

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2003-520

APRIL TERM, 2004

	} APPEALED FROM:
	}
Harold Wood	} Employment Security Board
	}
v.	}
	} DOCKET NO. 05-03-128-01
Department of	}
Employment and Training	}
and Rock of Ages	}
	}

In the above-entitled cause, the Clerk will enter:

Claimants appeal a decision of the Employment Security Board determining that they are not entitled to unemployment benefits for the period in which they were participating in a labor strike. We affirm.

At all times relevant to this proceeding, claimants were employed at the Rock of Ages Corporation, a granite manufacturing plant. They were members of the Granite Cutters' Association (GCA), which ratified a collective bargaining agreement with the company in April 2003. Members of the United Steelworkers of America, another union at the plant, voted to strike rather than ratify their agreement, however. The strike began on Monday, April 28, 2003 and ended on Friday, May 2, 2003. Claimants did not work during the strike. Later, they sought unemployment benefits for the days in which they did not work. The claims adjudicator denied their claims on the ground that they had participated in a labor dispute. The appeals referee vacated the claims adjudicator's decision, but the Board reinstated it, finding that claimants were not entitled to unemployment benefits because they stayed away from work to honor their fellow workers' strike rather than to comply with management's request that they avoid the picket lines. Claimants appeal to this Court, framing the issue as whether employees who follow a management directive to stay away from picket lines established by another striking union are participating in a labor dispute and thus barred from receiving unemployment benefits.

In relevant part, 21 V.S.A. ' 1344(a)(4)(A) disqualifies an individual from receiving unemployment benefits for work stoppage resulting from a labor dispute, unless the individual did not participate in the dispute that caused the stoppage of work. Here, claimants do not challenge the Board's position, which is supported by case law, that members of one union who refuse to work in deference to striking co-workers in another union are participating in a labor dispute and thus disqualified from receiving unemployment benefits. Rather, claimants contend that because the Board found that a member of the employer's negotiating team had asked employees to stay away from the picket lines because of a volatile situation that had occurred six years earlier, they were entitled to unemployment benefits. Claimants insist that they cannot have been participating in a labor dispute when they were staying away from work at the behest of their employer.

The problem with claimants' argument is that the Board, which is entitled to assess the credibility of witnesses and weigh the evidence, found that claimants did not work during the strike because of their union's longstanding policy of honoring the picket lines of fellow striking union members, not because management had asked them to stay away from the picket lines. The Board stated that claimants' alleged reason for not working contradicted an earlier statement by one of the claimants who said that GCA's policy was to honor other unions' picket lines. Ample evidence supported the Board's finding. See Whitcomb v. Dep't of Employment & Training, 147 Vt. 525, 528 (1986) (Board's findings will be

affirmed if supported by any credible evidence in record). Three days after the strike ended, GCA' s business agent sent a letter to the Department of Employment and Training stating that claimants were entitled to unemployment benefits because (1) GCA had always had a policy of honoring the United Steelworkers' picket lines; (2) if GCA members had crossed the picket lines, it would have been difficult to repair the damage to an on-going relationship between the two unions; and (3) he did not want his workers on their jobs because no qualified employees would have been available to operate the cranes. No mention was made of a management directive to stay away from the picket lines. In a later letter, one of the claimants stated that claimants were told by their union representative not to go anywhere near the Rock of Ages building during the strike under any circumstances. However, another claimant acknowledged, during the hearing before the appeals referee, that their standard union policy was not to cross picket lines. That same claimant was equivocal when asked whether management' s directive to stay away from the picket lines was the equivalent of an order not to work. Because the record supports the Board' s finding that the reason for claimants' absence of work was to honor their fellow workers' picket lines rather than to comply with a management directive to avoid the picket lines, we uphold the Board' s decision to disqualify claimants from receiving unemployment benefits for the days they did not work during the strike. See Pfenning v. Dep' t of Employment & Training, 151 Vt. 50, 52 (1989) (when issue depends on facts and circumstances of case, A we must uphold the Board' s factual conclusion unless we conclude that its findings of fact are clearly erroneous@ ); In re Hatch, 130 Vt. 248, 254 (1972) (claimant has burden of demonstrating that he is not disqualified from receiving benefits for participating in labor dispute).

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Paul L. Reiber, Associate Justice