

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
OFFICE OF UNEMPLOYMENT COMPENSATION
DECISION ON LABOR DISPUTE ISSUE

JFS-83000 03/13/2009

TITAN TIRE CORPORATION OF BRYAN 927 S UNION ST BRYAN, OH 43506-2252  1426077008	Date Issued 01/20/2011
	Determination Identification Number 222217879-1
	ODJFS Office Bureau of UC Program Services
Employer's Name TITAN TIRE CORPORATION OF BRYAN	UC Account Number 1426077008

THIS DECISION IS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4141.283, OHIO REVISED CODE

**Bureau of UC Program Services
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In The Matter Of A Labor Dispute Between

Union: **United Steelworkers Local 890** Employer: **TITAN TIRE CORPORATION OF BRYAN**
Docket No: **000000001000008** Hearing Officer: **Jim Bubutiev**
Date of Hearing: **01/10/2011** Date of Issuance: **01/20/2011**

Appearances

John Rigling, Staff Representative, represented USW Local 890L. John Bowling, Unit Chair/Claimant, was a witness for USW Local 890L.

Titan Tire, although duly notified pursuant to Ohio Unemployment Compensation Law, did not make an appearance at this hearing.

This matter was heard by Jim Bubutiev, Hearing Officer for the Director of the Ohio Department of Job and Family Services, pursuant to Section 4141.283 of the Ohio Revised Code. The purpose of this hearing is to determine the reason for the unemployment of certain individuals who have filed claims for unemployment compensation benefits. Division (A) of Section 4141.283 of the Ohio Revised Code provides that the Director is to schedule a hearing when there is reason to believe that the unemployment of twenty-five or more individuals relates to a labor dispute. The Ohio Department of Job and Family Services has received, to date, approximately 203 claims for unemployment benefits that relate to a labor dispute between USW Local 890L and Titan Tire.

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All interested parties were notified of this hearing pursuant to Ohio law. This hearing was held on January 10, 2011, in Bowling Green, Ohio.

FINDINGS OF FACT:

The claimants in this matter are members of USW Local 890L and are employed by Titan Tire in a facility located in Bryan, Ohio (Transcript Page 13).

Titan Tire of Bryan manufactures giant-sized tires for off-road use by vehicles and equipment in the agricultural, construction, mining, and forestry industries. Titan Tire also has facilities in Illinois and Iowa but the Bryan, Ohio facility is the only location involved in this matter (Transcript Pages 13-15).

Titan Tire of Bryan employs approximately 420 individuals and about 350 of them are also members of USW Local 890L (Transcript Pages 15-16).

USW Local 890L had a collective bargaining labor agreement with Titan Tire from August 1, 2006, through November 19, 2010 (Transcript Pages 19,21/Exhibit 1).

There was a formal written extension of the expiring collective bargaining labor agreement mutually agreed upon between the parties through December 17, 2010 (Transcript Pages 20-22,42-43).

Negotiations for a new collective bargaining labor agreement were conducted between the parties from the second week of September 2010 through December 17, 2010 (Transcript Pages 39-40,43).

A lockout began at about 10:00 p.m. on December 17, 2010 when Titan Tire closed the Bryan, Ohio facility, the extension of the collective bargaining labor agreement had expired, and a new agreement had not yet been reached. The lockout ended on December 27, 2010 when Titan Tire unilaterally declared an impasse, even though USW Local 890L wanted to continue negotiating for a new agreement, and Titan Tire implemented their last, best and final collective bargaining labor agreement offer. The members of USW Local 890L returned to work on December 27, 2010 under the implemented last, best and final collective bargaining labor agreement offer (Transcript Pages 17-18,22-23,26-30,41-42/Exhibits2-4).

USW Local 890L asserts the implemented last, best and final collective bargaining labor agreement offer is concessionary as compared to the now expired collective bargaining labor agreement. On December 19, 2010 an informational meeting was conducted with the members of USW Local 890L. On December 23, 2010 the members of USW Local 890L voted to reject the last, best and final collective bargaining labor agreement offer made by Titan Tire. The members of USW Local 890L have never voted to go on strike and Titan Tire has never been informed of any intent to go on strike. The members of USW Local 890L have at all times been willing to continue working under the terms and conditions of the now expired collective bargaining labor agreement and to continue negotiating on a new agreement. USW Local 890L does not agree that an impasse has been reached and is trying to restart negotiations for sometime in February 2011 (Transcript Pages 31-37,40,43-44,50-51,58,69-71).

No replacement workers were hired during the lockout (Transcript Pages 23-25/44-45).

ISSUES:

Pursuant to Section 4141.283 of the Ohio Revised Code, this Hearing Officer is required to make a determination as to whether the claimants are disqualified from receiving benefits under the unemployment compensation laws of the State of Ohio. The central issues to address can be stated thus:

1. What is the reason for the claimants' unemployment from Titan Tire?
2. Are the claimants disqualified from receiving unemployment compensation benefits?
3. What is the duration of the labor dispute?

The applicable law is Section 4141.29(D)(1)(a) of the Ohio Revised Code which provides as follows:

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(D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:

1) For any week with respect to which the director finds that:

a) The individual's unemployment was due to a labor dispute other than a lockout at any factory, establishment, or other premises located in this or any other state and owned or operated by the employer by which the individual is or was last employed; and for so long as the individual's unemployment is due to such labor dispute. . .

REASONING:

Section 4141.29(D)(1)(a) of the Ohio Revised Code provides that no individual may be paid benefits for any week during which their unemployment is due to a labor dispute other than a lockout. Thus, in order to come to a conclusion regarding the reason for the unemployment of the claimants, it is necessary to determine whether the labor dispute was a lockout within the meaning of the Ohio unemployment compensation law. The claimants would not be disqualified from eligibility for unemployment compensation benefits if the labor dispute were found to be a lockout.

The key issue to be resolved is whether the reason for the claimants' unemployment from Titan Tire was due to a lockout or a labor dispute other than a lockout.

In *Bays v. Shenango Co.* (1990), 53 Ohio St. 3d 132, a collective bargaining agreement between the employer and the union expired and the union offered to continue working under the terms of the expired contract for one year while a new contract continued to be negotiated.

The Ohio Supreme Court held that if an employer refuses to allow work to continue for a reasonable time under the pre-existing terms and conditions of employment, while negotiations continue, then the employer is deviating from the status quo.

Thus, the Supreme Court has set forth what is known as the status-quo test for deciding whether a work stoppage was the result of a lockout or due to a labor dispute other than a lockout.

In applying this test, it must be determined which side, union or management, first refused to continue operations under the status quo after the contract had technically expired, but while negotiations were continuing. *Id.* at 134-135.

Furthermore, the Ohio Supreme Court case of *M. Conley Co. v. Anderson* (2006) 108 Ohio St. 3d 252, favorably discussed *Bays*.

In this matter, the testimony and exhibit evidence indicate the members of USW Local 890L became unemployed when they were locked out by Titan Tire beginning on December 17, 2010.

There was no evidence to indicate that Titan Tire allowed the members of USW Local 890L to continue working under the terms and conditions of the expired agreement on December 17, 2010 and

thereafter, while negotiations continued.

In fact, Titan Tire changed the status quo by starting the lockout on December 17, 2010 and then implementing their last, best and final collective bargaining labor agreement offer beginning on December 27, 2010.

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Therefore, by applying the status quo test from the Bays decision, this Hearing Officer finds, based upon the documentation, testimony and evidence, that Titan Tire locked out the members of USW Local 890L and altered the status quo, while negotiations were ongoing, beginning on December 17, 2010 and that the lockout continued until December 27, 2010 when Titan Tire implemented their last, best and final collective bargaining labor agreement offer and allowed the members of USW Local 890L to go back to work under the terms and conditions of that offer.

Consequently, it is the conclusion of this Hearing Officer that the claimants in this matter were unemployed due to a lockout which began December 17, 2010, and that the lockout ended on December 27, 2010.

DECISION:

It is the decision of this Hearing Officer that all the claimants herein were unemployed due to a lockout which began on December 17, 2010, and ended on December 27, 2010 when they returned to work under the terms and conditions of the last, best and final collective bargaining labor agreement offer implemented by Titan Tire. The claimants are not disqualified from receiving unemployment compensation benefits due to a labor dispute other than a lockout pursuant to Section 4141.29(D)(1)(a) of the Ohio Revised Code.

APPEAL RIGHTS: If you disagree with this decision, you have the right to appeal. The following paragraph provides a detailed explanation of your appeal rights:

Application for appeal before the Unemployment Compensation Review Commission, Ohio Dept. Of Job And Family Services, PO Box 182299, Columbus, OH 43218-2299; or by fax to 1-614-387-3694; may be filed by any interested party within twenty-one (21) calendar days of the date of mailing of the decision. In order to be considered timely, the appeal must be filed in person, faxed, or postmarked no later than twenty-one (21) days after the date of mailing indicated on this decision. If the 21st calendar day falls on a Saturday, Sunday, or Legal Holiday, the period for filing is extended to include the next scheduled work day. Upon receipt of certified medical evidence stating that the interested party's physical condition or mental capacity prevented the filing of an appeal within the specified 21 calendar day period, the interested party's time for filing the appeal shall be extended and considered timely if filed within 21 calendar days after the ending of the physical or mental condition. **If unemployed**, claimants should continue to file weekly claims for benefits while under appeal.

This decision was mailed on **01/20/2011**.

The twenty-one day appeal period ends on **02/10/2011**.

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