

Loughry, J., dissenting:

I dissent to the majority's decision to affirm, by memorandum decision, the award of unemployment benefits in this case. The majority, like the circuit court and Board of Review, ignores the plain language of *Cumberland and Allegheny Gas Co. v. Hatcher*, 147 W. Va. 630, 130 S.E.2d 115 (1963), and the nearly overwhelming evidence of work stoppage in this matter.

In *Hatcher*, this Court held that a "stoppage of work" within the meaning of the unemployment compensation statutes means a "substantial curtailment of the employer's normal operations." Syl. Pt. 2, 147 W. Va. 630, 130 S.E.2d 115 (emphasis added). In this case, the "normal" operation of the employer was as a customer retention center. It is undisputed that during the strike, this "normal" operation ceased entirely because the employer did not have qualified employees to continue retention operations. As a result of this total curtailment of its normal operation, it began operating as a sales and service center. In my view, the analysis need go no further given the complete cessation of normal operations.

However, even if the replacement work were to be considered, it is clear that these operations were substantially curtailed as well, within the definition of *Hatcher*. To that end, during the two-week strike, the center was closed for two and a half days with a seventy percent reduction in the number of employees. As to the specific sales and service operations, for ten days no requests to move services were handled and a backlog of 9,000 calls was generated. Because of the strike, many customers received a "dead end" message stating their call could not be handled. Not surprisingly, there was a 50% to 68.2% reduction in call volume and work orders were down 87.5% from when the center previously worked as a sales and service center. Most tellingly, only 960 work orders were processed as compared to 7,696 orders during a representative two-week period earlier in the year—an approximate 87.5% reduction in these "substitute" operations. The circuit court and majority's reliance on the absence of evidence of retention data is wholly misplaced and patently unfair. The reason the data was not properly recorded was due to the total absence of qualified employees to record the data, which absence was occasioned by the strike itself.

Accordingly, I dissent. I am authorized to state that Chief Justice Benjamin joins me in this dissent.