THE STATE OF SOUTH CAROLINA

In The 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.

BRIEF OF APPELLANT

APPELLANT

Ross E. Buchanan, pro se
73 Doris Lisa view drive.
Hendersonville NC 28792

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1) Because the appellant simply asked to discuss the wages owed him, it was not misconduct and rightful cause for termination. It was in fact a wrongful termination.

2) Because the evidence is substantial, the decision of the Administrative Tribunal of SCDEW, this court has the authority to overturn this decision per South Carolina state statutes. Title I Chapter 23 section 1-23-380.

3) Because the decision was arbitrary and capricious this court again has the authority cited above to overturn the decision of the SCDEW.

4) Because asking for back wages is not asking for a pay increase, nor is it blackmail. It is in fact a recognized right of an employee and when done in a respectful and civil manner, as in this case the total being over $20,000, it should not be ruled as misconduct and a reason to deny unemployment benefits. Title 41 Chapter 35 section 41-35-120.

TABLE OF AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

1) IS IT CAUSE FOR TERMINATION TO ASK FOR YOUR BACK WAGES?

OR IS THAT CONSIDERED "MISCONDUCT" BY THE STATE OF SOUTH CAROLINA?

2) IS IT REASONABLE TO HEAR A WITNESS' TESTIMONY CONFIRMED AND DOUBT HIS CREDIBILITY?

3) IS IT "ARBITRARY OR CAPRICIOUS OR CHARACHTERIZED BY ABUSE OF DISCRETION OR CLEARLY UNWARRANTED EXERCISE OF DISCRETION" TO HAVE THE COUNSEL FOR THE SCDEW ARGUE THAT I "MARCHED INTO EMPLOYER'S OFFICE AND DEMANDED THAT THEY TALK ABOUT MONEY", WHEN NO SUCH TESTIMOMY WAS EVER GIVEN?

4) AND IN THE STATE OF SOUTH CAROLINA, IS RECEIVING WAGES THAT ARE OWED TO YOU CONSIDERED A PAY INCREASE?

STATEMENT OF CASE

Appellant Ross Buchanan filed an initial claim for unemployment with SCDEW on 2/10/2017.

Both employer and he furnished fact finding statements to SCDEW. The claim adjudicator determined appellant was fired for misconduct and disqualified from benefits. He timely appealed to the Appeal Tribunal.

On 3/22/2017 the tribunal conducted a hearing and affirmed the initial determination.

Appellant appealed to the Appellate Panel on 3/28/2017.

On 5/12 2017 the Panel affirmed the Tribunal's decision.

Appellant sought judicial review from South Carolina Administrative Law Court on 6/12/2017.

That decision affirmed previous ones and was sent to Appellant on 10/12/2017.

He now seeks justice from the Appeals Court of South Carolina.

FACTS

Appellant worked for employer from June 2015 until February 2017. He was at another company in Greeneville SC, where

he ran the 2nd shift production facility and took the position of production manager for Upstate Machine in Campobello SC. (R. p. 71, line 29)

The agreed upon salary was $1,000 a week. I received exactly that amount until about a month later when the owner, Stan Cannon said we had actually agreed on $50,000 a year, reducing my pay to approximately $961 a week.

Then about a month later on September 8, 2015 the Tuesday after Labor Day I arrived at 8 am. to find my supposed replacement, Craig Travis was hired.

When Stan finally got around to talking to the appellant about the situation at noon, excuses were offered and that his pay was reduced to $20 an hour.

He had been making $21.50 an hour at his previous job.

Several times over the next year the appellant not only continued to run the shop under Stan's direction, but twice moved to 2nd shift to run a crew to increase production. (R. p. 72, lines 16 – 19)

This is a direct contradiction to the employer's statement that the appellant lacked "people skills and couldn't get along with the employees" on page 72 of transcript.

Contrary to the false statement presented as "fact" by Counsel for SCDEW Sandra Groom, the appellant was responsible for EVERY machine in the shop, production, maintenance and training of employees.

The appellant had permission to alter, add or delete any program on any machine at any time and did so for the length of his employment. (R. p. 59, lines 1 -19)

The reason for this was given inadvertently on page 67 of the transcript by Craig Travis, a subpoenaed witness.

Mr. Travis, in his own words, isn't a programmer.

On at least half a dozen occasions the appellant approached the employer about his continuing to be responsible for the shop's production and yet not receiving the wages promised and agreed to at hiring. (R. p. 51 lines 18 – 31, p. 28, p.29 lines 1-9)

More than once it was submitted in writing and is in the record of appeal.

During December of 2016, the employer approached the appellant with several new parts for a new customer to make that required precise tolerances. In order to achieve this the appellant had to realign and repair a machine that was to be used for these jobs as it was operating out of tolerance.

This machine was only available because the appellant had moved a production part onto that machine and reduced the production time from 20 minutes down to 3. Hence the parts were done months ahead of schedule.

This machine is the Takisawa CNC lathe with live tooling, the one I was on the day I was fired.

The very same machine that just recently had it's back up batteries replaced (R. p. 54 Lines 1- 6) as testified by the employer.

The employer also testified about not having any problems with his machines in this area and more than adequate memory (R. pp. 50 - 54) as the appellant is cut off his questioning by the hearing officer (R. pp. 51 - 52).

Fortunately there is enough testimony to see that the appellant is correcting the statements made by the employer and there is documentation of it elsewhere.

This machine was disconnected from power for over a month. This is when the machine relies totally upon the back up power of the batteries.

A couple of points here.

(1) Yes, the batteries can last longer than a month, but why take the chance of

(2) losing the programs AND the parameters which are much more valuable and harder to replace?

(3) In the front of every CNC manual ever made, there is section that tells you NOT to use the machine as a device to store programs. The more you store the more battery you use. They advise you to keep it to a minimum and store them with an alternative method. Since the day the appellant was hired he tried to do this and the employer and his nephew resisted and blocked this attempt to store it on the central computer system.

As a matter of fact, when Mr. Travis was hired, the computer was taken out of his office and transferred to the front offices and passwords changed.

This was what the appellant was trying to explain, along with the electrical problems the other machines were having when he was cut off by the hearing officer as asking "irrelevant" questions.

On the day the appellant returned to work from his earned vacation, he noticed that none of the 3 machines he had been running before he left had been used at all. Not only had they not been used, the chips were still in the chip bin on one of them where he had trained an operator to finish running the job he had set up for her to run. The other one was sitting unused as normal and the Takisawa still had no tools attached to the turret as he had just reassembled it prior to his vacation after performing the realignment.

This contradicts several of the statement made by employer in the transcript. The reason this is included in these facts is to again show the credibility of the witnesses as a whole. (R. p. 54, lines 23 – 29 , p. 45, lines 1-2, lines 14-18)

On this day February 8, 2017 the appellant spent the first few hours of the day cleaning one machine and assembling the tooling necessary to set up the Takisawa as instructed by the employer.

Right around lunch time the appellant asked if he could speak to the employer for a few minutes and that was all the time it took.

He asked, "Can we discuss this unresolved financial situation?"

The employer replied, "If that's the way you feel about it, get your stuff and get out!"

The appellant replied, "Are firing me for asking a question?"

The employer answered, "Yes, now pack your **** and get out now!"

Afterwards the appellant left immediately and came back for his tools a few days later, giving the employer a chance to change his mind. This didn't happen and he filed for unemployment benefits and has been appealing those decisions by the SCDEW ever since.

The dates and filings are in the record of appeal.

ARGUMENTS

It is the determination of the SCDEW that the appellant was guilty of misconduct and therefore caused his own termination.

We refute that.

As asked in the ISSUES STATEMENT, this is only valid if asking an employer for wages that are owed and/or disputed is a reason for termination.

We do not believe that there are any such statutes in the State of South Carolina.

Moreover there are statutes that cover this and no where is termination for cause listed.

In the cases referenced in the table of contents, SC courts have ruled that asking for wages owed are a matter of public policy and indeed a right of the employee to exercise.

Evans v. Taylor, Keiger v. Citgo, Mathis v. Brown , Garner v. Morrison,

In firing the appellant, the employer is guilty of wrongful termination, contrary to view of the SCDEW that he was guilty of misconduct.

It was the arbitrary and capricious characterization that the employee was committing "blackmail" that resulted in this erroneous decision.

We think it is the intent of everyone to try and resolve these conflicts without going thru civil action whenever possible, which is what the appellant did for

over a year. This is also in agreement with the cases cited.

When he was terminated, we believe it was the duty of the SCDEW to fairly determine if this was the case.

It did not. Instead they affirmed the employer's false accusation that he had blackmailed the employer for a "pay increase".

Even after testimony that the previous production manager , Rusty used the exact same method of recording programs that the appellant used, it was characterized as surreptitious and private, which it was not. (R. p. 70, lines 15 – 22)

We will note at this point that the subpoenaed witnesses would not testify that they knew of the appellant's notebook of programs. It is our view that even if every employee were subpoenaed and put under oath, they would all say the same thing.

The reason for this has also been made clear and despite providing the name and telephone number to the legal counsel in the SC Dept. of Labor who could verify at least one instance of the employer's abuse and intimidation, this has been termed as irrelevant. (Ms. Sheila Schwartz, SCDOL. And I still have her direct phone number should the judge like to call her and verify our conversation) (R. pp. 27 -28) We again disagree.

When interviewing an employee of the employer who has witnessed other employees being threatened and fired in the presence of that employer, we

doubt that their testimony will be completely honest. It's not their fault, they are afraid for their jobs as well.

There is an employee there, Jim Carr who still has unpaid medical bills for a hernia operation as a result of a workplace injury. He was threatened with termination if he even asked again for the form to fill out for Workers Comp.

I know of several more violations of South Carolina Labor Laws that have taken place there. The employer is not credible and unscrupulous. (R. pp. 28-29)

This is why it is imperative that the review and appeals process be unbiased and we do not think that is the case here.

One only needs to read the transcript to conclude that the employer's testimony is not credible and not substantiated by facts.

This is where Lark v. Bi-Lo comes into play, most often cited by the opposing counsel.

Of course two people can come to different conclusions where the evidence isn't clear, but when the evidence IS clear, it is disingenuous to use that argument as an excuse to ignore an injustice.

The courts are clear in this matter. It is the right of the employee to ask for his back wages, it is not blackmail. It is clear from the evidence presented by the appellant that he asked for these wages many times before in a civil and respectful way, even writing the reasons down and giving them to his employer at an agreed to meeting. This was in response to the employer making a counter offer to the appellant to take a bonus compensation for production instead of his original agreement.

This is on page 89 of the Record On Appeal, Claimant Exhibit #1. (R. p. 89)

And although he hadn't yet convinced his employer to uphold their pay agreement, he continued in good service and to look after his employer's best interest.

We also point to SC Code Title 41 regarding wages and Mathis v. Brown and Brown.

The appellant had a verbal contract for his pay and duties that is supported by wage statements going back to 2015. (R. p. 12)

We do not think it reasonable to believe that an employee would voluntarily leave a job for less money and a lesser position.

The fact that the appellant was still the production manager de facto at the time of his termination also disputes the employer's testimony that all of this was done without knowledge and permission. Nearly every employee in that shop can testify to the fact that he had permission to write, delete or alter programs at will.

We do not agree that a reasonable person would come to the conclusion otherwise.

We do find it more than reasonable that the appellant continued in good service to the employer while trying to resolve this pay discrepancy without resorting to filing a claim with the Dept. of Labor nor a civil suit.

In fact had he filed a complaint, the very same question he asked the employer on February 8, 2017 would have been asked by the State of South Carolina employees sent to investigate that claim.

Would they also be guilty of misconduct and disregard for the employer's interests?

It is also a fact that the appellant was not aware of the statutes in Chapter 41 until they were quoted at the bottom of his 1st denial claim letter. He was acting in good

faith and in the spirit of the law without even realizing it at the time.

This was upheld in Kieger v. Citgo as well.

The fact that the head of the agency Cheryl Stanton also refused to pay wages owed to her housekeepers until she was sued in court was not lost on me in all this.

Is it any wonder that the agency that is supposed to be fair and unbiased, would side with a dishonest employer who reneges on pay agreements?

There's nothing wrong with South Carolina being pro business. What IS wrong, is to allow employers to withhold rightfully earned wages, wrongful terminations and then aid that employer in using dishonest language to deny rightfully earned unemployment benefits.

Is it any wonder that other employees would be reluctant to come forward in this type of atmosphere? Just look at the cases I cited. How many employees had to go to the Appellate Courts or Supreme Courts to receive the justice they should have already been granted?

I don't think this is a case of two different, reasonable views here. This is a simple case of basic right and wrong, the things we were taught as children by our parents and grandparents.

CONCLUSION

This incident has caused the appellant great financial harm and he would ask the court to review this matter and find in his favor, reversing the SCDEW's decision and granting the appellant the unemployment benefits denied, totaling approximately $6500.oo

We also ask that the court please accept his attempts at complying with the rules of this court as best he can, given his limited financial resources.

Hiring an attorney to file these documents and paying all of the costs for transcription is beyond his means.

Since a transcript was already available in previous appeals, that is the only one he can afford to copy from. The State agency already has its own copy as well as the Record on Appeal and the appellant would be more than happy to furnish as many copies to the Court as they deem necessary.

Also the court has generously granted an unasked request to waive the $100 filing Fee. This is not necessary but greatly appreciated. I only ask for my day in court to seek justice.

Thank you.

Ross E. Buchanan

CERTIFICATE OF COUNSEL IN FINAL BRIEF

THE STATE OF SOUTH CAROLINA

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CERTIFICATE OF COUNSEL

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

November 27th, 2018

R. E. Buchanan

Ross E. Buchanan, pro se
73 Doris Lisa view dr.
Hendersonville NC 29792
(828) 685-7556