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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

PARATRANSIT, INC., Plaintiff and Respondent, v. UNEMPLOYMENT INSURANCE APPEALS BOARD, Defendant; CRAIG MEDEIROS, Real Party in Interest and Appellant.	C063863 (Super. Ct. No. 34-2009-80000249)

Unemployment Insurance Code section 1256 (section 1256) disqualifies an employee from receiving unemployment compensation benefits if he or she has been discharged for misconduct. Misconduct within the meaning of section 1256 involves a willful or wanton disregard of an employer's interests or such carelessness or negligence as to manifest

equal culpability. It does not include, among other things, good faith errors in judgment. (*Amador v. Unemployment Ins. Appeals Bd.* (1984) 35 Cal.3d 671, 678 (*Amador*).)

Real party in interest Craig Medeiros (Claimant) appeals from a judgment of the trial court granting a writ of administrative mandamus to his former employer, petitioner Paratransit, Inc. (Employer), on Claimant's claim for unemployment insurance benefits. Claimant had been terminated by Employer for refusing to sign a disciplinary memorandum in connection with a prior incident of misconduct. Respondent Unemployment Insurance Appeals Board (Board) determined Claimant's refusal to sign the memorandum was, at most, a good faith error in judgment that did not disqualify him from receiving unemployment benefits. The trial court disagreed and directed the Board to set aside its decision and to enter a new one finding Claimant disqualified from receiving unemployment benefits. We affirm the judgment of the trial court.

FACTS AND PROCEEDINGS

Employer is a private, nonprofit corporation engaged in the business of providing transportation services for the elderly and disabled. Prior to his termination, Claimant had been employed by Employer as a driver for approximately six years.

As a condition of his employment, Claimant was required to join a union. The union was party to a collective bargaining agreement (CBA) with Employer that included the following provision: "The Employer shall provide a Vehicle Operator with

copies of complimentary letters received regarding his or her job performance and with copies of disciplinary notices, including verbal warnings that have been put in writing. *All disciplinary notices must be signed by a Vehicle Operator when presented to him or her provided that the notice states that by signing, the Vehicle Operator is only acknowledging receipt of said notice and is not admitting to any fault or to the truth of any statement in the notice."*

In February 2008, a passenger lodged a complaint against Claimant with Employer. Employer's human resources manager investigated the matter and concluded the alleged misconduct had occurred. This was not the first incident of alleged misconduct involving Claimant. On his application for employment in 2002, Claimant indicated he had not been convicted of any offenses. After Claimant was hired, a fingerprint search with the Department of Justice revealed a prior conviction. Claimant was terminated, but that termination was later rescinded based on Claimant's representations that the conviction arose from a domestic dispute. In September 2004, Claimant was issued a memorandum of discipline in connection with another incident.

On May 2, 2008, Claimant was called into a meeting with Employer's human resources manager and its director of administrative services and told he was being disciplined for the February 2008 incident. Claimant disagreed the incident had occurred as alleged, requested that a union representative be present at the meeting, and indicated he was tired from having just finished a full day of work and was confused because the

others at the meeting “had additionally brought up matters that had occurred when he had been hired six years earlier.” Claimant was informed he was not entitled to union representation because the meeting did not involve discussions that could lead to discipline but was merely to inform him of discipline that had already been determined.

Employer’s representatives had previously prepared a memorandum advising Claimant that he was being assessed discipline for the February 2008 incident, including suspension for two days without pay. They gave the memorandum to Claimant, explained its substance, and asked him to sign it. Below the signature line, the document read: “Employee Signature as to Receipt.”

Claimant refused to sign the memo because he believed he should not sign anything without a union representative present. The union president had previously provided Claimant a card advising him “not to sign anything without a union representative which could in any way lead to him being disciplined because once a document was signed the employer could use it as an admission of guilt and the union would not be able to defend him.”

When Claimant was given the disciplinary memorandum in 2004, he was also told to sign it. That document read under the signature line, “‘Employee Signature (as to receipt only).’” Claimant was told if he refused to sign the memo he would be terminated. Claimant signed that document “‘so [he] wouldn’t get fired.’”

In the May 2, 2008, meeting, Employer's representatives informed Claimant the CBA required him to sign the disciplinary memorandum and that, if he did not, this would be treated as insubordination and his employment would be terminated. Claimant complained that, if he signed the document, he would be admitting the truth of what was stated in it. The representatives assured Claimant his signature would only signify receipt of the document. Claimant stated he had been informed by the union president not to sign anything and he was not going to sign anything. Claimant did not believe he would be fired for failing to sign the memorandum. He thought instead that the meeting would be rescheduled to give him an opportunity to consult with the union. He also believed Employer's representations that his signature would not be an admission of anything were lies. Claimant departed the meeting without signing the disciplinary memorandum and without asking that the meeting be rescheduled. However, he did indicate he would be consulting with the union. Claimant was thereafter informed his employment had been terminated.

Claimant applied for unemployment insurance benefits, but the Employment Development Department (EDD) denied his request. Claimant appealed, but an administrative law judge (ALJ) upheld EDD's decision. After conducting an evidentiary hearing at which both Claimant and the two Employer supervisors testified, the ALJ concluded Claimant's "deliberate disobedience of a reasonable and lawful directive of the employer, to sign the memorandum notifying him of disciplinary action, where obedience

was not impossible or unlawful and did not impose new or additional burdens upon [him], constituted misconduct . . . .” The ALJ further concluded that, because Claimant had been terminated for misconduct, he was disqualified from receiving unemployment benefits.

Claimant appealed to the Board, and the Board reversed. The Board concluded: “In this case, the claimant was compelled to meet with the employer and his request for union representation was denied despite the fact that the discussion led to a threat of and actual termination. Furthermore, the employer’s disciplinary form appears to be in noncompliance with the language of its own rules in that there is no written notice on the form that, by signing, the employer [*sic*] is not admitting to any fault in the conduct resulting in discipline. Give[n] the admonition given to claimant by the union president not to sign, the lack of clarifying language near the signature line, and the denial of the claimant’s request for union representation, we find that the claimant’s failure to sign at the moment was, at most, a simple mistake or an instance of poor judgment.”

Following the Board’s decision, Employer filed the instant petition for writ of administrative mandamus. The trial court granted the petition, concluding Claimant deliberately disobeyed a lawful and reasonable directive of his employer and this amounted to misconduct rather than a good faith error in judgment. The court explained Claimant was not entitled to union representation at the meeting because it was not

investigatory in nature. As for Claimant's reliance on advice of the union president, the court indicated it did not believe the president "actually told [Claimant] not to sign anything without first obtaining union representation." The court further concluded that, even if the president did, Claimant could not in good faith have relied on such incorrect advice under the circumstances of this case.

Regarding the language of the disciplinary memorandum, the court determined this did not violate the CBA. The court explained the CBA did not require the exact language indicated therein and, while the CBA required both a statement that the signature is only an acknowledgement of receipt and a statement that the employee is not admitting guilt, the court concluded "these 'two requirements' are just different sides of the same coin." The court concluded "the memorandum was sufficiently clear that it was reasonable for [Employer] to demand that [Claimant] sign." Furthermore, even if it was not sufficiently clear, "[Employer] expressly advised [Claimant] that he was not entitled to a union representative and that signing the memorandum was merely an acknowledgement of receipt and not an admission of the truth of the statements."

The court did agree the discrepancies between the language of the memorandum and the language of the CBA must be considered in determining whether Claimant's refusal to sign was a good faith error in judgment. Nevertheless, the court concluded Claimant deliberately disobeyed a lawful and reasonable instruction of his employer and, under the totality of the

circumstances, this was misconduct rather than a good faith error in judgment.

DISCUSSION

I

Standard of Review

Claimant contends the trial court erred in concluding he engaged in misconduct within the meaning of section 1256 when he refused to sign the disciplinary memorandum. He argues he was not required to sign the memo, because it did not comply with the CBA. He further argues that, even if he was required to sign it, his failure to do so was, at most, a good faith error in judgment.

In reviewing a decision of the Board on a petition for writ of administrative mandate, "the superior court exercises its independent judgment on the evidentiary record of the administrative proceedings and inquires whether the findings of the administrative agency are supported by the weight of the evidence." (*Lozano v. Unemployment Ins. Appeals Bd.* (1982) 130 Cal.App.3d 749, 754.) We in turn review the decision of the superior court to determine whether it is supported by "substantial, credible and competent evidence." (*Ibid.*) "[A]ll conflicts must be resolved in favor of the respondent and all legitimate and reasonable inferences made to uphold the superior court's findings; moreover, when two or more inferences can be reasonably deduced from the facts, the appellate court may not substitute its deductions for those of the superior court."

(*Lacy v. California Unemployment Ins. Appeals Bd.* (1971) 17 Cal.App.3d 1128, 1134.) "However, 'where the probative facts are not in dispute, and those facts clearly require a conclusion different from that reached by the trial court, . . . the latter's conclusions may be disregarded.'" (*Amador*, *supra*, 35 Cal.3d at p. 679.)

II

The Disciplinary Memorandum

Section 1256 provides in relevant part: "An individual is disqualified for unemployment compensation benefits if . . . he or she has been discharged for misconduct connected with his or her most recent work." Misconduct within the meaning of section 1256 is "limited to '"conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or *good faith errors in judgment* or discretion are not to be deemed 'misconduct' within

the meaning of the statute."' [Citations.]" (*Amador*, *supra*, 35 Cal.3d at p. 678, italics added.)

Title 22 of the California Code of Regulations, section 1256-30, subdivision (b), identifies four factors for establishing misconduct: "(1) The claimant owes a material duty to the employer under the contract of employment. [¶] (2) There is a substantial breach of that duty. [¶] (3) The breach is a willful or wanton disregard of that duty. [¶] (4) The breach disregards the employer's interests and injures or tends to injure the employer's interests."

Labor Code section 2856 states: "An employee shall substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee." Title 22 of the California Code of Regulations, section 1256-36, subdivision (b), provides: "Implicit in the agreement of hire is the concept that an employee is subject to some degree of authority exercised by the employer or the employer's representative. An employee is insubordinate if he or she intentionally disregards the employer's interest and willfully violates the standard of behavior which the employer may rightfully expect of employees in any of the following ways: [¶] (1) Refuses, without justification, to comply with the lawful and reasonable orders of the employer or the employer's representative."

Claimant contends that where an employer's demand is "unlawful or unreasonable," disobedience by the employee is not

misconduct for purposes of unemployment insurance benefits. He further argues the lawfulness or reasonableness of an employer's directive is a question of law subject to de novo review, "when the determination rests on undisputed facts or where the inferences from the found facts point in one direction." Claimant argues this is such a case, because the lawfulness of Employer's demand that he sign the disciplinary memo depends solely on whether that memo complied with the CBA. Claimant asserts the memo at issue here did not do so.

Employer responds that the disciplinary memo adequately satisfied the terms of the CBA. It argues the CBA does not require any specific language and, as the trial court found, the two requirements that the memo state the employee is only acknowledging receipt and is not admitting any fault or the truth of the allegations are just two sides of the same coin. Finally, Employer argues, even if the memo did not comply with the CBA, that did not excuse Claimant's failure to sign it. According to Employer, Claimant's proper course of action was to sign the document and then file a grievance.

The question whether the disciplinary memorandum satisfied the requirements of the CBA is a red herring. At no time during the May 2 meeting did Claimant assert he would not sign the document because it failed to comply with the CBA. There is no indication he was even aware of the terms of the CBA. After being informed he was being disciplined, Claimant immediately requested union representation. He was told he was not entitled to such representation, and Claimant does not challenge that

point on appeal. When presented with the disciplinary memo, Claimant refused to sign it because "[h]e believed he should not sign *anything* without a representative present." (Italics added.) Thus, there is no reason to believe Claimant would have signed the document even if it had been in a form more in line with the requirements of the CBA.

When told the CBA required him to sign the memo, Claimant complained that his signature would be an admission of the truth of what was stated in the memo. Employer's representatives assured Claimant that was not the case and that his signature would only signify receipt. Claimant declared "he had been informed by the president of the union not to sign anything, and that he was not going to sign anything." Claimant did not believe Employer would go through with its threat to fire him if he did not sign the document. He also believed the assertions by Employer's representatives that his signature would not be an admission of anything were lies.

Thus, the question here is not whether Claimant was relieved of the requirement to sign the memo because it did not comply with the CBA. Claimant refused to sign "anything" presented to him by Employer. Claimant does not argue on appeal that signing the disciplinary memo would have imposed a new and unreasonable burden on him, except insofar as it failed to comply with the CBA. He argues he was afraid signing the memo would be an admission of guilt, but the language under the signature line and the assurances of the Employer representatives should have dispelled any such concern.

Although Claimant asserts he believed the representatives were lying, he cannot so easily sidestep his obligations to his employer. Claimant presented no evidence to warrant such belief.

Under the circumstances presented, we conclude Claimant's failure to sign the disciplinary memo violated his obligations to Employer under Labor Code section 2856. (See *Lacy v. California Unemployment Ins. Appeals Bd.*, *supra*, 17 Cal.App.3d at p. 1133 [employee must comply unless the employer's directive imposes a duty that is both new *and* unreasonable].) The remaining question is whether such insubordination was misconduct under section 1256 or a good faith error in judgment.

III

Good faith Error in Judgment

As described above, an intentional refusal to obey an employer's lawful and reasonable directive qualifies as misconduct. But where an employee, in good faith, fails to recognize the employer's directive is reasonable and lawful or otherwise reasonably believes he is not required to comply, one might conclude his refusal to obey is no more than a good faith error in judgment. "Section 1256 must be read in light of section 100 of the Unemployment Insurance Code which was included in the code as a guide to interpretation and application of other sections of the code." (*Drysdale v. Department of Human Resources Development* (1978) 77 Cal.App.3d 345, 352.) This latter section reads, in relevant part: "The

Legislature . . . declares that in its considered judgment the public good and the general welfare of the citizens of the State require the enactment of this measure under the police power of the State, for the compulsory setting aside of funds to be used for a system of unemployment insurance providing benefits for persons unemployed *through no fault of their own*, and to reduce involuntary unemployment and the suffering caused thereby to a minimum." (Italics added.) Fault is therefore the basic element for considering and interpreting the Unemployment Insurance Code. (*Drysdale* at p. 353; *Evenson v. Unemployment Ins. Appeals Bd.* (1976) 62 Cal.App.3d 1005, 1015-1016.)

Claimant argues it was reasonable for him to have been mistaken, if indeed he was, about his obligation to sign the disciplinary memo and, therefore, his failure to do so was, at most, a good faith error in judgment. He points to the fact the three entities who have considered the issue--EDD, the Board and the trial court--"reached different conclusions about whether or not [Employer's] requirement that [Claimant] sign the disciplinary notice without a union representative was lawful and reasonable."

Claimant misreads the record. There is nothing therein as to what prompted EDD to reject Claimant's claim. The next decision maker to consider the issue was the ALJ, who is not mentioned by Claimant. The ALJ concluded Claimant deliberately disobeyed a reasonable and lawful directive of Employer. The Board reversed the ALJ's decision. However, the Board did not reach any specific conclusion on whether Employer's instruction

to sign the memo was lawful and reasonable. Instead, the Board concluded "[a]n employee's refusal to comply with a reasonable rule or direction is not misconduct if the employee has good cause for his or her action" and, in this case, Claimant's failure to sign "was, at most, a simple mistake or an instance of poor judgment." Finally, the trial court agreed with the ALJ that Claimant deliberately disobeyed a lawful and reasonable directive of Employer.

Claimant next argues that, in finding as a matter of law the disciplinary memo did not violate the CBA, the trial court "failed to consider [Claimant's] testimony regarding his confusion about the affect [*sic*] of signing the notice, absent the 'no admission' language, and whether or not that testimony showed [Claimant's] decision not to sign the notice was a good faith error in judgment." However, absent contrary evidence, we presume official duty has been regularly performed and that the court considered all relevant evidence in reaching its conclusions. (See Evid. Code, § 664; *People v. Frye* (1994) 21 Cal.App.4th 1483, 1486.) Claimant has made no attempt to demonstrate otherwise. Furthermore, Claimant never testified he was confused about the effect of signing the memo because of the absence of specific language on it. He testified he was reluctant to sign because of what he had been told by the union.

Claimant contends the evidence nevertheless does not support the trial court's conclusion his refusal to sign the memo was not a good faith error in judgment. He asserts the circumstances of the May 2 meeting demonstrate he "was confused

and troubled by the notice's lack of the 'no admission' language." He points to the fact he "was tired at the end of his shift, called into a meeting with two senior employees of [Employer], confronted with serious allegations he refuted, asked about lying on his employment application six years prior, faced with demands that he sign the disciplinary notice that confirmed the allegations, and was threatened with termination if he did not sign the notice." Claimant argues he was concerned that signing the memo would be an admission of guilt and would bar him from obtaining union assistance in defending the matter, in light of statements to him by the union president and Claimant's understanding that "the union had previously refused to assist employees who had signed disciplinary notices." Claimant argues the trial court failed to consider any of the foregoing in determining his failure to sign the memo was not a good faith error in judgment and, therefore, we must consider the issue de novo.

As mentioned above, absent contrary evidence, we presume official duty has been regularly performed and that the trial court considered all relevant evidence. Claimant has not demonstrated otherwise here. He merely assumes that, because the court ruled against him, it must not have considered these matters.

Furthermore, Claimant's argument is based on a false narrative that he refused to sign the memo because he was confused by the absence of specific language on it.

Claimant also misstates the facts in asserting he was "confronted with serious allegations" at the meeting.

We note the record of the hearing before the Board reflects the following, McHugh being the representative of the employer and Brown being a witness for Paratransit:

"Ms. McHugh: . . . Ms. Brown, during your investigation of the underlying matter that resulted in the document the Claimant refused to sign, at any time did he ask for union representation during the investigation?

"Ms. Brown: No.

"Ms McHugh: Had he asked during the investigation would you have allowed a union rep to participate in the investigation?

"Ms. Brown: Yes.

"Ms. McHugh: That rule that you told us about as far as a union rep is not allowed to be present during meetings when the discipline has already been decided and its merely being delivered to the--the employee, is that a Paratransit rule or is that something else?

"Ms. Brown: No. Those are Weingarten rights and that's coming from the National Labor Relations Board."

Thus, the record demonstrates the investigation of the prior misconduct had already taken place, during which Claimant was, as far as the record shows, confronted with the serious allegations made by one of his riders. He never asked for union representation during that investigation. The only thing Claimant was confronted with at the May 2 meeting was his

employer's decision to discipline him at which time he did not have a right to union representation. The trial court could reasonably conclude that defendant's claims as to why he acted in good faith in refusing to sign the disciplinary notice were arrived at after the fact of his receipt of the notice.

As for the fact Claimant was instructed to sign the memo and was told that, if he did not, he would be terminated, this obviously cannot excuse his actions. Claimant was directed to sign the memo and was told he would be subject to termination if he failed to do so. If these facts were enough to make a refusal to obey an employer's directive a good faith error in judgment, no employee would ever have to obey an employer's directive.

Finally, while Claimant may well have been tired at the end of his shift and may have been reminded at the meeting about his earlier lie on his employment application, these matters were known to the trial court, who nevertheless concluded they were not sufficient to establish a good faith error in judgment. We cannot say on this record the court erred in this regard.

Claimant's reliance on the advice of the union fairs no better. The trial court made a credibility determination that the union president did not in fact say what Claimant testified he said. Claimant argues this credibility determination is not entitled to any weight, because the portions of the transcript to which the trial court referred support Claimant's testimony. Not so. Although Claimant testified the union president told him not to sign *anything*, Claimant repeatedly referred to a

card, Exhibit 8E, as support. That card read: "STATING YOUR WEINGARTEN RIGHTS TO THE EMPLOYER: 'If this discussion could in any way lead to my being disciplined or terminated or have any effect on my personal working conditions, I respectfully request that my union representative, officer, or steward be present at this meeting. Without union representation, I choose not to participate in the discussion.'" The court could readily have concluded from the totality of Claimant's testimony that he was told only that, if the meeting could lead to discipline, he should demand union representation and not participate without such representation. The court could also reasonably presume the union president would not have misstated that Claimant should not sign *anything* without union representation.

The trial court also concluded that, even if the union president had told Claimant not to sign *anything* without union representation, Claimant was not entitled to rely on such erroneous advice. We agree. Were it otherwise, a union could insulate members from adverse employment action simply by giving them bad advice that they need not comply with an employer's orders. If the union gave Claimant bad advice that resulted in his termination, Claimant's recourse may be against his union, not a claim for unemployment insurance funds.

Claimant also takes issue with the following statement in the trial court's decision: "Moreover, regardless of whether the memorandum's signature block was, by itself, clear, [Employer] expressly advised [Claimant] . . . that signing the memorandum was merely an acknowledgement of receipt and not an

admission of the truth of the statements." Claimant argues he was not required to accept Employer's representations. He further asserts prior Board precedent establishes that, if an employee doubts the reasonableness or legality of a supervisor's instructions, he should seek redress through avenues other than disobedience. Claimant argues he complied with this duty by "request[ing] a union representative" and indicating he wanted to talk with the union before signing.

We have previously explained an employee cannot so easily sidestep his obligations to his employer by a bald assertion that he did not believe what the employer's representatives told him. Claimant has presented no evidence to warrant such disbelief.

As to Claimant's argument that he sought redress through means other than disobedience, this is based on a misconception of the situation presented. Claimant was told to sign the disciplinary memo and that, if he did not, he would be subject to termination. Instead, Claimant requested union representation. He was then told he had no right to union representation at the meeting. Claimant was then instructed to sign the memorandum without union representation. By refusing to do so, Claimant was not seeking redress by other means. He was directly disobeying the employer's command.

The trial court concluded Claimant had no reasonable basis to believe he had a right to union representation at the disciplinary hearing. The record supports this conclusion. The card provided to Claimant by his union explained he had a right

to union representation only where the meeting could lead to discipline. Claimant was informed at the outset that Employer had already settled on the discipline to be imposed for the prior incident and that the meeting was solely for the purpose of notifying him of such discipline. The Employer representatives also told Claimant he had no right to union representation at the meeting. Under these circumstances, Claimant could have had no reasonable belief that he was entitled to union representation.

Claimant counters that he reasonably believed the May 2 meeting was investigatory in nature, thereby entitling him to union representation. Claimant asserts the fact the Employer representatives brought up the matter of the six-year-old lie on his employment application and the threat that further discipline would be imposed if he failed to sign the memo gave rise to a reasonable belief that the meeting was for more than just informing him of predetermined discipline.

The trial court concluded Claimant could not have reasonably believed the meeting was investigatory in nature simply because of the reference to his six-year-old lie. The court pointed out the lie was discovered soon after it was made and Claimant was disciplined for it. There was no reason for Claimant to believe he might be further disciplined for that falsehood. The trial court indicated that, while the reference might not have been necessary to inform claimant of the discipline for the February 2008 incident, it “did not transform the disciplinary meeting into an investigatory interview.”

We agree. A single, stray reference to a prior lie by Claimant for which he had already been disciplined could have served no purpose other than to remind him that his credibility might be suspect. The obvious purpose of the meeting was to inform Claimant of the discipline that was about to be imposed following a full investigation. Claimant could not reasonably have believed the stray comment changed that fact.

As for Claimant being informed if he did not sign the memo he could be further disciplined, this too did not change the nature of the meeting. Claimant was under a continuing obligation to comply with lawful and reasonable orders of his employer and otherwise not to engage in misconduct. This included during the meeting. If Claimant had assaulted the Employer representatives during the meeting, he would not be able to avoid discipline by claiming he did not have union representation. Likewise, if Claimant refused to sign a document he was required to sign, he cannot escape punishment by claiming he did not have union representation at the meeting. The Employer representatives were just reminding Claimant of what he should already know, i.e., that insubordination can result in discipline. Such advice did not change the underlying nature of the meeting.

We conclude substantial evidence supports the trial court’s determination that Claimant’s refusal to sign the disciplinary memorandum was misconduct under section 1256 and not a good faith error in judgment. Claimant is therefore not entitled to unemployment benefits.

DISPOSITION

The judgment of the trial court is affirmed.

HULL, J.

I concur:

NICHOLSON, J.

I respectfully dissent.

Craig Medeiros was fired from his job as a Paratransit employee for refusal to sign a receipt, required by a provision in a collective bargaining agreement, stating that he had received a notice of disciplinary action and that by signing the receipt he did not admit to the truth of any statement in the notice. The Unemployment Insurance Appeals Board determined that the refusal was at most a good faith error in judgment that did not disqualify him from receiving unemployment benefits. My colleagues would reverse the administrative judgment. I disagree.

The provision requiring a signed notice was obviously meant to benefit the employee and I find it perverse that a refusal to sign can be seized upon by the employer as a pretext to fire the employee when the penalty to be imposed for the disciplinary violation was two days' pay. The Unemployment Insurance Code (§ 1256) provides that an employee may be disqualified for benefits for misconduct evincing a "willful . . . disregard of an *employer's interests*", but the employer's interests were manifestly not involved in the violation of a union provision designed to protect the employee. (Italics added.)

Moreover, the disciplinary notice given Mr. Madeiros - "Employee Signature as to Receipt" - did not comply with the bargaining agreement requirement that he was "only acknowledging receipt of said notice and is not admitting to any fault or to the truth of any statement in the notice." My colleagues, following the trial court, say that the notice given and the

notice required are but “just different sides of the same coin” and in any event Madeiros was orally informed that no adverse inference was to be drawn. But the explicit written notice required by the collective bargaining provision is there for a reason, to negate any adverse inference, an inference not ruled out by the statement “Employee Signature as to Receipt.” And the employer’s oral statement negating the inference manifestly did not comply with the written requirement.

I would affirm the judgment of the Unemployment Insurance Appeals Board.

BLEASE, Acting P. J.