

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

**HY-POINT DAIRY FARMS,** )  
Employer - Appellant, )  
 )  
v. ) C.A. 04A-07-006 PLA  
 )  
**ELLA J. DUMIRE,** )  
Employee - Appellee, )  
 )  
and )  
 )  
**UNEMPLOYMENT INSURANCE** )  
**APPEAL BOARD,** )  
Appellee. )

Submitted: November 11, 2004  
Decided: December 6, 2004

UPON APPEAL FROM A DECISION OF  
THE UNEMPLOYMENT INSURANCE APPEAL BOARD  
**REVERSED AND REMANDED.**

Charles S. Knothe, Esquire, Wilmington, Delaware, Attorney for Appellant

Ella J. Dumire, *pro se*

Mary Page Bailey, Deputy Attorney General, Attorney for the Board

ABLEMAN, JUDGE

On appeal from a decision by the Unemployment Insurance Appeal Board (“UIAB” or “Board”), the Court finds that the Board abused its discretion in refusing to hear and consider evidence from Employer-Appellant. The Board’s decision is therefore reversed and remanded for reconsideration consistent with this opinion.

### *Facts*

Employee-Appellee Ella Dumire answered an advertisement in the Wilmington News Journal for a truck driver position with Employer-Appellant Hy-Point Dairy Farms (“Hy-Point”). She came to Hy-Point’s office, filled out a “driver” application, and interviewed with the manager and with Hy-Point’s half-owner, Jay Meany. Hy-Point hired her a week later, for a position the parties vigorously dispute. Dumire claims she was hired to be a driver, like the ad said. Hy-Point claims Dumire was hired for a general clerk/auditor/driver position, with the possibility to move into a full-time driver position when a route became available.

Dumire began her job at Hy-Point by training in a truck operated by an experienced driver, for approximately a month. After this time, the other driver realized that Dumire was training to replace him, and the resulting friction caused Meany to move Dumire to a different truck. After a few weeks, Hy-Point decided that Dumire was sufficiently trained and that it was no longer necessary for her to

ride with other drivers. Dumire was not given a route of her own, however, because none was available. Instead, Dumire did clerical work in Hy-Point's offices, and substituted for sick and vacationing drivers.

After thirteen months, Dumire abandoned her employment. She testified that she was feeling stressed, and simply left in the middle of the day, with no notice or explanation to her employer. Dumire testified that no argument or confrontation had occurred, and that there was no particular reason that she quit that day as opposed to any other.

Dumire testified that drivers make more than double the salaries of office staff, and that she had verbally complained to Meany numerous times that she wanted to drive in order to make a driver's wage. Dumire is adamant that she was hired to be a driver and never consented to do a staff job, but was shunted into the position because no appropriate route ever opened for her. Oddly, Dumire also testified that she extensively negotiated her salary with Meany, an act totally inconsistent with her assertion that she always intended to work as a driver, a position that paid more than twice as much.

As to Dumire's complaints, the only point on which the parties agree is that she never made them in writing. Dumire testified that she orally complained to several Hy-Point personnel, and has added new names at every stage of the case.

Hy-Point denies that Dumire ever complained to anyone, a rather implausible position given the nature of this litigation.

### *The UIAB Hearing*

Dumire lost before both the Claims Deputy and the Referee, who found that she had inexcusably walked off the job before exhausting her remedies within Hy-Point. She promptly appealed, resulting in a hearing before the UIAB.

The hearing proceeded in a somewhat unconventional fashion. The Board allowed Dumire to tell her story uninterrupted for about four pages worth of testimony.<sup>1</sup> When the Board began asking questions, Dumire repeatedly went on long, unresponsive soliloquies irrelevant to the issues under discussion. By page 10 of the Transcript, the Board seems to have lost patience with Dumire, starting to ask her leading questions and cutting her off when she offered unresponsive answers. This was only marginally successful, however; Dumire continued to talk over Board members and complain about extraneous facts.

By page 20 of the Transcript, the Board was clearly exasperated and, it seems, eager to end the hearing. They finally concluded Dumire's testimony, and launched directly into questioning Hy-Point's representative, Human Resources director Sherry Hastings. The Board gave Hastings no opportunity to freely tell Hy-Point's side of the story, as it had done for Dumire. Instead, the Board

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<sup>1</sup> Appellant's Op. Br. App. Ex. 3, Tr. of May 19, 2004 Hr'g of Unemployment Insurance

appeared interested only in whether Hastings was an owner of the company, and whether she was privy to any conversations between Dumire and Meany. On page 24, the Board returned to questioning Dumire, and seemed to be attempting to bolster her prior testimony. Then, on page 26, the Board attempted to close the hearing, making no effort to determine whether Hastings had finished presenting Hy-Point's case. Hastings had to interrupt and ask permission to offer a copy of Hy-Point's employee manual, which contradicts Dumire's claims.<sup>2</sup> The Board brushed this evidence aside to re-question Hastings on whether she was an owner of Hy-Point. The Board then asked Dumire a few more bolstering questions, and, on page 30, concluded the hearing without determining whether Hastings was finished, or indeed without ever offering her a real chance to present evidence or asking her a relevant question.

In a May 19, 2004 decision, the Board reversed the Referee and awarded Dumire benefits. The Board principally relied upon *Hopkins Construction v. UIAB*<sup>3</sup>, which, in the Board's opinion, requires an employee to exhaust her remedies within the employing company before voluntarily quitting. The Board characterized Dumire's testimony about complaining to management as

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Appeals Board, *hereinafter* "Tr. at \_", p. 2-6.

<sup>2</sup> Tr. at 26 ("Sherry Hastings: Um, but can I, in my data I have some other things I want to present.").

<sup>3</sup> 1998 WL 960713 (Del. Super. 1998). Hy-Point complains that the UIAB ignored the second prong of the *Hopkins* test, which concerns the employer offering the complaining employee work to which she is reasonably suited. While there appears to be some merit to this claim, it is not

“uncontroverted,” and found that these complaints substantively exhausted Hy-Point’s internal procedures for redress of grievances.

Hy-Point moved for re-argument, arguing that there was no reason it should have known that the Board would only be interested in testimony from an owner, as the hearing questioning clearly indicated. Thus, in Hy-Point’s view, sending Hastings to testify when only Meany would do was excusable neglect. The Board rejected this reasoning, stating that Dumire had indicated in prior testimony that she had complained to Meany, and therefore Hy-Point was on notice that Meany’s testimony may have been necessary to prove its case.

### ***Standard of Review***

Normally, this Court reviews agency appeals under the “substantial evidence” standard.<sup>4</sup> This review is extremely limited, and requires only enough evidence in the record for the agency to have fairly and reasonably reached its decision.<sup>5</sup> The Court does not second-guess agency fact-finding or credibility determinations; it only considers whether the evidence in the record is legally adequate to support the agency’s decision.<sup>6</sup>

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necessary to the Court’s opinion.

<sup>4</sup> *Streett v. State*, 669 A.2d 9, 11 (Del. 1995).

<sup>5</sup> *Id.*

<sup>6</sup> DEL. CODE ANN. tit. 29, § 10142(d) (1997 & Supp. 2002).

Certain actions are consigned to agency discretion. Predictably, the Court reviews these decisions only for abuse of discretion.<sup>7</sup> The decision to grant or deny re-argument is of that ilk.<sup>8</sup>

### *Discussion*

The evidence considered by the Board in this case is not legally sufficient to support its decision, and its failure to correct its mistake by granting re-argument was an abuse of discretion. Specifically, the Board failed to accord Hy-Point a meaningful chance to present its own evidence or to rebut Dumire's. The transcript makes it readily apparent that the Board became exasperated with Dumire's ramblings and neglected its duty to hear both sides of the case and reach a fair and impartial decision. Delaware law is clear that, even in the context of laxer procedural requirements governing agency actions, both sides must be afforded the opportunity to confront the evidence against them and to tell their side of the story.<sup>9</sup> Failure to provide that chance, as occurred here, deprives a litigant of

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<sup>7</sup> *Connors v. Mountaire Farms of Delmarva*, C.A. No. 95A-05-007, Lee, J. (Del. Super. May 22, 1996).

<sup>8</sup> *Id.*

<sup>9</sup> *Torres v. Allen Family Foods*, 672 A.2d 26, 31-32 (1995) (“The Board may not, however, relax rules which are designed to ensure the fairness of the procedure. While the nature of the proceedings and the spirit of the Compensation Law justify some relaxation of the technical rules of evidence, nevertheless, it is fundamental that the right to confront witnesses, to cross-examine them, to refute them, and to have a record of their testimony must be accorded unless waived . . . These rules, such as the right to cross-examine, are designed to guarantee the substantial rights of the parties and are based on fundamental notions of fairness . . . Nothing is more repugnant to our traditions of justice than to be at the mercy of witnesses one cannot see or challenge, or to have one's rights stand or fall on the basis of unrevealed facts that perhaps could be explained or refuted.”)(internal citations and quotation marks omitted).

due process.<sup>10</sup> The Board's conduct in this case was thus not simply a failure to meet the substantial evidence standard; it was a clear abuse of discretion.

Because the Court has found a structural defect in the proceedings below that warrants reversal, it is not necessary to reach the merits of Dumire's unemployment claim.<sup>11</sup>

### *Conclusion*

For these reasons, the decision of the Unemployment Insurance Appeal Board is **REVERSED AND REMANDED** for reconsideration consistent with this opinion.

**IT IS SO ORDERED.**

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Peggy L. Ableman, Judge

cc: Charles S. Knothe, Esquire  
Ella J. Dumire  
Mary Page Bailey, Esquire  
Unemployment Insurance Appeal Board  
Prothonotary

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<sup>10</sup> *Id.*

<sup>11</sup> The Court notes, in passing, that the logic supporting the decision -- Dumire's testimony that she complained to Hy-Point management is uncontroverted -- only works because the Board refused to allow Hastings to testify, and therefore rests entirely upon the structural error requiring reversal.