

TAYLOR V. BOARD OF REVIEW

PROFESSOR CRIDER

employee is, and thereafter state "but does not include * * *" (R.C. 4111.01[D] and [E]). Because the Minimum Fair Wage Standards Act is also remedial in purpose, exemption from coverage under the Act should also be narrowly construed against the employer. Consequently, the "but does not include" portions of R.C. 4111.01(D) and (E) are analogous to exemptions under the Fair Labor Standards Act. Therefore, the employer who seeks to avoid payment of overtime compensation on the basis that the business' gross volume of sales made for business done is less than \$150,000, exclusive of excise taxes at the retail level, has the burden of proving that the business' gross volume of sales is less than the \$150,000 figure.

As the trial court erred in finding that it was plaintiff's burden to show that defendant had gross volume of sales of \$150,000 or more, the first assignment of error is sustained.

The fifth and final assignment of error is that the financial requirement on which the directed verdict was granted occurred as a result of the failure of defendant to supply plaintiff with documents requested in her request for production of documents for inspection and copying, filed January 27, 1982.

By a May 28, 1982 decision, the trial court ordered defendant to respond with the production of the documents requested, except the personal tax returns of defendant. There is no indication in the record that defendant did not comply with the order, nor did plaintiff thereafter make a Civ. R. 37(B) motion before the trial court.

Therefore, the fifth assignment of error is overruled.

For the foregoing reasons, the January 4, 1984 judgment of the Franklin County Court of Common Pleas is reversed, and the cause is remanded for further proceedings according to law.

*Judgment reversed
and cause remanded.*

MCCORMAC, P.J., and STRAUS-
BAUGH, J., concur.

BROGAN, J., of the Second Appellate District, sitting by assignment in the Tenth Appellate District.

TAYLOR, APPELLANT, v. BOARD OF
REVIEW ET AL., APPELLEES.

[Cite as Taylor v. Bd. of Review (1984),
20 Ohio App. 3d 297.]

*Unemployment compensation — Quit for
just cause — R.C. 4141.29(D)(2)(a)
— Reasonable fear of one's personal
safety is proper reason for leaving
one's employment.*

O.Jur 2d Unemployment Compensation §§
39, 53.

1. An employee has just cause to quit his job and is entitled to unemployment compensation where he is threatened with physical harm by a fellow employee who has already beaten him on a prior occasion and the complaining employee has reported that threat to his employer who does not or is unable to take appropriate steps to alleviate the genuine and reasonable fear of the employee who has quit his job.
2. As used in R.C. 4141.29(D)(2)(a), "just cause" is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.
3. In accordance with R.C. 4141.29(D)(2)(a), a reasonable fear of one's personal safety is a proper reason for leaving one's employment, *e.g.*, an employee cannot be expected to remain on the job until an actual physical assault takes place.
4. In an unemployment proceeding pursuant to R.C. Chapter 4141, where

the sworn testimony of a witness is contradicted only by hearsay evidence, to give credibility to the hearsay statement and to deny credibility to the claimant testifying in person is unreasonable.

(No. 47912—Decided
November 5, 1984.)

APPEAL: Court of Appeals for
Cuyahoga County.

Jose A. Villanueva, for appellant.
Anthony J. Celebrezze, Jr., attorney
general, and *Q. Albert Corsi*, for ap-
pellees.

PARRINO, J. Claimant-appellant Danny Taylor was employed by Mediterranean Bakery, Inc. from February 20, 1982 until September 7, 1982 as a maintenance worker. Claimant was beaten up by Jack Elias in July 1982, away from the bakery. Elias was not an employee of the bakery at that time. Shortly thereafter, Elias was employed by the bakery. He also was engaged to be married to one of the owners of that business. Before Elias started working, he, claimant and one of the owners, discussed the animosity that existed between the two men. Apparently an agreement was reached that they would attempt to get along.

On September 7, 1982 claimant was assigned to sort bread. He started to fall behind, and asked Elias for some help. Elias did not respond so Taylor asked one of the owners for help. At that point, Elias stated, "F— — you and shut up." Several other people helped Taylor complete the job. A few minutes later Elias reportedly told claimant, "You better have your jack ready when you get off work because I'll be waiting for you."

Taylor reported the threat to his supervisors who in turn talked with Elias. Taylor was then assured that Elias would not assault him. However, Taylor stated that he was told by one of

the owners that Elias was "going to become family" so nothing could be done about him. Furthermore, if anything occurred between them, it would be Taylor who would have to leave the bakery. Taylor then quit his job.

Claimant filed for unemployment benefits claiming that he quit with just cause. The claim was denied by the administrator on October 6, 1982, and claimant pursued his claim through the administrative process. At a hearing before a referee, claimant appeared and testified; however, no witnesses testified for the employer. The Board of Review denied further appeal on January 13, 1983, and claimant filed a timely notice of appeal to the court of common pleas where the denial of benefits was affirmed on November 22, 1983.

Claimant is before this court on timely appeal and assigns three errors for review:

"I. The court of common pleas erred in failing to rule that the denial by the Board of Review of the Ohio Bureau of Employment Services of appellant's claim for unemployment benefits was unlawful, unreasonable, and against the manifest weight of the evidence.

"II. The court of common pleas erred in failing to reverse the denial of appellant's unemployment benefits since the Board of Review of the Ohio Bureau of Employment Services failed to apply a flexible 'just cause' standard to the facts of this case.

"III. The court of common pleas erred in failing to reverse the denial of appellant's unemployment benefits, since appellant had 'just cause' to quit his employment pursuant to O.R.C. § 4141.29(D)(2)(a)."

As these three assignments are related in law and fact, they will be addressed together.

Appellant contends that he quit his job with just cause because he feared for his physical safety.

R.C. 4141.29(D)(2)(a) establishes the

general standard to obtain unemployment benefits for those who leave their jobs. In pertinent part it provides:

"(D) * * * [N]o individual may * * * be paid benefits under the following conditions:

"(2) For the duration of his unemployment if the administrator finds that:

"(a) He quit his work without just cause * * *."

The question *sub judice* then is whether appellant had just cause for quitting. Just cause has not been clearly defined in case law, but one court has ruled that just cause "is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act. * * *" *Peyton v. Sun T.V.* (1975), 44 Ohio App. 2d 10, 12 [73 O.O.2d 8]. We believe appellant justifiably quit his job at Mediterranean Bakery.

We adhere to the holdings of other courts which have said that a reasonable fear of one's personal safety is a proper reason for leaving one's employment. *Reeves v. Bd. of Review* (C.P. 1954), 69 Ohio Laws Abs. 70; *Condo v. Bd. of Review* (N.J. Super. Ct., App. Div., Mar. 20, 1978), Unemployment Ins. Rept. (CCH), Paragraph 33, 779 at page 8,530; *In re Fried* (N.Y. Sup. Ct., App. Div., Aug. 5, 1976), Unemployment Ins. Rept. (CCH), Paragraph 10,530, at page 4622. An employee cannot be expected to remain on the job until an actual physical assault takes place.

Our review of the record indicates that Elias' threats of physical abuse constituted just cause for appellant to quit his job. The record clearly shows that Elias previously beat appellant, and that Elias subsequently threatened Taylor with another physical confrontation. While the employer assured claimant that Elias would not bother him, Taylor was also told that the employer could do nothing about Elias. Taylor's testimony

was uncontradicted. The only statement made by the employer was a telephone conversation with an investigator for the Bureau of Employment Services in which "George" said the appellant was assured that Elias would not bother him. The evidence clearly shows that appellant had reason to fear that Elias would harm him.

The phone call to the employer was hearsay evidence. This court has previously said that where the sworn testimony of a witness is contradicted only by hearsay evidence, to give credibility to the hearsay statement and to deny credibility to the claimant testifying in person is unreasonable. *Bohannon v. Bd. of Review* (Mar. 5, 1981), Cuyahoga App. No. 42773, unreported. See, also, *Cunningham v. Jerry Spears Co.* (1963), 119 Ohio App. 169 [26 O.O.2d 401]. Thus, any weight to be given to the employer's hearsay is clearly outweighed by appellant's sworn testimony at the hearing before the referee.

Accordingly, we hold that an employee has just cause to quit his job and is entitled to unemployment compensation where he is threatened with physical harm by a fellow employee who has already beaten him on a prior occasion and the complaining employee has reported that threat to his employer who does not or is unable to take appropriate steps to alleviate the genuine and reasonable fear of the employee who has quit his job.

For the above-stated reasons, appellant had just cause to quit his job and is therefore entitled to unemployment compensation.

The judgment is reversed, and the cause is remanded.

*Judgment reversed and
cause remanded.*

CORRIGAN, C.J., and PATTON, J.,
concur.

CASE BRIEF

CITATION: Taylor v. Board of Review, 20 Ohio App. 3d 297, 485 N.E.2d 827 (1984).

PARTIES: Taylor/Employee/Claimant and Appellant below/
Appellant here

Board of Review/Administrative Board/Agency and
Appellee below/Appellee here

OBJECTIVES: Taylor wants to receive unemployment compensation
benefits.

Board of Review wants benefits denied.

THEORIES OF
LITIGATION: Taylor claims he had just cause for quitting his
job.

The Board of Review maintains that he quit his
job without just cause.

PRIOR PROCEEDINGS: Administrative hearing: Claimant filed for
unemployment benefits through the Ohio Bureau of
Employment Services after quitting his job.
Result: Benefits were denied by the
administrator and the Board of Review.

Appeal: Claimant appealed to the common pleas
court.
Result: Denial of benefits affirmed.

PRESENT PROCEEDING: Claimant now appeals to the Court of Appeals for
Cuyahoga County.

FACTS: Taylor, an employee, was threatened with physical
harm by a fellow employee who had previously
beaten Taylor up prior to becoming employed at
the same place. Taylor reported the threat to
his supervisor and was assured that the fellow
employee would not harm him. Taylor was then
told that nothing could be done about the fellow
employee because the fellow employee was engaged
to an owner of the business. Taylor quit his
job.

ISSUE: Whether an employee has just cause to quit his
job and is entitled to unemployment compensation
where he is threatened with physical harm by a
fellow employee who has already beaten him up on
a prior occasion and the complaining employee has
reported that threat to his employer who does not
take any action to alleviate the employee's fear.

HOLDING: An employee has just cause to quit his job and is entitled to unemployment compensation where he is threatened with physical harm by a fellow employee who has already beaten him up on a prior occasion and the complaining employee has reported that threat to his employer who does not take any action to alleviate the employee's fear.

REASONING: Ohio Revised Code section 4141.29 disqualifies persons from receiving unemployment compensation benefits if they quit their jobs without "just cause." "Just cause" is what "an ordinarily intelligent person" considers a "justifiable reason" for acting. Reasonable fear for one's safety is a justifiable reason for leaving employment; one should not have to wait until a physical assault occurs. The evidence showed that the employee's fear of an assault was reasonable.

DISPOSITION: Judgment reversed and cause remanded.