

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

WICKLAND OIL COMPANY
(Petitioner)

DEPARTMENT OF BENEFIT PAYMENTS

Office of Appeals No. S-T-8153

PRECEDENT
TAX DECISION
P-T-395
Case No. T-77-159

The Department has appealed from the decision of the administrative law judge which granted the petition for reassessment.

STATEMENT OF FACTS

The Department assessed the petitioner on the basis of payments to gasoline station dealers during the years 1972, 1973, and 1974. The petitioner claims that the dealers were independent contractors.

The petitioner maintains gasoline stations which it leased to dealers. Upon entering into the relationship, the dealer signed a Commission Dealer Lease and a Commission Dealer Agreement. Under the lease the dealer was obligated to pay minimum rent of \$150 per week, while the agreement guaranteed that the dealer would receive at least \$150 per week in commissions. The premises could be used only to sell gasoline, oil, and certain items specified by the company. The dealer could not engage in repair work, the sale or rental of equipment, or the parking of vehicles for a fee. The company alone determined how much gasoline and oil would be delivered and the price sold for all items. Furthermore, the company established the minimum number of hours the station would be open. There was no evidence that stations remained open longer than the prescribed hours. Finally, the company had signs on the premises which identified the station as a Regal station. The individual dealers did not advertise.

Additionally, there was an Operating Manual for the dealers to follow, and the company had district managers to review the dealers' performance. The manual gave explicit instructions on how certain activities would be carried on. For example, there were instructions on where employees could park, what employees would wear, and their appearance while at the station. Both dealers and employees were cautioned against divulging to others outside the organization any information regarding certain company policies. Standards were set for full-time employees, who had to be high school graduates or the equivalent, in good health, of a neat and pleasing appearance, have a favorable prior employment record, and be bondable. With regard to personal appearance, the dealer was obliged to prepare specific standards under the general company guidelines. These standards were subject to approval by the company's district manager.

The agreement also provided that while the dealer was free to engage the number of employees that he desired, the company required that if a certain amount of gallons of gasoline were sold that additional manpower be engaged. The dealer was paid an extra amount to cover the cost of the additional help.

The payroll records for stations were maintained by a payroll service chosen by the company. Checks were issued by the service based on records submitted by the dealers.

The company specified the credit cards which could be used at the station to purchase gasoline and oil. Only those credit cards would be accepted.

The bulk of the dealer's remuneration was based upon the amount of gasoline sold. Deducted from the gross amount of commissions earned were certain expenses such as shortages for losses from bad checks. Dealers received a weekly draw based on expected commission earnings.

REASONS FOR DECISION

Employer contributions to the Unemployment and Disability Funds are based on the payment of wages for employment pursuant to sections 976 and 984 of the Unemployment Insurance Code. Section 601 of the code defines employment as services by an employee. Except as specifically provided in section 621 of the code contributions are not due with respect to the services of an independent contractor (Appeals Board Decision P-T-2).

The issue presented for resolution is whether the dealers were employees or independent contractors. In resolving this question the primary consideration is whether the petitioner had the right to control the manner and means of how the work was done -- the so-called common law test. We are also required to consider the relationship in light of a number of factors set forth in section 220(2) of the Restatement of Agency. (Empire Star Mines v. California Employment Commission (1946), 28 Cal. 2d 33; Tieberg v. California Unemployment Insurance Appeals Board (1970), 2 Cal. 3d 943, 949).

There have been a number of decisions which have applied the common law test to gasoline service station and bulk station operators (83 American Law Reports, Annotated, 2d, pp. 1276-1303). Generally, the determining factors of the relationship have been whether the operator has a substantial investment in the business, furnishes extensive and expensive equipment, hires and fires employees, operates a repair business on his own in conjunction with the station, is free to sell other products, sets his own retail prices, determines the hours business is open, and provides local advertising. The resolution has not depended upon whether the agreement between the parties specified that the operator is an independent contractor.

The evidence in this case clearly supports the conclusion that under the above test the dealers were employees. They had no investment in the business; there were extensive controls not only on the taking of inventory but on the operation of the business; the company alone determined how much gasoline and oil would be allowed the dealer and the price to be charged; the company effectively established the hours business was open; and finally, the operations of the dealers were closely supervised by district managers. It is particularly noteworthy that the operators were not free to engage in a servicing business whereby they could develop their own clientele, but remained completely dependent upon the company.

DECISION

The decision of the administrative law judge is reversed. The petition for reassessment is denied.

Sacramento, California, June 13, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

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