

James Poniatowski :
 :
v. : A.A. No. 15 – 090
 :
Department of Labor and Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. The United States Postal Service participates in Rhode Island’s unemployment insurance system voluntarily. As a federal employer, the Postal Service does not make regular contributions into the unemployment fund as private employers do; instead, it reimburses the Department of Labor and Training for any benefits that are provided to its former employees.

In this case, Mr. James Poniatowski, a postal worker, argues that the Board of Review of the Department of Labor and Training erred when it found him ineligible to receive unemployment benefits while he was suspended from work without pay. However, I have concluded that this Court will not be able address

the substance of his argument. Because I believe the outcome of this appeal (however this Court were to rule on the merits of Mr. Poniatowski's complaint) would have absolutely no financial impact on any of the parties, I believe the instant case must be DISMISSED due to mootness. I so recommend.

I

FACTS AND TRAVEL OF THE CASE

On February 6, 2015, Mr. Poniatowski, a 21-year employee of the Postal Service, was out on his delivery route on the East Side of Providence when he was involved in a dispute with a postal customer, which was prompted by her request that he move his vehicle.¹ Although he and the customer gave different versions of what transpired, Mr. Poniatowski admitted he used profanity in front of the customer.² For this, Claimant was suspended without pay.³

On May 5, 2015, while still on suspension, Mr. Poniatowski filed for unemployment benefits.⁴ And because the Postal Service did not respond to the Department's request for information about Mr. Poniatowski's suspension, a designee of the Director of the Department of Labor and Training issued a

¹ Decision of Referee, July 30, 2015, at 1.

² Id.

³ Id.

⁴ Department's Exhibit No. 1 (Form 480), in electronic record at 84. References to the electronic record will be designated as "ER."

decision, on June 23, 2015, finding Claimant was eligible for benefits.⁵ The Postal Service filed an appeal and, on July 28, 2015, Referee Carol A. Gibson conducted a hearing, at which Mr. Poniatoski and a representative of the employer appeared and testified.⁶

Two days later, on July 30, 2015, Referee Gibson issued her decision. In addition to making findings regarding the incident, she also noted that, on June 15, 2015, Claimant had made a settlement with the Postal Service, under which, in return for being permitted to return to his job (on June 25, 2015), he agreed that his suspension had been for just cause.⁷ So, at the time of the hearing, Mr. Poniatoski had been back to work for over a month. In any event, the Referee found Claimant had been discharged for proved misconduct.⁸

Mr. Poniatoski filed an appeal from this decision. The Board of Review declined to conduct a new hearing into the matter; instead, it found that the decision of the Referee was a proper adjudication of the facts and the law applicable thereto; the Board therefore adopted the Referee's decision as its own.⁹

⁵ Department's Decision, June 23, 2015, Department's Exhibit No. 2, ER, at 81.

⁶ Referee Hearing Transcript, at 1.

⁷ See Decision of Referee, July 30, 2015, at 1. See also Employer's Exhibit No. 3, ER, at 63, and Referee Hearing Transcript, at 33-35, 41.

⁸ Id. at 2.

⁹ See Decision of Board of Review, August 31, 2015, at 1. This procedure is

Disappointed by this outcome, Mr. Poniatowski filed an appeal in the District Court on September 30, 2015. Jurisdiction for appeals from the decisions of the Board of Review is vested in the District Court by Gen. Laws 1956 § 28-44-52. This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1.

II ISSUES PRESENTED — APPLICABLE LAW

Introduction

As I indicated at the outset of this opinion, I believe that it is demonstrable that the outcome of this case will have no financial effect on any of the parties: not on Claimant, who is actively pursuing this appeal, and not on the Postal Service, which is (thus far) a passive party-in-interest. I believe these circumstances require us to consider the threshold issue of whether Mr. Poniatowski's appeal meets the constitutional standard of justiciability.

But, in order to properly evaluate this issue, we will need to familiarize ourselves with three areas of law — first, the doctrine of justiciability itself; second, the law establishing within the unemployment system a separate program for federal employers — so we can decide if the outcome of the instant case will have a financial effect on the employer; and third, the law governing the Claimant's

permitted by Gen. Laws 1956 § 28-44-47.

liability, vel non, to repay any unemployment benefits he received if the Board of Review's decision disallowing his claim is not overturned.

A

JUSTICIABILITY — GENERALLY

Article 10 of our Constitution,¹⁰ which vests the judicial power of Rhode Island State in our Supreme Court and such “inferior courts” as may be established by the General Assembly, contains no provision, like that found in Article III of the United States Constitution,¹¹ limiting our power to act to “cases or controversies.”¹² However, the Court has stated (and restated) that “ ‘our whole idea of judicial power’ is the power of courts to apply laws to cases and controversies within their jurisdiction.”¹³ And so, the Court will not answer moot

¹⁰ R.I. CONSTITUTION, Art. 10, § 1.

¹¹ U.S. CONSTITUTION, Art. III, § 2.

¹² See State of Rhode Island v. Lead Paint Industries Association, Inc., 898 A.2d 1234, 1237-38 (R.I. 2006)(citing Vose v. Brotherhood of Correctional Officers, 587 A.2d 913, 915 n.2 (R.I. 1991) quoting Rhode Island Ophthalmological Society v. Cannon, 113 R.I. 16, 28, 317 A.2d 124, 130 (1974)); City of Cranston v. Rhode Island Laborers’ District Council, Local 1033, 960 A.2d 529, 533 (R.I. 2008); Sullivan v. Chafee, 703 A.2d 748, 752 (R.I. 1997); United Service and Allied Workers of Rhode Island v. Rhode Island State Labor Relations Board, 969 A.2d 42, 44 (R.I. 2009)(citing Sullivan, id.).

¹³ Lead Paint Industries Association, 898 A.2d at 1238; Rhode Island Laborers’ District Council, id.; Sullivan, id.; United Service and Allied Workers, id. A fuller version of the quotation reads as follows:

Indeed, laws and courts have their origin in the necessity of rules and means to enforce them, to be applied to cases and controversies within

or hypothetical questions,¹⁴ or render advisory opinions.”¹⁵

And so, the Rhode Island Supreme Court has declared that the first requirement for the exercise of jurisdiction is an “actual, justiciable controversy.”¹⁶

And what is a justiciable case? In 2010, the Court reiterated the two requirements of a justiciable case —

“For a claim to be justiciable, two elemental components must be

their jurisdiction; and our whole idea of judicial power is, the power of the [courts] to apply the [laws] to the decision of those cases and controversies. To affect to decide, or to control the decision, of a case or controversy which has arisen at law or in equity, or to interfere with its progress, or to alter its condition in any way, is to assume the exercise of judicial powers. (Emphasis added).

G. & D. Taylor & Co. v. Place, 4 R.I. 324, 337 (1856) as quoted in Sullivan, id.

¹⁴ H.V. Collins Company v. Williams, 990 A.2d 845, 847 (R.I. 2010). A more comprehensive version of the quotation is — “As a general rule, the Supreme Court will ‘only consider cases involving issues in dispute; we shall not address moot, abstract, academic, or hypothetical questions.’ ” H.V. Collins, 990 A.2d at 847 (quoting Morris v. D’Amario, 416 A.2d 137, 139 (R.I. 1980)).

¹⁵ H.V. Collins Company, id. (citing Sullivan v. Chafee, id.). Of course, the Supreme Court is authorized by Article 10, § 3 of the R.I. Constitution to render advisory opinions on constitutional questions propounded by the Governor or one chamber of the General Assembly.

¹⁶ H.V. Collins Company v. Williams, id. (citing Sullivan, 703 A.2d at 751). Although it is interesting to note (though irrelevant to the instant case), that a case which is justiciable when filed will be deemed moot if “... events occurring after the filing have deprived the litigant of a continuing stake in the controversy. Foster-Glocester Regional School Committee v. Board of Review, 854 A.2d 1008, 1013 (R.I. 2004)(citing In re New England Gas Co., 842 A.2d 545, 553 (R.I. 2004)(quoting Cicilline v. Almond, 809 A.2d 1101, 1105 (R.I. 2002) (per curiam)). See also Associated Builders and Contractors of Rhode Island v. City of Providence, 754 A.2d 89, 90 (R.I. 2000).

present: (1) a plaintiff with standing and (2) ‘some legal hypothesis which will entitle the plaintiff to real and articulable relief.’ ”¹⁷

We will now endeavor to unfold these two elements.

1

Standing

a

Standing Generally

The first component of justiciability, the requirement of standing, “focuses on the party seeking to have a claim entertained ‘and not on the issues he [or she] wishes to have adjudicated.’ ”¹⁸ The party must allege a personal stake in the outcome of the controversy sufficient “to assure that concrete adverseness which sharpens the presentation of issues” in contest.¹⁹

The test in Rhode Island to determine whether the plaintiff is a “proper party to request an adjudication of a particular issue”²⁰ (i.e., whether the plaintiff has standing) was enunciated by our Supreme Court in 1974, in Rhode Island

¹⁷ H.V. Collins, ante n.14, 990 A.2d at 847 (quoting N & M Properties, LLC v. Town of West Warwick, 964 A.2d 1141, 1145 (R.I. 2009), quoting Bowen v. Mollis, 945 A.2d 314, 317 (R.I. 2008)).

¹⁸ McKenna v. Williams, 874 A.2d 217, 225 (R.I. 2005)(quoting Flast v. Cohen, 392 U.S. 83, 99, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968)).

¹⁹ McKenna, 874 A.2d at 226 (quoting Flast, 392 U.S. at 99-100, 88 S.Ct. at 1942).

²⁰ McKenna, 874 A.2d at 225 (quoting Flast, 392 U.S. at 99, 88 S.Ct. at 1942, quoting Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691, 7 L.Ed 2d 663 (1962)).

Ophthalmological Society v. Cannon,²¹ to be — whether the plaintiff has alleged that “the challenged action has caused him injury in fact, economic or otherwise.”²² Our Supreme Court’s adoption of the test, called the “injury-in-fact test,” has been repeatedly confirmed in recent years.²³

b

Standing in Appeals From the Board of Review

There do not appear to be any appeals from the Board of Review which decided, or even discussed standing, at least in the constitutional sense we have discussed ante. But, there have been three cases which have discussed a related statutory issue — whether the petitioners qualified as an “aggrieved parties” within the meaning of Gen. Laws 1956 § 42-35-15(a).

The first of the three precedents we shall review is New England Telephone and Telegraph Company v. Fascio.²⁴ In New England Tel. & Tel., the Supreme Court affirmed a decision of a Justice of the Superior Court dismissing the

²¹ Rhode Island Ophthalmological Society v. Cannon, 113 R.I. 16, 317 A.2d 124 (1974).

²² R.I. Ophthalmological Society, 113 R.I. at 22-23, 317 A.2d at 128 (quoting Association of Data Processing Service Organization, Inc. v. Camp, 397 U.S. 150, 152, 90 S.Ct. 827, 829, 25 L.Ed.2d 184 (1970)).

²³ See Pontbriand v. Sundlun, 699 A.2d 856, 861-62 (R.I. 1997); McKenna, 874 A.2d at 226 (2005); Bowen v. Mollis, 945 A.2d 314, 317 (R.I. 2008); N & M Properties, ante n.17, 964 A.2d 1141, 1145 (R.I. 2009).

²⁴ New England Telephone and Telegraph Company v. Fascio, 105 R.I. 711, 254 A.2d 758 (1969).

employer's appeal from a Board of Review decision permitting certain of its striking employees to receive unemployment benefits, on the theory that no property right of the employer was substantially affected, since the payments made were taken from the Department of Employment Security's solvency fund.²⁵

In the next case, Newman-Crosby Steel, Inc. v. Fascio,²⁶ the Court held that neither the Board of Review nor the employer had "legal" (statutory) standing under § 42-35-15(a) to seek review of a Superior Court decision which reversed the Board of Review's denial of benefits to certain striking workers of the petitioner.²⁷ Firstly, it found the Board of Review was not an "aggrieved party" because it served a "quasi-judicial" role and not a regulatory one.²⁸ Secondly, the Court held that the employer was not an aggrieved party because it had not shown that its contributions to its account would be affected by the payments made to its employees, since they were made from the solvency account, and payments so made did not affect the employer's experience rate (and therefore the amount of its future contributions).²⁹

²⁵ 105 R.I. at 717-18, 254 A.2d at 761-62.

²⁶ Newman-Crosby Steel, Inc. v. Fascio, 423 A.2d 1162 (R.I. 1980).

²⁷ Id., 423 A.2d at 1167-68.

²⁸ Id., 423 A.2d at 1165-66.

²⁹ Newman-Crosby Steel, 423 A.2d at 1166-68. Interestingly, the Court also held that the Court should evaluate the petitioner's standing as of the date of filing.

The third and final case, Renza v. Murray,³⁰ has an interesting provenance, as its caption suggests: Mr. John S. Renza was the Director of the Department of Employment Security; Mr. Henry F. Murray was the Chairman of the Board of Review. The case constituted the Director’s effort to reverse the Board’s decision granting benefits to a state worker who ran (unsuccessfully) for public office.³¹ In its analysis, the Court relied on its decision in Newman-Crosby — and held that the Director was an “aggrieved person” within the meaning of § 42-35-15(a) and allowed his appeal.³²

2

The Opportunity For Relief Element — Unemployment Appeals

As mentioned above, the second portion of the test for standing is whether the complainant has presented a legal hypothesis that would entitle him to relief. Excluding the cases discussed in the previous heading (which center on the construction of § 42-35-15(a)), there is, to my knowledge, but one case in which

423 A.2d at 1166-67. Compare this holding with the principle espoused in the cases cited in Part II-A of this opinion, ante at 6, n.16, holding that a case that was justiciable when filed may be dismissed if it subsequently becomes non-justiciable during the pendency of the action.

³⁰ Renza v. Murray, 525 A.2d 53 (R.I. 1987).

³¹ Renza v. Murray, 525 A.2d at 54-55.

³² Renza v. Murray, 525 A.2d at 55-56. The Court found the Director had an interest beyond the customary notions of aggrievement. Id., at 56 citing Liguori v. Aetna Casualty and Surety Co., 119 R.I. 875, 880, 384 A.2d 308, 311 (1978).

our Supreme Court has considered whether an appeal from the Board of Review was justiciable due to the absence of a financial impact on the parties — Foster-Glocester Regional School Committee v. Board of Review (R.I. 2004).³³ Unfortunately, in Foster-Glocester our Court appears to have assumed that the case was moot (due to the absence of a financial impact), but proceeded nonetheless to address the substantive (evidentiary) issue presented — whether the evidentiary value that must be given to prior recorded testimony in Board of Review hearings — because the Court found it to be a question of great public importance notwithstanding the presumed mootness.³⁴ And so, if we reach this issue, we will have to resolve it on general justiciability principles, without the benefit of unemployment cases to guide our way.

3

The Exception to the Rule Precluding Consideration of Moot Cases

Notwithstanding the foregoing, it should be noted that our Supreme Court has declared that even in circumstances where the plaintiff cannot show his claim to be justiciable (because of mootness or some other defect), the issues presented may nonetheless be addressed — “when the issues raised are of extreme public

³³ 854 A.2d 1008 (R.I. 2004).

³⁴ Foster-Glocester, 854 A.2d at 1013-14, 1017-21. For an explanation of the doctrine, see the next heading.

importance and likely to recur in such a way as to evade judicial review.”³⁵

B

MOOTNESS — THE FINANCIAL IMPACT ON THE PARTIES

1

The Possible Impact on the Employer–Postal Service

Having set forth the principles of justiciability and mootness generally, we must now determine whether the instant case will have a financial effect on the Postal Service. And we can only resolve that issue by achieving an understanding of the unemployment system as it applies to private-industry employees, state and local government (reimbursing) employees, and finally, federal employees. We will now provide a brief synopsis of each system.

a

The Unemployment System For Employees of Private Employers

Essentially, the unemployment benefit program for private employers operates like an insurance system — employers pay contributions (which are certainly not voluntary and which are properly considered to be taxes) to the

³⁵ Foster-Glocester, 854 A.2d at 1013 (citing New England Gas, 842 A.2d at 554, quoting Cicilline, 809 A.2d at 1105-06). And, H.V. Collins, 990 A.2d at 847 (citing In re Stephanie B., 826 A.2d 985, 989 (R.I. 2003) quoting Morris, 416 A.2d at 139). Generally, a matter of “great public importance” is one which “will usually implicate important constitutional rights, matters concerning a person’s livelihood, or matters concerning voting rights.” Foster-Glocester, 854 A.2d at 1013 (citing New England Gas, 842 A.2d at 554 quoting Cicilline, 809 A.2d at 1106).

Department of Labor and Training. The amount of these contributions is based on the size of the employer's payroll³⁶ and its "experience rate"³⁷ — which is determined by the employer's unemployment experience (i.e., the number of its former workers who have collected benefits). These contributions become the corpus of what is known as the "balancing account."³⁸ And within the balancing account, each employer has its own "employer's account."³⁹ The bottom line is that if a firm's former employee is awarded benefits, the employer's contribution rate may increase, but benefits will come from the account.

b

The Unemployment System For Charitable & Governmental Employees

However, within the Employment Security Act are a series of provisions which, taken together, permit governmental employers (and nonprofit employers) to avoid this system — by agreeing "to pay to the director for the employment security fund the full amount of regular benefits ... that are attributable to service in the employ ..." of the governmental employer.⁴⁰ Participation in the program

³⁶ The size of the employer's payroll — for purposes of the Employment Security Act — is designated its "taxable wage base." Gen. Laws 1956 § 28-43-7(b).

³⁷ Gen. Laws 1956 §§ 28-43-1(5) and 28-43-8.

³⁸ Gen. Laws 1956 §§ 28-43-1(1) and 28-43-2.

³⁹ Gen. Laws 1956 §§ 28-43-1(4) and 28-43-3, 28-43-4, and 28-43-5.

⁴⁰ Gen. Laws 1956 §§ 28-43-29(a) and 28-43-24(a). See also Gen. Laws 1956 § 28-43-31 (Emphasis added). This program includes state and municipal

— the existence of which is required by the Federal Unemployment Tax Act (FUTA)⁴¹ — is not mandatory; but if a governmental employer opts out of the program, it must enter the contribution system.⁴² Each month, the Department bills each governmental employer for benefits paid to their former employees.⁴³

Note that the duty to repay the Department is absolute,⁴⁴ so long as the benefits that were paid were attributable to work for the reimbursing employer.⁴⁵

governmental employers only. As we shall see in Part II-B-1-b, post, federal employers partake in a similar, but separate, system.

⁴¹ See 26 U.S.C. § 3304(a)(6)(B) and 26 U.S.C. § 3309(a)(2). It has been said that Congress’s purpose in permitting governmental and non-profit employers to be “reimbursers” is to permit these employers to avoid paying more into the unemployment fund than the actual costs incurred by the unemployment program. See 76 AM. JUR. 2d Unemployment Compensation § 37 (citing Wilmington Medical Center v. Unemployment Insurance Appeal Board, 346 A.2d 181, 183 (Del.Super. 1975) aff’d Unemployment Insurance Appeal Board v. Wilmington Medical Center, 373 A.2d 204 (Del. 1977)).

⁴² Gen. Laws 1956 § 28-43-24(c).

⁴³ Gen. Laws 1956 § 28-43-30(a). Indeed, payment by Rhode Island’s state agencies is virtually automatic; invoices for state agencies are sent directly to the General Treasurer for payment. Gen. Laws 1956 § 28-43-30(b).

⁴⁴ The only exception of which I am aware is the situation where the Department paid the claim “without authority” to do so. Jewish Home for the Aged v. Department of Labor and Training, A.A. No. 91-255 (Dist.Ct. 03/06/1992). What happened was this — the claimant was permitted benefits by the Director but when the Referee reversed, curtailing benefits, the DLT continued to pay the Claimant. We found that these post-decision payments were made illegally and were, ipso facto, not attributable to the claimant’s service with the charitable institution.

⁴⁵ Westerly Public Schools v. Department of Labor and Training, Board of Review, A.A. No. 2013-101, at 23-26, 40-41 (Dist.Ct. 2014)(Ippolito, M.).

The Unemployment System For Federal Employees

Now, the states cannot require the federal government and its agencies to participate in their unemployment systems. This is so because every award of benefits to a formal federal worker (made by a state agency or court) would, in essence, constitute a money judgment against the government; and, as we know, the federal government enjoys immunity from suit.⁴⁶

But, while the federal government has chosen to make unemployment benefits available to its former employees,⁴⁷ it has not established its own federal system to evaluate and adjudicate unemployment claims. Instead, it has waived its immunity, by granting to federal officials the authority to enter into an agreement

While the term “attributable” is not defined in the statute, we can nonetheless note that — according to lexicographers past and present — the word connotes only a causative relationship. See Webster’s Third New International Dictionary of the English Language, (2002) at 142, wherein the second definition of the verb “attribute” is given as — “: to explain as caused or brought about by : regard as occurring in consequence of or on account of <the collapse of the movement can be *attributed* to lack of morale>.”

⁴⁶ Constantopoulos v. New Hampshire Department of Employment Security, 107 N.H. 400, 404, 223 A.2d 418, 420-21 (1966)(citing United States v. Sherwood, 312 U.S. 584, 586, 61 S.Ct. 767, 85 L.Ed. 1058 (1941) and United States v. Preston, 352 F.2d 352, 356 (9th Cir. 1965)). Also, Weaver v. Wallace, 565 S.W.2d 867, 871 (Tenn. 1978)(citing United States v. Sherwood, 312 U.S. 584, 61 S.Ct. 767, 85 L.Ed. 1058 (1941)).

⁴⁷ Regarding the system under which a former federal worker may seek unemployment benefits, see generally, 76 AM. JUR. 2d, Unemployment Compensation, § 56.

with each state agency under which they (i.e., the state agencies) are delegated the authority to adjudicate the unemployment claims of former federal employees.⁴⁸ And if benefits are awarded (and paid), the federal government must reimburse the state program.⁴⁹

In Ranone v. Department of Employment Security, Board of Review,⁵⁰ our Supreme Court recognized that this authority had been accorded to the Rhode Island unemployment program.⁵¹

2

The Possible Impact on the Employee — Mr. Poniatowski

With regard to the potential impact on the Appellee, Mr. Poniatowski, we may note the presence of the following provision of the Employment Security Act:

⁴⁸ Weaver, 565 S.W.2d at 872 (citing 5 U.S.C. § 8502)). See also Constantopoulos, 107 N.H. at 404-06, 223 A.2d at 421-22 (citing 26 U.S.C. § 1362, the predecessor provision to 5 U.S.C. § 8502). In Fondel v. Commonwealth Unemployment Compensation Board of Review, 111 Pa. Cmwlth. 123, 128, 533 A.2d 789, 792 (1987), a Pennsylvania Court indicated that the state programs act as “agents” of the federal government (citing 5 U.S.C. § 8502).

⁴⁹ See Hill v. Commonwealth, Unemployment Compensation Board of Review, 35 Pa. Cmwlth. 252, 255, 385 A.2d 1032, 1034 (1978)(citing 5 U.S.C. § 8502, 5 U.S.C. § 8505). See also Constantopoulos, 107 N.H. at 405-06, 223 A.2d at 421-22 (citing 26 U.S.C. § 1366, the predecessor provision to 5 U.S.C. § 8505).

⁵⁰ 474 A.2d 748 (R.I. 1984).

⁵¹ Ranone, 474 A.2d at 751 n.7 (citing 5 U.S.C.A. §§ 8502-03 (1967)). Our Court noted that the compensation awarded must be “ ‘in the same amount, on the same terms, and subject to the same conditions’ as would be paid under the unemployment compensation law of the state.” Id.

28-44-40. Payment of benefits pending appeal — (a) If an appeal is filed by an employer, benefits shall be paid to an eligible claimant until that employer’s appeal is finally determined. If the employer’s appeal is finally sustained, no further benefits shall be paid to the claimant during any remaining portion of the disqualification period. Any benefits paid or payable to that claimant shall not be recoverable in any manner. ...

As can be readily seen, § 28-44-40(a) requires benefits paid to Claimants during the pendency of an employer’s appeal. And, any benefits paid during this period are not recoverable.

III

ANALYSIS – THE JUSTICIABILITY (MOOTNESS) QUESTION

A

Mr. Poniatowski Does Not Have Standing to Appeal

Mr. Poniatowski’s benefits ended when he went back to work in June of 2015. And, under § 28-44-40, he cannot be ordered to repay any benefits he received pursuant to the Director’s June 23, 2015 decision. And so, the Referee’s July decision denying him benefits had no tangible effect upon him. The same is true of the Board of Review’s August affirmance. Quite simply, Mr. Poniatowski suffered no “injury-in-fact” from either decision.⁵² And because he cannot show he has standing to appeal, this case must be considered non-justiciable.

⁵² See Part II-A-1-a of this decision, ante at 7-8, and cases cited therein.

B

Mr. Poniatowski Cannot Be Deemed an “Aggrieved Party”

Based upon the precedents discussed ante, at 8-10, it is clear that Mr. Poniatowski’s inability to show any injury also requires us to find that he cannot be deemed an “aggrieved party” as that term is used in § 42-35-15(a).⁵³ And so, Mr. Poniatowski’s appeal must be denied and dismissed.

C

The Instant Appeal Can Have No Financial Impact on the Postal Service

I have concluded that the instant case will have no financial impact on the employer, because, whatever the decision of this Court, the Postal Service must reimburse the Department of Labor and Training for benefits it paid to Mr. Poniatowski. Why must it do so? Because it promised to. The United States Postal Service, like other federal employers, voluntarily assumes the duty to repay the Department of Labor and Training for any benefits the agency paid to the USPS’s former (or, in this case, suspended) worker.⁵⁴ It must, if it has not already done so, reimburse the Department for the monies it paid out.⁵⁵

⁵³ See Part II-A-1-b of this decision, ante at 8-10, and cases cited therein.

⁵⁴ 5 U.S.C. § 8505.

⁵⁵ See Part II-B-1-c of this decision, ante at 15-16, and cases cited therein.

D
**Because the Instant Appeal Can Have No Effect
On Both Parties, It Is Moot**

Because, as we have found, the instant case can have no financial impact on either of the parties, it cannot be regarded as an “actual, justiciable controversy.”⁵⁶ And so, since this Court may not rule on what is simply “an abstract question,”⁵⁷ I must recommend that the Court find the instant case to be deemed non-justiciable and moot.

In support of this principle I must invoke one last statement of our Supreme Court, one drawn from the R.I. Laborers District Council case, which, in my estimation, rolls the instant case up into a neat little ball:

If this Court’s judgment would fail to have a practical effect on the existing controversy, the question is moot, and we will not render an opinion on the matter.⁵⁸

And so, because I believe that the outcome of the instant appeal can have no practical effect (economic or otherwise) on the parties to the instant case, I must recommend it be deemed moot.

⁵⁶ H.V. Collins, 990 A.2d at 847 (citing Sullivan, 703 A.2d at 751).

⁵⁷ H.V. Collins, *id.* (citing Sullivan, *id.*).

⁵⁸ R.I. Laborers’ District Council, Local 1033, 960 A.2d at 533 (citing Morris, 416 A.2d at 139).

This recommendation is consistent with two recent District Court rulings, which held that the appeals of a state governmental employer and a reimbursing municipal employer were financially moot.⁵⁹ And I believe our recommendation is further buttressed, if only inferentially, by our Supreme Court’s decision in Foster-Glocester Regional School Committee v. Board of Review, (R.I. 2004),⁶⁰ where the Court assumed arguendo that the case before it was financially moot — as it proceeded to find the case fell within the exception to the mootness rule.⁶¹

E

The Mootness Exception Is Inapplicable

Finally, we must ask, does this case fall within the exception to the rule against deciding moot cases, which allows moot cases to be decided “when the issue before [the] court is one of great public importance that, although technically moot, is capable of repetition yet evading [judicial] review.”⁶² I believe not.

⁵⁹ See Kent County Water Authority v. Department of Labor and Training, Board of Review, A.A. No. 2014-71, at 7-9 (Dist.Ct. 2013)(Montalbano, M.) and Westerly Public Schools v. Department of Labor and Training, Board of Review, A.A. No. 2013-101, at 40-52 (Dist.Ct. 2014)(Ippolito, M.).

⁶⁰ 854 A.2d 1008, 1013-14 (R.I. 2004).

⁶¹ Id.

⁶² See Part II-A-3 of this opinion and cases cited therein, ante at 11, n.35. Also, In re Briggs, 62 A.3d 1090, 1097 (R.I.2013)(citing In re Tavares, 885 A.3d 139, 147 (R.I.2005)).

The issue here is simple and contains none of the eminence which would justify judicial review: the Director granted benefits because it had not heard from the employer. He awarded benefits because he had been given no basis to disqualify Mr. Poniatowski. As we know, when the employer did (belatedly) present its reason for suspending Claimant, the Referee was satisfied that misconduct had been shown and Mr. Poniatowski was disqualified — and the Board of Review affirmed.

So, the only great principle to be gleaned from this case is an obvious one — the Postal Service (like every employer) should cooperate with the Department of Labor and Training when it seeks information. I therefore find this case contains no issue of such significance as to justify review notwithstanding the financial mootness of the case.

IV CONCLUSION

For the reasons stated above, I recommend that the instant appeal be DISMISSED as being non-justiciable and moot.

_____/s/_____
Joseph P. Ippolito
MAGISTRATE
January 25, 2016

