson-Hazelton, General Counsel, Unemployment Appeals Commission, 1321 Executive Center Drive East, 221 Ashley Building, Tallahassee, FL 32301-8247 and James C. Conner, Jr., Esq., 325-F John Knox Road, Suite 120, Tallahassee, FL 32303 and Paolo G. Annino and Marc E. Taps, Esq. Legal Services of North Florida, Inc. 822 N. Monroe St., Tallahassee, FL 32303.



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