Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

—DECISION—

Decision No.: 1194-BR-90

Date: Nov. 28, 1990

Claimant: Paul M. Ward

Appeal No.: 9011604

S. S. No.:

Employer: National Car Rental System, Inc.
c/o The Frick Company

L O. No.: 2

Appellant: CLAIMANT

Issue:

Whether the claimant was discharged for gross misconduct or misconduct, connected with his work, within the meaning of Section 6(b) or 6(c) of the law.

—NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON December 28, 1990

—APPEARANCES—

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The claimant was fired for three things: an incident of May 22, placing a letter on a co-employee's car, and arguing with that co-employee on the employer's lot.

The employer has the burden of proving that these were incidents of misconduct. Regarding the first incident, the employer's witness had no first-hand knowledge. The employer's only evidence was a barely legible warning notice which stated that the claimant "started to back talk me." This is insufficient evidence, in the face of the claimant's denial of wrongdoing, to sustain a finding of misconduct in this one instance.

The claimant did put a letter on a co-worker's car. Employer's Exhibit #2 is the first page of that letter. In that letter, the claimant recites his girlfriend's allegations that the co-employee was physically forcing his attentions on her. The letter stated that the claimant will bring attempted rape charges against the co-employee if the co-employee will not meet with the claimant to discuss the matter. There is no indication that the discussion was supposed to take place on work time, and the Board credits the claimant's testimony that the letter was prepared and timed specifically so that a confrontation on work time could be avoided.

The claimant then had a verbal confrontation with the co-employee on the parking lot. The co-employee was insisting that the claimant discuss it at that moment, and the claimant was refusing to do so until after work. (The claimant's testimony about the nature of the confrontation was not contradicted by any testimony or evidence from the employer.)

The Board concludes that the sending of the letter was not misconduct. The threat in the letter was a threat to bring criminal charges against a co-employee if the co-employee would not meet with him and explain his actions. The claimant clearly has the right to threaten to bring criminal charges if he believes a crime has been committed. There is no evidence that the threat was made in bad faith. There is evidence that the threat was communicated at work, but an effort was made to do it in such a way so as not to disrupt the work. The Board perceives no misconduct in the posting of this letter.[1]

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[1] The Board, of course, is unaware of the entire contents of the letter. This ruling concerns only that part of the letter submitted into evidence.

being issued as well as a subsegment incident which occurred on June 21, 1990 caused the claimant's discharge by the employer. However the employer did not have a witness with any personal knowledge to substantiate the events which occurred on May 22, 1990 which caused the written notice to be issued.

However the employer did present evidence concerning the incident which occurred on June 21, 1990. On that date the operations manager witnessed a non-physical argument between the claimant and a fellow employee. The argument was precipitated by a note left on the car of the employee by the claimant. In the note the claimant threatened to bring attempted rape charges against the employee and call the newspapers because of a report from the claimant's girl friend that the co-worker was getting forceful with the girl friend.

The claimant had desired to talk to the co-worker after working hours.

CONCLUSIONS OF LAW

The term "misconduct," as used in the Statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during hours of employment or on the employer's premises. (See Rogers v. Radio Shack 271 Md. 126, 314 A.2d 113). The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions rise to the level of misconduct, within the meaning of the Statute.

In the instant case the claimant essentially provoked the confrontation with his co-worker by the nature of the words he used in his note to his co-worker including the direct threat to bring attempted rape charges against the co-worker. It was clearly foreseeable that such action on the part of the claimant would lead to a hostile working relationship with his co-worker and possibly, as did occur in this case, a fight with the co-worker.

The determination of the Claims Examiner will be reversed.

DECISION

The claimant was discharged for actions which constitute misconduct, in connection with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. Benefits are denied the week beginning June 17, 1990 and the nine weeks thereafter.

The determination of the Claims Examiner is reversed.

Gail Smith
Hearing Examiner

Date of Hearing: 9/24/90
alma/Specialist ID: 02416
Cassette No: 7759
Copies mailed on 10/01/90 to:

Claimant
Employer
Unemployment Insurance - Glen Burnie (MABS)

Gerald E. Askin
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Maryland
Department of Economic & Employment Development

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— D E C I S I O N —

Date: Mailed: 10/01/90

Claimant: Paul M. Ward

Appeal No.: 9011604

S. S. No.:

Employer: National Car Rental Syst.
c/o The Frick Co.

LO. No.: 02

Appellant: Employer

Issue: Whether the claimant was discharged for gross misconduct connected with the work, within the meaning of Section 6(b) of the Law.

— NOTICE OF RIGHT OF FURTHER APPEAL — .

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAYBE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON October 16, 1990

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Doreen Howard,
Operations Mgr.;
Gerald E. Askin,
Esquire

FINDINGS OF FACT

The claimant worked for the employer from July 2, 1985 until June 22, 1990 as a service agent earning $8.25 per hour at the time of his separation.

The claimant received a written warning on May 22, 1990 for insubordination. The conduct which was the cause of the warning

Nor did the employer prove misconduct on the claimant's part during the verbal confrontation on the employer's lot. The co-employee began the verbal confrontation and persisted despite the claimant's requests that the matter be discussed after work. It is true that the co-employee was upset because of the claimant's letter, but the letter was not in itself misconduct, and the claimant is not responsible for the co-employee's reaction.

Based on the evidence presented at the hearing, the Board concludes that it was the co-employee and not the claimant who was reacting unreasonably in insisting on an immediate confrontation.

DECISION

The claimant was discharged, but not for any misconduct, connected with his work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on his discharge from employment with National Car Rental System, Inc.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Donna P. Watts
Associate Member

K:DW
kbm
COPIES MAILED TO:

CLAIMANT

EMPLOYER

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UNEMPLOYMENT INSURANCE - GLEN BURNIE