THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Case No. 2017-002378

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 17-ALJ-22-0224-AP

Ross Buchanan, Appellant,

v.

South Carolina Department of Employment and Workforce and Upstate Machine and Manufacturing, LLC, Respondents.

[redacted] REPLY BRIEF [redacted] OF APPELLANT

[redacted]

APPELLANT

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REPLY BRIEF OF APPELLANT

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STATEMENT

There are two main issues in this case.

1) Is the South Carolina Administrative Law Court's determination of the Appellant's actions during his employment to be misconduct, "reasonable"?

2) Is there "substantial evidence" to support the Appellant's claim that the SCALC's ruling was in error and should be reversed?

ARGUEMENTS

Does the evidence support the Appellant's version of events or the Employer's ?

*** It was alleged that Appellant deleted programs the week before his vacation and recorded them secretly to blackmail the Employer upon his return.

(Respondent's Brief p. 6,9)

***It was alleged that Appellant "admitted" to recording programs that only he knew about and that it wasn't a normal practice. (Respondents' Brief p.9)

The Appellant's witness, his immediate supervisor Craig Travis testified that he DID know about the Appellant keeping handwritten records of programs and the reason why he did so. (Record On Appeal pp. 67-68)

The Appellant's other witness, Chad Treadway testified that a handwritten program was the only way he could load a program. (ROA p.69)

He also testified that the former shop foreman (Rusty) used the same method of program recording and uploading as well as other employees. (ROA p.70)

The reason for this may not be obvious, but the Appellant realized the limitations of the operators, the machines and the methods of uploading and downloading programs at Upstate Machine. (ROA pp. 50-58, 60-61, 65-67)

This was not misconduct to harm the employer, just the opposite.

Once again, please read Appellant's statement in the ROA page 61 lines 18-31 and Craig Travis' testimony in ROA p.67 lines 27-29 (question) and p. 68 lines 1-2 (answer).

The motion to exclude wage statements because they are not in the Record On Appeal is not only incorrect, but shows the bias of the previous rulings.

The Appellant's wage statements can be found on p. 12 of the Record.

The issue of asking for wages promised, earned and not paid to the Appellant according to South Carolina law, for over a year is what has been called misconduct. (ROA p.61)

The Employer testified that this had been brought up many times by the Appellant. (ROA p.71) This was also entered into the Record by the Appellant. (ROA p.63)

It was also the Employer's testimony that the Appellant had never been given a disciplinary warning or reprimand during the entire time of his employment. (ROA p. 47)

Furthermore the Appellant offered additional witness testimony that the Employer had previously demanded the Appellant work for no wages. (ROA p. 27)

To our knowledge, this was never investigated even though the Appellant provided The name and phone number of the state employee at the South Carolina Dept of Labor that he spoke with at the time of the incident.

***Finally, we have two allegations by the Employer of misconduct used as a basis for SCDEW decision and SCALC upholding it.

On p. 15 in the ROA the Employer states in his own handwriting that Appellant also had "missed many days of work in 2017" and "used all PTO for the year" and "missed one day of work per week this year on top of PTO used".
Just a reminder that this entire year being referred to was the **month of January** 2017 and the Appellant was dismissed the first week of February.
The first week of January was broken up by the New Year's holiday and the last week was the appellant's earned vacation otherwise called personal time off (PTO).
The Appellant DID take an additional week off the first of February without pay, after which he returned to work.
Now, please refer to the Employer's opening statement in the ROA p. 43, lines 18-23.
This testimony is also made in other places in the ROA, but the Employer's own words show that this "missed work" was NOT an issue of misconduct but voluntarily agreed upon – in direct conflict with the reason given to the SCDEW for the Appellant's dismissal.

***The second allegation at the center of this dispute is whether the Appellant 'marched into the employer's office and demanded money' in an attempt to blackmail him.

There is a definite conflict of testimony on this point between the Appellant and the Employer. There is no dispute between the testimonies about the next sentence of that conversation. The Appellant was told to "pack his stuff and leave."

But according to the ROA, no witness heard this "blackmail attempt" except the Employer. It is unsubstantiated by the evidence in the ROA p. 47 lines 21-28, p. 48 Lines 1-11.

CONCLUSION

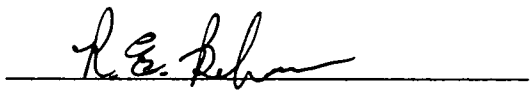
These are just some of the many inconsistencies between the testimony of the witnesses and the conclusion of the SCDEW and SCALC.

The Appellant's version of events has been backed up with other witnesses' testimony. The Employer's version of events is either in direct conflict with the testimony given in the ROA or unsubstantiated by other witnesses.

Yet this has been called a "reasonable" decision to believe the Employer and not believe the Appellant.

The decision of the SCALC is not supported by the evidence in the ROA and should be overturned.

Respectfully submitted,



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July 20, 2018.

CERTIFICATE OF COUNSEL IN FINAL BRIEF

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

February 18th, 2019

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