

# **Workman, C.J., Dissenting Opinion, Case No.23855 Janice Glass v. Cathy S. Gatson, et al.**

No. 23855 - Janice Glass v. Cathy S. Gatson, Clerk of the Circuit Court of Kanawha County; James G. Dillon, as Chairman of Board of Review, West Virginia Bureau of Employment Programs; Andrew N. Richardson, as Commissioner of West Virginia Bureau of Employment Programs; and One Valley Bank, N.A.

Workman, C. J., dissenting:

I must respectfully dissent from the majority's decision on the grounds that its conclusion that One Valley was at fault within the meaning of West Virginia Code § 21A-6-3 (1996) in temporarily<sup>(1)</sup> requiring Ms. Glass as its employee to take on one-third of the duties of a deceased co-worker is preposterous. When the facts of this case are examined, the ridiculousness of the result reached is immediately apparent. The mail clerk died on Friday, May 6, 1994. For the next four working days, Ms. Glass, in addition to her own duties as an escrow clerk, was assigned one-third of the mail clerk's responsibilities. Yet, as the majority acknowledges, by her own testimony Ms. Glass "performed a small amount of the mail clerk's duties, but mainly focused on her escrow agent duties." On that fourth working day, Ms. Glass submitted her resignation without giving her employer any notice regarding her complaint or the opportunity to resolve the situation.

The majority wrongly relies on an earlier decision of this Court in Wolford v. Gatson, 182 W. Va. 674, 391 S.E.2d 364 (1990), to conclude that Ms. Glass had no obligation to inform her employer of her dissatisfaction with having to perform a portion of the mail clerk's duties for the purpose of permitting One Valley an opportunity to accommodate her needs/concerns. While this Court distinguished the claimant's case in Wolford from those where the employers "were unaware of the situations that caused the claimants to leave their employment[,] the concern at issue was undeniably "whether notice by the claimant might have resulted in adjustment." Id. at 676, 391 S.E.2d at 366. While we noted that the employer in Wolford was aware of the changed circumstances--a twenty-five percent reduction in hours--we further observed that the claimant in that case had "informed . . . the store manager[]that the reduction in her work hours was causing a financial hardship." Id. Thus, Wolford does not stand for the proposition that the claimant does not have an obligation to inform the employer of her reason for being "forced" to leave work whenever the change in working conditions emanates from the employer--certainly this is almost always the case. When read, even cursorily, the import of the analysis in Wolford was to present employers with an opportunity to accommodate the dissatisfied employee prior to resignation. Because Ms. Glass never gave One Valley the benefit of her concerns, the Bank never had the opportunity to make any adjustments. I wholeheartedly concur with the circuit court's observation in Wolford that West Virginia Code 21A-6-3(1) implies "'at the very least, a "good faith" effort on the part of the employee to speak with his or her employer regarding the reason or reasons he or she is being "forced" to leave work.'" 182 W. Va. at 676, 391 S.E.2d at 366.

In addition, the majority's conclusion that the additional mail clerk's duties, which amounted to only five or six hours a week of additional responsibilities, amounted to a "substantial unilateral change[] in the terms of [Ms. Glass'] employment" has me (almost) speechless. See Syl. Pt. 2, Murray v. Rutledge, 174 W. Va. 423, 327 S.E.2d 403 (1985). Assuming Ms. Glass worked a forty-hour work week, these additional duties took up, at most, fifteen percent of her work week. That doesn't even come close to qualifying as "substantial." If court personnel were justified in resigning every time we added t their duties, we would certainly have a huge turnover here. The Board of Review and the circuit court correctly applied the facts of this case to the

law in concluding that the job changes instituted by One Valley were "not substantial such as to justify the claimant quitting her job for the purposes of unemployment compensation." The bottom line is that the correct decision was reached below and the majority has set a dangerous precedent that will leave employers with little or no room for requiring additional responsibilities to be assumed by their employees in situations similar to what occurred in this case. Further, it actually suggests that employees who feel a change has been made in their duties may unilaterally resign without ever giving their employers a right to address the issue.

1. Although the decision was ultimately reached by One Valley not to fill the position of the deceased coworker, because that decision had not been made at the time Ms. Glass submitted her resignation, the Bank's action in requesting her to assume additional duties prior to her resignation would have to be viewed as merely temporary in any analytical framework. (Ms. Glass' own testimony indicated that she was not aware at the time of her resignation that One Valley did not intend to replace the mail clerk position.)