

No. 32054 – *Herbert J. Thomas Memorial Hospital v. Board of Review of the West Virginia Bureau of Employment Programs, James G. Dillon, as Chairman thereof, James Sago and Carl A. L. Bloom, as members thereof, Greg Burton, Commissioner of the Bureau of Employment Security, and James M. Kirk*

**FILED**

**July 12, 2005**

released at 3:00 p.m.

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

OF WEST VIRGINIA

Starcher, J., dissenting:

Mr. Kirk was fired for taking food at work without paying for it.

Oh, my God! It is not as if this is the first time such an act ever occurred.

Nevertheless, for his transgressions – taking food from his employer, Mr. Kirk was fired, then denied unemployment compensation benefits – benefits that were restored by the Unemployment Compensation Board and sustained by Judge Irene Berger, subject to a six week disqualification period.

But the employer, Thomas Memorial Hospital, thought firing and a six-week disqualification wasn't a severe enough penalty.

So Thomas appealed (and lost) – twice, with the Unemployment Compensation Board and in circuit court. I mean, Thomas was determined to send a message!

Now the majority of this Court has reversed the Unemployment Compensation Board and a good circuit judge. No mercy for food stealers!

I note that the lawyer who apparently led Thomas Memorial Hospital to this stunning victory over a “food-stealing janitor” (who had no lawyer) was treasurer of the “Christian Legal Society” when he was in law school. I wonder what a certain Carpenter's

reaction would be to a decision that gave the *maximum possible penalty* to a janitor who took food at work without paying.

Accordingly, I dissent.