

BEFORE THE
STATE OF WISCONSIN

LABOR AND INDUSTRY REVIEW COMMISSION

In the matter of the
unemployment benefit claim of

DAVID A. JENSEN. Employee

Hearing No. 88-002376 MD

Involving the account of
BADGER CAB, INC., Employer

SEE ENCLOSURE AS TO TIME
LIMIT ON FURTHER APPEAL.

---oOo---

Pursuant to the timely petition for review filed in the above-captioned matter, the Commission has considered the petition and all relief requested. The Commission has reviewed the applicable records and evidence and finds that the Appeal Tribunal's findings of fact and conclusions of law are supported thereby. The Commission therefore adopts the findings and conclusions of the Appeal Tribunal as its own.

DECISION

The decision of the Appeal Tribunal is affirmed. Accordingly, benefits are denied from the employer's account based upon the performance of the services described above.

Dated and mailed

January 6, 1989

105-CD0436

/s/

Hugh C. Henderson, Chairman

/s/

Carl W. Thompson, Commissioner

/s/

Pamela I. Anderson, Commissioner

MEMORANDUM OPINION

The employe attempted to show that the lease was not bona fide. He argued that there were matters not covered by the lease agreement which are necessary to the operation of a cab enterprise, and that the employer unilaterally imposed these matters upon him. Such matters include the lease rate the employe had to pay the employer for a day's use of a cab. The employe asserted that the existence of such agreements, not in writing as required by the lease, made the lease not bona fide.

The Appeal Tribunal properly rejected this argument. The lease agreement expressly refers to separate agreements outside the actual lease agreement, such as for the lease rate. Although the terms of the lease agreement require the other matters to be in writing and attached to the lease, a failure in this requirement does not make the lease less than bona fide. A party's remedy is to have the proper matters attached to the lease. In addition, the employe continued the employment relationship until his discharge, despite the employer's alleged failure to strictly adhere to the conditions of the lease agreement. The employe thus cannot now argue that the lease is not bona fide due to the existence of matters not covered by the original lease agreement.

The employe argues also that the lease fee depends upon the number of miles the driver logs, that the driver's income depends upon the number of miles the driver logs, and that the amount of the lease payment therefore is contingent upon income generated through use of the vehicle during the lease term. This reasoning is incorrect. It is logical error to argue that the lease payment is contingent upon income solely because both lease payment and income depend upon the number of miles a driver logs. This condition would apply where, for example, the driver's obligation to the employer consisted of a percentage of the driver's income.

The employe also argues that much of his work for the employer consisted of carriage and courier service, which is not taxi cab work and which should not constitute excluded work under section 108.02 (15)(k)18. The Commission believes, however, that such service is within the purposes of cab operations.

The employe argues, finally, that the surcharge the employer places on deliveries of goods, brings the relationship outside the 108.02 (15)(k)18. exclusion. One of the requirements of the exclusion is that the individual retain income earned through the use of the leased vehicle. The record indicates, however, that the surcharge is to cover costs of billing clients for payments the clients charge to the employer. These charges are independent of the income the employe generates from operation of the cab. Rather, they are connected only to the employer's billing method.

cc: Simon Karter, Attorney