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Unemployment Compensation -- Disqualification for Participation in a Labor Dispute

ference from the press and radio. Courts seem to avoid drawing a line as to the time element, so as to reach satisfactorily a point where a public personage may, by voluntarily retiring from the public's gaze, return to the status of a private individual.[7]

Two leading cases, each of which concerned publicity of an incident which had occurred many years before, have reached opposite conclusions. The courts predicated their decisions on different grounds, one allowing recovery [8] and the other denying it,[9] but both completely side-stepped consideration of the passage of time and the change of circumstances in reaching their decisions.

If the elements of lapse of time and change of conditions had been given proper weight by the courts in reaching their decisions in these cases, it is submitted that the results in both of these cases and in the case under discussion could have been more consistent.

The court in the instant case stated that the right of privacy of the plaintiffs *could* have been violated by unwarranted and offensive publicity with reference to their deceased father, but recovery was denied because the passage of time could not erase the fact that he was a public figure, since his story was a part of the community's history. Thus, there resulted a waiver of the right of privacy of himself and his family in regard to this incident. It would seem that the dissemination of news of this event which occurred sixteen years previously did, in itself, constitute such unwarranted and offensive publicity affecting these innocent members of the family living in the community that it should be actionable by them. It is true that each case presented to the court because of an alleged invasion of the right of privacy involves its own peculiar circumstances. However, it is submitted that when a court must draw the line between freedom of speech and press on the one hand, and an individual's right of privacy on the other, and there is present a considerable passage of time plus a voluntary change of circumstances, the court should not avoid these two elements in reaching its decision, but should place greater emphasis upon them.

UNEMPLOYMENT COMPENSATION—DISQUALIFICATION FOR PARTICIPATION IN A LABOR DISPUTE

Respondents, women employees of the Pacific Telephone and Telegraph Company, refused to cross a picket line maintained by a union of which they

7. 41 Am. Jur. 939.

8. Melvin v. Reid, 112 Cal. App. 285, 297 Pac. 91 (1931) (a prostitute changed her way of life, married and settled in a community. Years later a motion picture was made of her previous way of life).

9. Sidis v. F-R Pub. Corp., 113 F.2d 806 (C. C. A. 2d 1940) (a boy genius withdrew from the limelight to live a life of seclusion. After many years passed, a newspaper printed an article concerning his past life).

were not members, claiming fear of violence and bad publicity. The State Commissioner of Unemployment Compensation denied them compensation benefits, finding that there was no violence or reasonable fear of violence. The superior court reversed the Commissioner's decision and allowed recovery. *Held,* on appeal, that the claimants were *participating* in a labor dispute, thereby disqualifying themselves from benefits under the Washington Unemployment Compensation Law.[1] *Matter of Appeals of Employees of Pacific Tel. & Tel. Co.,* 198 P.2d 675 (Wash. 1948).

Induced by the Federal Social Security Act, similar unemployment compensation laws have been enacted by all the states and by Alaska, Hawaii, and the District of Columbia.[2] The avowed purpose of these laws is to remedy the unpleasant consequences of unemployment.[3] Because of their remedial nature,[4] they should be liberally interpreted in the employee's favor.[5]

Considering the facts of the instant case it would seem that the respondents could have been declared ineligible for leaving work voluntarily and without good cause,[6] or possibly for not seeking further employment.[7] However, basing its decision on a previous case,[8] the court chose to disqualify them under the participation in a labor dispute clause [9] since their refusal to cross the picket line placed the strikers in a superior bargaining position.

Participate means to take part.[10] To hold that one takes part in a labor dispute solely because his inaction serves to benefit the strikers' position is a

1. Sec. 77 of the Washington Unemployment Compensation Act, REM. SUPP. § 9998-215 (1945), provides: "An individual shall be disqualified for benefits for any week with respect to which the Commissioner finds that his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed: Provided, That this section shall not apply if it is shown to the satisfaction of the Commissioner that (a) he is not *participating* in or financing or directly interested in the labor dispute which caused the stoppage of work; . . ." (Italics added.)

2. 48 Am. Jur. 520.

3. Tube Reducing Corp. v. Unemployment Compensation Commission, 56 A.2d 596 (N. J. 1948); Singer Sewing Machine Co. v. Industrial Commission of Utah, 104 Utah 175, 134 P.2d 579 (1943); Godsol v. Michigan, 302 Mich. 652, 5 N.W.2d 519 (1942); Barnes v. Hall, 285 Ky. 160, 146 S.W.2d 929 (1940).

4. Department of Industrial Relations v. Drummond, 30 Ala. App. 91, 1 So.2d 395 (1941); Singer Sewing Machine Co. v. Industrial Commission of Utah, *supra.*

5. See note 3 *supra;* Taylor v. McSwain, 54 Ariz. 295, 95 P.2d 415 (1939); Department of Industrial Relations v. Drummond *supra;* REM. SUPP. § 9998-141 (Wash. 1945), "this act shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum."

6. Sec. 73, REM. SUPP. § 9998-211 (Wash. 1945), which provides: "An individual shall be disqualified for benefits for the calendar week in which he has left work voluntarily without good cause. . . ."

7. Sec. 68, REM. SUPP. § 9998-206 (Wash. 1945), which provides: "An unemployed individual shall be eligible to receive waiting period credit or benefits with respect to any week only if the Commissioner finds that. . . .

"(c) he is able to work, and is available for work in any trade, occupation or business for which he is reasonably fitted. To be available for work an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him and must be actively seeking work. . . ."

8. *In re* Persons Employed at St. Paul & Tacoma Lumber Co., 7 Wash. 580, 110 P.2d 877 (1941).

9. See note 1 *supra.*

10. State v. Dade County, 144 Fla. 448, 198 So. 102 (1940).

potentially dangerous concept of participation.[11] A strict application of this rule would seem to preclude recovery in a similar situation though it has been proved that there was a reasonable fear of violence. The benefit to the strikers would be identical whether or not the abstinence from crossing the picket lines was voluntary. Yet where the facts justify not crossing the picket lines, benefits should be and have been allowed.[12] Any other result would obviously be unfair and contrary to the legislative intent.[13] Interpretations of labor dispute disqualification clauses by courts which follow the letter of the law rather than its spirit, where the two conflict, have caused rather unhappy results.[14] Courts reaching such decisions hesitate to construe liberally any part of the statute which seems clear and unambiguous on its face, regardless of the social implications involved.[15] In the light of this judicial attitude, it is submitted that the legislatures should specifically define the terms which are used in this type legislation in order to insure that the legislative intent is carried out.[16]

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11. The following decisions seem strongly influenced by the Washington concept of participation: Aitkin v. Board of Review of Unemployment Compensation Commission, 56 A.2d 587 (N. J. 1948); Brown v. Maryland Unemployment Compensation Board, 55 A.2d 696 (Md. 1947); Bunny's Waffle Shop v. California Employment Commission, 24 Cal.2d 735, 151 P.2d 224 (1944).

12. Steamship Trade Ass'n. of Baltimore v. Davis, 57 A.2d 818 (Md. 1948).

13. See note 5 *supra*.

14. Kemiel v. Review Board, 72 N.E.2d 238 (Ind. 1947); Nobes v. Michigan Unemployment Compensation Commission, 313 Mich. 472, 21 N.W.2d 820 (1946); Members of Iron Workers Union of Provo v. Industrial Commission, 104 Utah 242, 139 P.2d 208 (1943); Chrysler Corporation v. Smith, 297 Mich. 438, 298 N.W. 87 (1941); Miners in General Group v. Hix, 123 W. Va. 637, 17 S.E.2d 810 (1941); Barnes v. Hall, *supra*.

15. Bodinson Manufacturing Co. v. California Employment Commissioner, 101 P.2d 165, *aff'd*, 17 Cal.2d 321, 109 P.2d 935 (1941).

16. *Cf.* Fierst and Spector, *Unemployment Compensation in Labor Disputes*, 49 YALE L. J. 461 (1940), where the repeal of labor dispute disqualifications is urged.