
MILTON DAANEN and
AUDREY DAANEN, d/b/a
OUT OF TOWN CLUB,

Plaintiffs,

vs.

DECISION
#81-CV-735

LABOR AND INDUSTRY REVIEW COMMISSION
and ROSALIE GERHARTZ,

Defendants.

This is a review of a decision of the Labor and Industry Review Commission (Commission) which affirmed an appeal of a tribunal decision holding that the defendant employee, Rosalie Gerhartz, was entitled to unemployment benefits. The employee worked for the plaintiffs, Milton and Audrey Daanen, as a cook at the Out of Town Club in Kaukauna. The Commission found that the employee quit her job on January 29, 1981 with good cause attributable to her employer.

A person who quits his job with good cause attributable to his employer is eligible for unemployment benefits. Wis. Stat. 102.23 (6) (b). The Court in Kessler vs. Industrial Commission, 27 Wis. 2d 398, 401, 134 N.W. 2d 412 (1965) defined "good cause" as involving "...some fault on his (the employer's) part and must be real and substantial."

The Commission found sufficient facts in its opinion to justify a determination that the defendant quit with good cause. Specifically, it made the following findings of fact:

"The employers/owner and kitchen manager admitted that she was a good cook generally, and there was no indication that she had been warned prior to January 27, 1981 (week 5) about any cooking deficiencies on her part. Furthermore, there was no showing that she had made recent mistakes in her cooking which would warrant a reprimand on January 27, 1981 (week 5). Nevertheless, on that day, she was harshly and loudly criticized,

her pay was reduced 20 percent, and she was made to work under close supervision with the kitchen manager in the future. These actions were not reasonable under the circumstances, and could not have been designed to reach a peaceful solution to a problem with her cooking. Rather, they were meant to induce her to leave her employment, and constituted good cause for her quitting."

The standard of review is whether there is credible evidence to sustain the Commission's findings. Farmer's Mill of Athens, Inc. vs. ILHR Dept., 97 Wis. 2d 576,582, 294 N.W. 2d 39 (Ct. App. 1980). I conclude that there is sufficient credible evidence in the record to sustain the Commission's finding that the employee quit with good cause attributable to her employers.

The employee testified that she had never been told that her work was unsatisfactory. The employee also testified that her employer yelled at her in a loud voice on January 27, 1981. This was confirmed by a co-worker and by the employer. The employee further testified that the employer reduced her wage scale from \$5.00 per hour to \$4.00 per hour and put her under the direct supervision of the kitchen manager. Her employer corroborated her testimony on these points.

On this evidence, it is reasonable to conclude that the employee quit with good cause attributable to the employer.

The employer also challenges the finding of fact that the employee was given the option of continuing her employment under the new conditions or quitting. The finding of this option is a reasonable inference arising from the above supported findings of fact. See Universal Foundry Co. v. ILHR Dept. and Clark, 86 Wis. 2d 582, 273 N.W. 2d 324 (1978). Consequently, the finding of the Commission stands.


The employers also argue that it was not logical or legal for the Commission to conclude that the employee quit with good cause attributable to her employer since the only issue at the hearing was whether she quit or was discharged. The question

of whether she quit with good cause attributable to her employer is closely and logically related to the issue of whether she quit or was discharged. The employers made no affirmative showing that they were damaged by the hearing examiner's failure to set forth "good cause attributable to her employer" as an issue prior to the hearing. Therefore, the Commission's alleged error or irregularity will be disregarded pursuant to Wis. Stat. 102.23 (2).

Therefore, let judgment be entered confirming the Commission's decision.

Dated at Appleton, Wisconsin this 27th day of January, 1983.

BY THE COURT


Urban P. Van Susteren
Circuit Judge, Branch II.