IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cinram Manufacturing, LLC,	:	
	:	
Petitioner	:	
	:	No. 409 C.D. 2010
	:	
v.	:	No. 424 C.D. 2010
	:	
	:	No. 425 C.D. 2010
	:	
	:	No. 426 C.D. 2010
Unemployment Compensation	:	
Board of Review,	:	No. 427 C.D. 2010
	:	
Respondent	:	No. 428 C.D. 2010
	:	Submitted: October 1, 2010

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM FILED: January 12, 2011

Cinram Manufacturing LLC (Employer), petitions for review from orders of the Unemployment Compensation Board of Review (Board) which affirmed the decisions of the referees granting benefits to Anthony Scalzo, Darlene Gebert, David Reed, Daniel Kachinski, Kurt Bryer and Darlene Sakosy (Claimants). We affirm.

Claimants are long time employees of the Employer. Employer utilizes a 4x4 rotating work shift whereby employees work twelve hour shifts on four consecutive days. The employees then have four consecutive days off. Thus, an employee works forty-eight hours during one week and thirty-six hours the next week.

In March of 2009, Employer changed its policy of holiday payment from twelve hours of holiday pay to eight hours of holiday pay. During the claim weeks at issue in each appeal, according to the rotation, Claimants' normal work schedule was thirty-six hours of work.[1] Thus, for the claim weeks at issue, each Claimant worked two, twelve hour shifts for a total of twenty-four hours and received eight hours of holiday pay, for a total of thirty-two hours worth of compensation. But for the holiday, each Claimant would have worked a full-time schedule of thirty-six hours.

The referees determined that Claimants were entitled to unemployment benefits under Sections 401 and 4(u) of the Unemployment Compensation Law (Law), Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, as amended, 43 P.S. §§801 and 753(u). The referees determined that Claimants' earnings and potential earnings were less than the combination of their weekly benefit rate and partial benefit credit, through no fault of their own. Although Claimants were compensated for their holiday pay, they were not compensated for the entire twelve hour period they would have worked had the plant not closed.

On appeal, the Board adopted the findings of the referees and affirmed the decisions. The Board further observed that Employer's recently instituted reduction in holiday pay had the effect of reducing Claimants' annual wages. This appeal followed.[2]

---

[1] For David Reed, the week at issue is the week ending April 18, 2009, which included the Easter holiday. For the remaining Claimants, the week at issue is the week ending July 4, 2009, which included the Fourth of July holiday.

[2] This court's review is limited to determining whether constitutional rights were violated, whether an error of law was committed or whether the necessary findings of fact are supported by substantial evidence. Curran v. Unemployment Compensation Board of Review, 752 A.2d 938 (Pa. Cmwlth. 2000).

Section 4(u) of the Law, 43 P.S. § 753(u), defines "unemployed" as follows:

> An individual shall be deemed unemployed (I) with respect to any week (i) during which he performs no services for which remuneration is paid or payable to him and (ii) with respect to which no remuneration is paid or payable to him, or (II) with respect to any week of less than his full-time work if the remuneration paid or payable to him with respect to such week is less than his weekly benefit rate plus his partial benefit credit.
>
> Notwithstanding any other provisions of this act, an employee who is unemployed during a plant shutdown for vacation purposes shall not be deemed ineligible for compensation merely by reason of the fact that he or his collective bargaining agents agreed to the vacation.
>
> No employe shall be deemed eligible for compensation during a plant shutdown for vacation who receives directly or indirectly any funds from the employer as vacation allowance.

"In order for a claimant to be unemployed under Section 4(u) of the Law, during the weeks in question he must have been working less than his normal full-time work." Corning Glass v. Unemployment Compensation Board of Review, 616 A.2d 175, 176 (Pa. Cmwlth. 1992), petition for allowance of appeal denied, 535 Pa. 624, 629 A.2d 1384 (1983). To determine what constitutes "full-time work", the focus is not upon the number of hours worked, but upon the individual circumstances of the employment relationship. Baldwin-Whitehall School District v. Unemployment Compensation Board of Review, 848 A.2d 1021, 1024-25 (Pa. Cmwlth. 2004).

In Corning Glass, the claimants' rotating work schedule was seven work days followed by two to four days off. Due to production concerns, the employer changed the claimants' schedule to four days of work followed by two days off. Under the new schedule, the claimants usually worked 40 or 48 hours per week throughout the year. However, during seven or eight weeks of the year, the claimants only worked 32 hours. The scheduling change had no effect on the average number of hours worked per week which was 42 hours and, in fact, the claimants' annual earnings increased. The claimants sought unemployment compensation for the weeks they were scheduled to work 32 hours.

In determining that the claimants were not entitled to benefits, this court stated:

> Where, as here, the reduction in any one week is a result of a schedule fluctuation and not an attempt by an employer to reduce the overall number of hours worked, an employee is not entitled to compensation benefits. Under both the old and the new schedule, Claimants worked an average of 42 hours per week and will receive the same or more salary for the year. The only change was in the number of days worked in particular weeks, and under the collective bargaining agreement covering Claimants, scheduling was a matter within Employer's discretion. Because the change in work schedule did not result in Claimants losing hours or wages, the Claimants are not working less than their full-time work and are not unemployed.

Id. 616 A.2d at 177.

In this case, unlike Corning Glass, Claimants will not receive the same wages. During the claim weeks at issue, each Claimant worked

twelve hour shifts for a total of twenty-four hours and received eight hours of holiday pay for a total of thirty-two hours worth of compensation. Although Claimants were compensated for the holiday, they were not compensated for the entire twelve hour period they would have worked had the plant not closed. Unlike Corning Glass, the reduction in Claimants' hours was not the natural result of a schedule fluctuation, but rather the closure of Employer's facility. But for the Employer holiday, during which time the plant was closed, each Claimant would have worked a full-time schedule of thirty-six hours.

Employer argues, however, that Claimants worked their regular full-time schedule for the weeks at issue and that their full-time hours were not reduced due to lack of work. The underlying claims, according to Employer, were filed because a scheduled company holiday happened to fall upon a day that otherwise would have been a work day for Claimants. Employer argues that the fact that it paid eight hours of holiday pay, rather than twelve, is irrelevant to determining whether Claimants were "unemployed."

Employer maintains that case law supports the proposition that a pre-scheduled day off due to a company recognized holiday, does not result in an employee becoming "unemployed" within the meaning of the Act. Employer relies on the language in Section 4(u) of the Law which states that "[n]o employe shall be deemed eligible for compensation during a plant shutdown for vacation who received directly or indirectly any funds from the employer as vacation allowance." In Dennis v. Unemployment Compensation Board of Review, 423 A.2d 458 (Pa. Cmwlth. 1980), the

court defined "vacation period" to mean that period when an employee who otherwise would have been required to work was excused from working.

The Board responds that the compensation at issue is "holiday pay" and not a "vacation allowance." "Holiday pay" is defined in 34 Pa. Code § 61.1 as "[r]emuneration payable for services performed in the claim week in which a legal holiday occurs for purposes of computing compensation for partial and part-total compensation." We agree with the Board that holiday pay is not synonymous with vacation or vacation allowance. Here, Employer's representative did not testify that there was a "plant shutdown for vacation" or that Claimants received a "vacation allowance". Rather, Employer's representative stated that Employer had scheduled holidays, but that based on demand, there is work on a scheduled holiday. (R.R. at 38a.) Moreover, Claimants were not excused from working, but rather, were not scheduled to work.

Here, Claimants worked less than their normal full-time work and were thus unemployed. In accordance with the above, the decisions of the Board are affirmed.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cinram Manufacturing, LLC,	:	
	:	
Petitioner	:	
	:	No. 409 C.D. 2010
	:	
v.	:	No. 424 C.D. 2010
	:	
	:	No. 425 C.D. 2010
	:	
	:	No. 426 C.D. 2010
Unemployment Compensation	:	
Board of Review,	:	No. 427 C.D. 2010
	:	
Respondent	:	No. 428 C.D. 2010

PER CURIAM

O R D E R

Now, January 12, 2011, the orders of the Unemployment Compensation Board of Review, in the above-captioned matters, are affirmed.