

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF CALHOUN

WAYNE O. COX,

Plaintiff-Appellant

v

TRI-COUNTY LABOR AGENCY,

Defendant-Appellee

and

MICHIGAN EMPLOYMENT SECURITY
COMMISSION,

Appellee

O P I N I O N

Docket No. 85-1861AE

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This case arises out of MESC's determination that Wayne O. Cox, the appellant, should be required to reimburse the commission for unemployment benefits paid to him. While oral argument was requested, subsequently the same was waived by stipulation of counsel.

There is little dispute as to the facts. Mr. Cox was discharged from his position as executive director of the Tri-County Labor Agency. He filed a grievance and the matter ultimately went to arbitration. The arbitrator concluded that he was entitled to reinstatement with back pay, except for a two-month period. He had been paid unemployment benefits during the time of the grievance proceedings.

Mr. Cox did not immediately return to work for the agency as negotiations were undertaken to provide for payment in exchange for a voluntary resignation. He resumed his position on December 1, 1983 but was discharged for a second time on December 8, 1983. Another grievance was filed.

Negotiations for settlement were continued and on February 1, 1984, the appellant was paid \$20,500. Until that date, he had not received back wages as ordered by the arbitrator. The agreement concluding the matter contained the following:

"This Agreement settles the Award of Arbitrator Ellmann and the Grievance of Cox of January 14, 1984."

The question presented is whether the payment included back wages and therefore whether the appellant should be required to make the reimbursement as determined. The administrative procedure was followed including an appeal to the Board of Review. At each stage it was held that reimbursement was required, one member of the Board of Review having dissented. The referee found that the claimant was in fact paid back wages which he considered to be remuneration and that the claimant (Mr. Cox) was ineligible for benefits during the time period

in question. There was clearly competent evidence upon which the decision could have been reached. Appellant contends that the question of whether a lump sum settlement includes back wages is one of law. Both parties make reference to an unreported Court of Appeals case entitled McBride v MESC and Chrysler Corp., #69736, decided June 27, 1984. While there is some similarity in the factual situation, there are also substantial differences. In this case appellant's demand for a lump sum settlement included back wages plus a number of other items such as unused vacation and severance pay. His employer, recognizing the finality of the arbitrator's decision, stood ready to pay the back wages but disputed some of the other requests. The ultimate figure did appear to have been a compromise of the disputed issues.

Admittedly, the appellant and his attorney requested that no taxes be deducted from the settlement figure although the employer proposed to report the income to the IRS. The referee made his decision in part on the basis of testimony that the claimant would take care of his own taxes.

Assuming the issue is one of law, I find no error on the part of the referee or the review board in its determination that the appellant here did receive remuneration for the period during which he also received unemployment compensation. The decision of the Board of Review is affirmed.

Dated: March 13, 1986



Stanley Everett, Circuit Judge