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Social Security - Unemployment Compension - Is Conscientious Objection to Signing a Loyalty Oath Good Cause for Refusal of Suitable Employment

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students in state institutions, which conduct has no relation to the welfare of the institution, has also been held to be unreasonable.[8]

It is true that state statutes generally restrict the marriages of males under twenty-one and females under eighteen by requiring the consent of their parents prior to the issuance of a marriage license,[9] but this restriction does not necessarily mean that public policy disfavors such marriages after consumation.[10] A few states have even shown favoritism towards minors after marriage by extending their legal rights.[11]

A consummated marriage contract subjects the parties to the most important of social institutions, and the public policy which supervenes to maintain a marriage is correspondingly strong.[12]

It is evident that a school board should only penalize when a breach of discipline or good morals has occured. Neither such breach has occured in this instance, yet the school board has undoubtedly passed a punitive regulation. It is very questionable whether the welfare of the school will be endangered, and also whether the penalty was prescribed with the "good" of the school in mind. Furthermore, it seems a marriage once entered into should be, and is, favored by public policy. The view point has been expressed that school board members often yield to various social forces in a community in suppressing educational freedom.[13] Such seems to be the case here.

SERGE H. GARRISON.

SOCIAL SECURITY — UNEMPLOYMENT COMPENSION — IS CONSCIENTIOUS OBJECTION TO SIGNING A LOYALTY OATH GOOD CAUSE FOR REFUSAL OF SUITABLE EMPLOYMENT? — Plaintiff, who was receiving benefits from the California Unemployment Commission, was disqualified for refusing to accept employment with a county agency because he conscientiously objected to a loyalty oath required of all California civil servants. Plaintiff maintained that this was good cause for refusal. The Supreme Court of California *held,* two justices dissenting, that when an applicant declines to take an oath and states his own conscientious objection to the taking, and there is no finding that his stated objection is a sham for the purpose of avoiding work or is otherwise false, the applicant may not be denied such unemployment insurance benefits as would otherwise be payable. *Syrek v. California Unemployment Insurance App. Bd.,* 354 P.2d 625 (Calif. 1960).

All of the states in this country have some system of unemployment com-

8. Gentry v. Memphis Federation of Musicians, 177 Tenn. 566, 151 S.W.2d 1081 (1941) (It was found that the act in question disavowed any purpose to promote discipline or benefit the school). In the present case only one school board member, when questioned, mentioned that action was taken for the "good" of the school and this was in reply to a leading question.

9. See, *e. g.,* N.D. Rev. Code § 14-0302 (1943) ". . . If the male is under the age of twenty-one years, or the female under the age of eighteen years, a marriage license shall not be issued without the consent of the parents or guardian, if there are any."

10. See *In re* Anonymous, 32 N.J. Super. 599, 108 A.2d 882, 887 (1954) ". . . the purpose of the statute is to discourage child marriages and to protect children from the consequences which a binding marriage involves."

11. See 41 Iowa L. Rev. 436 (1956) "Whatever effect marriage has on minority in Iowa is based on section 599.1 of the 1954 Iowa Code, which provides that 'the period of minority extends to the age of twenty-one years, but all minors attain their majority by marriage' . . ." Other states with similar statutes are Florida, Kansas, Louisiana, and Utah.

12. Gress v. Gress, 209 S.W.2d 1003 (Tex. Civ. App. 1948).

13. 59 Yale L.J. 929, 930 (1950).

pensation.[1] These social welfare programs have a primary function to protect individuals from involuntary unemployment, or unemployment through no fault of their own.[2] There are certain requirements necessary to qualify for benefits under these programs. Thirty-five states and the District of Columbia provide that one must be able to work and be available for work; six states require that an individual be able to work and available for work in his usual occupation, or one for which he is reasonably fitted; nine states, including North Dakota provide that one must be able to work and be available for suitable work.[3] Most states require in addition, that any refusal of work must be with good cause.[4]

Claimants who refuse jobs for personal reasons, however, have generally been denied compensation upon the apparent theory that the law will look objectively to the job and not subjectively to the man.[5] The usual state statute provides that in determining whether a claimant has good cause for refusing suitable employment, the issue of moral risk must be considered.[6] Although there is no North Dakota case law on this point, the Code allows considerable latitude for interpretation by the judiciary.[7] These somewhat ambiguous code provisions would not seem to hinder a liberal court. Courts in the neighboring jurisdiction of Minnesota have recognized this personal aspect in the test for good cause.[8] Clearly, cases dealing with this matter are not numerous and of those litigated, all are not in accord. Originally, for example, Ohio courts denied compensation for refusal of work for religious reasons,[9] but later rendered an entirely opposing decision, basing the change on an amendment of the statute which added the moral test.[10] It is interesting to note that Ohio, by statute, has done literally what the court in this case declines to do in effect; that is, make a loyalty oath a prerequisite to obtaining benefits.[11] This statute has not been successfully challenged.[12] Note that it has been held that a government may not withhold a privilege

1. U.S. Bureau of Employment Security, Dep't of Labor, Comparison of State Unemployment Insurance Laws as of January 1, 1960 page 1.

2. Bigger v. Unemployment Comp. Comm'n, 4 Terry 553, 53 A.2d 761, 766 (1947); Muncie Foundry Division of Borg-Warner Corp. v. Review Bd. of Empl. Sec. Div., 114 Ind. App. 475, 51 N.E.2d 891, 893 (1943); Fannon v. Federal Cartridge Corp., 219 Minn. 306, 18 N.W.2d 249, 251 (1945); John Morrell & Co. v. Unemployment Comp. Comm'n, 69 S.D. 618, 13 N.W.2d 498, 500 (1944).

3. U.S. Bureau of Employment Security, Dep't of Labor, Comparison of State Unemployment Insurance Laws as of January 1, 1960, PP. 85-102.

4. Comparison of State Unemployment Insurance Laws as of January 1, 1960, page 91.

5. Leclerc v. Admbinistrator, 136 Conn. 438, 78 A.2d 550 (1951); Ford Motor Co. v. Appeal Bd., 316 Mich. 468, 25 N.W.2d 586 (1947); Mills v. South Carolina Unempl. Comp. Comm'n, 204 S.C. 37, 28 S.E.2d 535 (1944); Jacobs v. Office of Unempl. Comp. and Placement, 27 Wash.2d 641, 179 P.2d 707 (1947).

6. 55 Yale L.J. 138, 139 (1945).

7. See N.D. Rev. Code § 52-0636 (1943) (Factors considered in determining suitability of work and good cause for voluntary leaving) ". . . there shall be considered in this section, the degree of risk involved to his health, safety, and morals . . ."

8. Swanson v. Minneapolis-Honeywell Regulator Co., 240 Minn. 449, 61 N.W.2d 526 (1953).

9. Kut v. Albers Super Markets, Inc., 76 Ohio App. 51, 63 N.E.2d 218 (1945), it was held that one who refused to work on Saturday because he observed that day as the Sabbath, refused suitable work without good cause.

10. Tary v. Board of Review, 161 Ohio St. 251, 119 N.E.2d 56 (1954) Sabbath work was held unsuitable to a bona fide conscientious objector since his belief constituted an integral part of his morals.

11. Ohio Rev. Code § 4141.28; In State v. Hamilton, 92 Ohio App. 285, 110 N.E.2d 37 (1951) defendant was prosecuted and convicted under this statute.

12. Dworken v. Collopy, 91 N.E.2d 564, *Aff'd* 118 N.E.2d 857 (1951); Here, Ohio Rev. Code § 4141.28 was held constitutional.

to which it has no vested right on condition that the prospective recipient surrender a constitutional right.[13] California previously enacted a law requiring a loyalty oath as a prerequisite for obtaining a tax refund. This was subsequently held unconstitutional by the United States Supreme Court.[14] It is submitted that should a case of this nature arise in North Dakota, the courts would follow the more liberal view espoused by the court in the instant case and align themselves with what would appear to be the majority.

K. M. BROWN.

VENDOR AND PURCHASER — INSTALLMENT CONTRACT — WAVIER OF VENDOR'S RIGHT TO TERMINATE INSTALLMENT PURCHASE CONTRACT THROUGH ACCEPTANCE OF BELATED PAYMENTS. — Plaintiff signed an installment contract for the purchase of an automobile which contained a non-waiver agreement. Plaintiff failed to make payments on time and defendant repossessed the automobile. Plaintiff brought an action against the finance company to recover installments paid on the basis that defedant had entered into a "quasi new agreement" with plaintiff under the Georgia statutes,[1] by accepting belated payments. Plaintiff was non-suited. On a appeal it was *held,* three judges dissenting, the judgment reversed. The majority held the evidence established a prima facie cause of action which would turn the question of wavier of contractual rights to the jury. The dissent argued that the provision against waiver in the contract should control the case and required affirmance of the judgment of non-suit, in accordance with Georgia's public policy statute.[2] *Few v. Automobile Finance, Inc.,* 115 S.E.2d 196 (Ga. App. 1960).

In the absence of automobile installment cases, the Georgia court referred to a case involving belated payment of insurance premiums, in which the jury considered whether the provision against waiver of contractual rights had itself been waived.[3] The court departed from Georgia cases which held that no departure from the terms of the contract is shown by a series of installments which are paid belatedly.[4]

The judgment is in general accord with decisions in other jurisdictions

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13. Frost v. Railroad Comm'n, 271 U.S. 583, 593 (1926); Danskin v. San Diego United School Dist., 28 Cal.2d 536, 171 P.2d 885 (1946); Lawson v. Housing Authority of City of Milwaukee, 370 Wis. 269, 70 N.W.2d 605 (1955).

14. Speiser v. Randall, 357 U.S. 513 (1958) Justice Black concurring, "California, in effect has imposed a tax on belief and expression. In my view, a levy of this nature is wholly out of place in this country."

1. Ga. Code Ann. § 20-116 (1935) "Where parties, in the course of the execution of a contract, depart from its terms and pay or receive money under such departure, before either can recover for failure to pursue the letter of the agreement, reasonable notice must be given the other of intention to rely on the exact trems of the agreement. Until such notice, the departure is a quasi new agreement."

2. Ga. Cod Ann. § 102-106 (1935) "Laws made for the preservation of public order or good morals cannot be done away with or abrogated by any agreement; but a person may waive or renounce what the law has established in his favor, when he does not thereby injure others or affect the public interests."

3. Commercial Casualty Ins. Co. v. Campbell, 54 Ga.App. 530, 188 S.E. 362 (1936).

4. Soverign Camp, W.O.W. v. Hart, 187 Ga. 123, 200 S.E. 296 (1938); Hill v. Sterchi Bros. Stores, Inc., 50 Ga. 193, 177 S.E. 353 (1934) here the mere fact that defendant paid some installments of membership in a fraternal benefit association after they were due would not be sufficient to show departure as to require notice from plaintiff of intention to comply with strict terms thereof before plaintiff could insist upon forfeiture of same.