

**SC92682, Reva Billings and William Morrison v. Division of Employment Security**  
Appeal from the Labor and Industrial Relations Commission  
Argued and submitted Jan. 31, 2013; opinion issued Apr. 9, 2013

**Attorneys:** Billings and Morrison were represented by Canice T. Rice Jr., an attorney in St. Louis, (314) 241-8000; and the division was represented by Michael E.C. Pritchett and Shelly A. Kintzel, general counsel for the department of labor and industrial relations in Jefferson City, (573) 751-3844.

**Overview:** A company operated a call center employing more than 800 workers. Under the contract between the company and the workers' union, before the company could lay off workers, it must provide them with a least two weeks notice. In July 2008, the company advised two of the call center workers that they were to be laid off in the near future and advised them that they should no longer return to work. The workers were eventually laid off more than two weeks later. The two workers then applied for benefits under a federal provision that provides weekly allowances and training for workers who have lost their jobs as a result of foreign trade. In order to receive these benefits, the workers must have been separated from their employment on or after the "impact date" set by the federal government. The impact date set for the two workers was after the day that they were told they would be laid off in the future and not to return to work but before the day that their layoffs were effective. The two were denied their benefits under the federal provision on the grounds that their dates of separation were the day they stopped coming into work. The two appealed the decision, arguing that their dates of separation were the dates of their lay offs, thereby making them eligible for benefits. The commission found for the company. The workers appeal. The decision is reversed and the case is remanded.

**Facts:** On July 3, 2008, Western Union informed Reva Billings that she would be laid off from her position at the Bridgeton call center July 20, 2008, and it informed William Morrison that he would be laid off from his position August 7, 2008. These lay off dates complied with the union contract, which provided that Western Union must provide those with one year or more of service 15 days notice prior to their "force-reduction furlough." At issue is the effect, if any, of the fact that both were sent home from the workplace July 3, 2008 and advised not to return between then and their lay off dates.

Under the Trade Act of 1974, workers who have lost their jobs as a result of foreign trade may be eligible for weekly allowances and training. The United States Department of Labor determined that the former Bridgeton call center employees were eligible for Trade Act benefits and set their "impact date" as July 15, 2008. A condition of an individual claimant's eligibility for Trade Act benefits is that the claimant's date of separation from employment must have occurred on or after the determined "impact date."

Ms. Billings and Mr. Morrison applied for their benefits to the Missouri Division of Employment Security, but it denied benefits to both on the grounds that they were separated from employment before the July 15, 2008 impact date. It found the date of separation for Ms. Billings and Mr. Morrison to be July 3, 2008, the day that they

received their contractually-required notice that they would be laid off in the near future. On appeal, the Labor and Industrial Relations Commission affirmed and adopted the Division's rulings.

### **COURT REVERSES DECISION AND THE CASE IS REMANDED.**

**Court en banc holds:** Under the Trade Act, "date of separation" is defined as "the last day worked." The act does not provide a definition of "work" or "last day worked" and no state or federal court has addressed its meaning under the act. Western Union contends that Ms. Billings and Mr. Morrison's last day worked was July 3, 2008, the day they received notice that they would be laid off in the future, since they also were told to go home until those lay offs became effective. It says that the period between the notice and the actual layoff should not be considered work, even though the two employees were not yet laid off.

Western Union's interpretation of "last day worked" is based on the erroneous supposition that the employer must allow the worker to be physically present at the workplace or actively engaged in work away from the workplace for the employee still to be working for the employer. But this is not the case. If the employer declares that the employee is to be paid until a particular day of the month, and that pay is not severance pay or furlough pay but actual work pay, as is the case here, then the employees are considered working until the time of their separation from employment. Western Union cites no authority for this Court to consider the period after the notice and before the employment ended as some sort of novel but undefined status that neither constitutes work nor unemployment.

For these reasons, Ms. Billings and Mr. Morrison continued to work for Western Union until the day that they were actually furloughed on July 20 and August 7, 2008, respectively. Because their separation from employment occurred after the July 15, 2008, impact date of certification under the Trade Act, the facts of the case do not support the Labor and Industrial Relations Commission's denial of Trade Act benefits. The decision is reversed, and the case is remanded.