STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

FLOYD SCHULTZ,

TRANSFER & STORAGE,

Complainant,

vs.

EARL WETENKAMP d/b/a WETENKAMP

Respondent.

Case I No. 13927 Ce-1311 Decision No. 9781-C

ORDER AMENDING AND AFFIRMING EXAMINER'S FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Examiner John T. Coughlin having, on March 31, 1971, issued his Findings of Fact, Conclusion of Law and Order, with Accompanying Memorandum in the above entitled matter; and the Commission, on April 20, 1971, having issued a Notice of Review thereof, wherein the Commission indicated that, on its own motion, it would review the entire record in the matter as well as the Examiner's Findings of Fact, Conclusion of Law and Order and Accompanying Memorandum; and the Commission having done so, and being satisfied that the Examiner's Findings of Fact, Conclusion of Law and Order and Accompanying Memorandum be amended and affirmed;

NOW, THEREFORE, it is

ORDERED

- 1. That paragraph 11 of the Findings of Fact be amended to read as follows, and, that, however, the Commission affirms the remaining Findings of Fact as found by the Examiner as its own:
 - "11. That on June 22, 1970, Schultz contacted Respondent and told him that his physician had released him and that he was now available for work; that Respondent informed Schultz that he considered him to have quit his job and that in any event there was no work available; and that, however, Schultz had not quit his employment but was discharged by the Respondent."
- 2. That the Commission affirms the Conclusion of Law and Order issued by the Examiner in the above entitled matter.
- 3. That the first two sentences in that portion of the Memorandum under the title "Discussion" be amended to read as follows:

"The initial question existing in the instant case is whether Schultz quit his job or was terminated by the Respondent on June 3, 1970, for if Schultz voluntarily quit his employment such a fact would result in the dismissal of the complaint. We have found that Schultz did not quit his employment, since in order to constitute a quit the Respondent would have had to establish that Schultz actively or constructively conveyed an intention to the Respondent that Schultz quit his employment. There is nothing in the record to establish such an intention. On the contrary, the evidence discloses that Schultz left his employment on June 3, 1970, during the working day because of a back injury and at no time did he convey any intention of quitting his employment. Thus, the termination of Schultz's employment resulted from a constructive discharge by the Respondent."

4. That the Commission adopts the remaining portion of the Examiner's Memorandum as its own.

Given under our hands and seal at the City of Madison, Wisconsin, this 16th day of July, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Morris Slavney, Chairman

del S. Rice II, Commissioner

Jos. B. Kerkman, Commissioner