



IN THE COURT OF APPEALS OF IOWA

CHARLES GABUS FORD, INC.,)

Petitioner-Appellee,)

Filed August 30, 1983

vs.)

IOWA DEPARTMENT OF JOB SERVICE,)

COLLEEN SHEARER, DIRECTOR, and)

JERRY L. MEYER,)

3-196
2-69306

Respondents-Appellants.)

Appeal from Polk District Court - Luther T. Glanton, Judge.

Respondent agency appeals from the judgment of the district court reversing its finding that claimant was entitled to jobless benefits. **VACATED AND REMANDED WITH DIRECTIONS.**

Walter F. Maley, Blair H. Dewey, and Edmund Schlak, Jr., Des Moines, for respondents-appellants.

R. Todd Gaffney of Duncan, Jones, Riley & Finley, Des Moines, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel and Hayden, JJ.

DONIELSON, J.

Respondent agency appeals from the judgment of the district court reversing its finding that claimant was entitled to jobless benefits. The agency asserts that the court erred in finding its decision that claimant voluntarily quit his employment for good cause attributable to his employer was unreasonable, arbitrary and capricious and not supported by substantial evidence. We vacate the decision of the district court and remand with directions.

Claimant quit his job as a non-union auto body repairman when the employer proposed to reduce his wages from \$9.50 per hour to \$7.60 per hour. Respondent agency concluded that the wage reduction constituted a substantial change in the contract of hire and that claimant therefore voluntarily quit for good cause attributable to the employer. The district court reversed on judicial review, concluding that the employer's wage reduction plan was a condition of the contract of hire.

The employer's charge for labor on an auto body repair job was based on the number of billable hours as determined from a guidebook. Employees were paid an hourly rate multiplied by the number of billable hours even if they actually worked fewer hours than were billed. Claimant regularly worked more hours than were actually billed. The employer's policy of reducing hourly wages in such circumstances was similar to policies in effect in other area body shops. Claimant had worked as an auto body repairman for fourteen years and had previously worked for the employer in 1971 or 1972 but testified that he had not been informed of the employer's wage reduction policy when he was hired in August, 1980. Respondent agency made no factual finding that claimant was aware of the employer's wage reduction policy. Under the hearing "Conclusions of Law" the district court stated that claimant was aware that the employer could reduce his pay if he continually worked more than the number of hours he billed and that the

wage reduction plan was a condition of employment. The agency brought this appeal.

Under Iowa Code § 96.5(1), a person is not eligible for unemployment benefits if he or she left work "voluntarily without good cause attributable to his or her employer." If an employee quits because of an employer's action in substantially reducing the wage scale, the employee left for good cause attributable to the employer and is therefore eligible for benefits. 370 I.A.C. § 4.26(1). If, however, such wage reduction was ordered pursuant to a term or condition of the employment contract of which term or condition claimant was aware, then he, of course, would have no cause for complaint. As stated above, the agency made no fact finding concerning claimant's awareness of his employer's wage reduction policy. The record before the agency viewed as a whole would appear to contain substantial evidence to support either conclusion that claimant was or was not aware of that policy. "The fact that an agency could draw two inconsistent conclusions from the evidence presented to it does not mean that one of those conclusions is unsupported by substantial evidence." Gipson v. Iowa Department of Job Service, 315 N.W.2d 834, 837 (Iowa Ct. App. 1981). If claimant was aware of the policy, it would appear that the district court was correct; if he was not aware, then the court erroneously found to the contrary and the agency's decision would be correct. We therefore vacate the decision of the district court and remand for the purpose of sending this case back to the agency in order to make a specific finding of fact whether claimant was aware of his employer's wage reduction policy at the time he quit his employment.

VACATED AND REMANDED WITH DIRECTIONS.