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Dypwick v. Swift Transp. Co., Inc. Appellant's Brief Dckt. 35027

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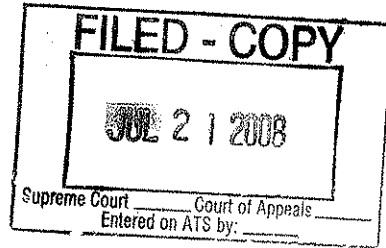
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BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

KURT J. DYPWICK,)
)
Claimant / Appellant,)
)
vs.)
)
SWIFT TRANSPORTATION CO., INC.,)
)
Employer / Respondent,)
)
and)
)
IDAHO DEPARMENT OF LABOR,)
)
Respondent.)
_____)

SUPREME COURT NO. 35027

APPELLANTS / BRIEF



BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

For Claimant / Appellant

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1901 Mount Street Unit C
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For Employer/Respondent

None

For Respondent

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 SWIFT TRANSPORTATION CO., INC.,)
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)
 IDAHO DEPARTMENT OF LABOR,)
)
 Respondent)
 _____)

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of July, 2008 a true and correct copy of Appellant's brief, filed July 18th, 2008 was served by regular United States mail upon each of the following:

THE SUPREME COURT OF THE STATE OF IDAHO
PO BOX 83720
BOISE, ID 83720-0101

SWIFT TRANSPORTATION COMPANY INC
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DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
317 W MAIN STREET
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Claimant / Appellant

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ISSUES

Your Honors I have several points to bring up in the matter of the way my case was handled. From the very start I feel that the burden of proof has been placed on me. During the process Swift has always had the last word until this point. They have misrepresented reasons for my termination and confused the examiner and the Industrial Commission. I will briefly as best I can clarify my concerns and hope that a fresh prospective will show what I feel to be an unjust termination.

WARNINGS/WRITE-UPS

I have never received any write ups during my employment with Swift Trucking. The only warning I received was during my training period due to misinformation provided by my mentor/trainer.

HANDBOOK ISSUES

The handbook I received was old, outdated and missing pages. As you can see in my previous briefs I have continually documented that the handbook I received was missing the policy for which I was terminated. The Industrial commission realized the importance of this fact and still made several errors. The most important error was in assuming that I actually had page 22 in my manual and assuming it would contain a damaged equipment policy. They addressed this by saying I should have displayed common sense and have been able to understand what my employer expected of me anyway. This certainly doesn't meet the preponderance of evidence that the employer is supposed to show and not me. This misunderstanding is documented on page 66 of the original list of exhibits. On page 65 they further state that the "standard of conduct"

appeared on different pages of two examples. The Industrial Commission further stated that discussion is identical in both exhibits when in actuality my copy has 29 listed standard of conduct policies (see page 42 of original list of exhibits) while their standards of conduct have 35 policies (see page 36 of original list of exhibits). This may seem minor but is only one of many key oversights and misrepresentations of my entire case.

INCOMPLETE INVESTIGATION

After my brief meeting with Mr. Hadley on June 8, 2007, I was told that there would be an investigation and it would take at least a week for Phoenix to make a decision. This is further stated in the handbook that a decision of this magnitude would be handled at a corporate level in Phoenix.

1. No attempt to reach the previous driver was made to see if he in fact had damaged the trailer.
2. No attempt to contact Shopko was made to see if they had knowledge of trailer damage. The Shopko facility is equipped with security video cameras at the check out station. No contact was made to review these cameras as they may have supported my claim that the trailer was damaged before I picked it up.

LOG BOOK

Much has been made about my failure to note damage to the trailer in my log book. In fact no copy of my log book was ever presented as evidence and for good reason. The log book is a very small piece of paper with very limited area to make a notation of

damage. There was no way I could completely explain this incident on the log book form. Furthermore Mr. Hadley was less than honest on several occasions during the phone hearing held by the appeals examiner. Mr. Stephens, the appeals examiner, was confused about the timing of events regarding my reporting or failing to report the damage to the trailer. In the **Findings of Fact** on page 16 of the list of exhibits he states that on June 8, 2007, was the first time Mr. Hadley received a report about a trailer that I had just unhooked and unloaded. He further notes the significance of not putting the damage into a log book and my admission that in hindsight I should have written something. On number 9 of **Findings of Fact** Mr. Hadley stated that not reporting trailer damage in a log book was a violation of policy that in and of itself could have resulted in my discharge. This is not true. They never documented this policy and this statement was misrepresentation on Mr. Hadley's version of why I was terminated. No. 8 of the **Findings of Fact** shows Mr. Stephens was aware that I had reported damage to the trailer attaching a written note to it after consulting my home terminal safety manager.

On page 28 of the list of exhibits you will see that my inexperience during my questioning of Mr. Hadley prevented me from bringing out discrepancies/willful admissions and misrepresentations of the chain of events. One of the questions I was able to ask Mr. Hadley was he aware that one full day earlier on June 7, 2008, which was the actual date I dropped off the trailer, I reported the trailer damage to Shawn Marks, my safety manager. His response was "yes I remember but you didn't specify damage or when it took place". Further review of that page will show I don't feel Mr. Stephens realized that this was the best way based upon my training to report damage. As I had

reported previous trailer damage in this exact same manner without noting it on my log book I feel there is an ulterior motive by Mr. Hadley for my termination.

Log book violations were not even one of the original reasons listed as a reason for my termination. Under the way the system works Mr. Hadley was less than honest and Mr. Stephens misunderstood the significance of the claim I was fired for a log book violation.

The way the process works is the log books are placed in a sealed pouch, placed in a locked drop box and sent to Phoenix. The log book dates in question could not have possibly been reviewed by Mr. Hadley in Salt Lake City because on the date of my termination, June 11, 2007, the log books were still on their way to Phoenix and would not even be entered into the computer until days if not weeks later. This is very significant proof and proves that Mr. Hadley was not completely forthcoming with his testimony. This lends credibility of my feelings that my termination was retaliatory and not based on any definitive policy I was ever made aware of.

MR. HADLEY

In my dealings with Mr. Hadley I have found him on several occasions to be less than truthful.

The most blatant occasion was a documented Costco driver meeting concerning log book entries. To be brief, Mr. Hadley left a group of drivers believing his suggested solution to a log book entry problem was adequate. In fact it was not. The meeting was about to end at that point when I realized that his suggestion was not adequate. As the drivers were leaving the meeting I pointed this out to Mr. Hadley. The other drivers then

realized that they had been misled and their jobs could be in peril if they had followed Mr. Hadley's suggestions as they understood them. The meeting then became more confrontational between the other drivers and Mr. Hadley as they were quite upset that he had misled them. Mr. Hadley was perfectly willing to let this group of drivers leave the meeting believing his instruction on something that he knew was not true and Mr. Hadley was quite upset with me when all I wanted was a definitive answer and to know how to properly maintain my log book.

Further Mr. Hadley in our June 8, 2007 meeting misrepresented to me the decisions that would be made determining my termination. These are documented in my previous briefs in the list of exhibits.

TRAILER DAMAGE

There is good reason no photos and no costs were ever listed by Swift Trucking/Mr. Hadley regarding the damage to the trailer. Damage to the trailer was minimal and was repaired with a piece of small piece of sheet metal and a couple of dozen rivets. In the audio recording Mr. Hadley exaggerated the damage to the trailer.

HANDBOOK

The policies in the handbook are purposefully vague and could justify terminating a person for any reason at all as they were interpreted by the Industrial Commission.

They were never followed by Mr. Hadley as they were actually intended to be regarding warnings and severity of discipline. The vague wording lead Mr. Hadley to jump to the most severe form of punishment possible.

MY CONCLUDING STATEMENT

Your Honors, I feel I have adequately addressed my concerns and feel a fresh and unbiased review of this case will show that I was wrongfully terminated by Swift Transportation Co. and that Swift certainly did not have a preponderance of evidence to justify my termination.

I further believe my termination was pushed through by Mr. Hadley for retaliatory reasons as all of my professional dealings with him were unpleasant.

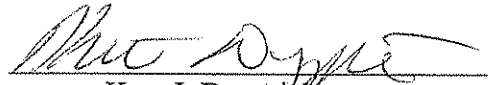
The original reason as reported to the Labor Board for my termination was a policy that I have proven was never made clear to me and I had no knowledge of during my training.

The ascertainment that I did not display common sense in addressing this policy, figuring out on my own how to proceed, doesn't explain why on previous occasions when I had reported damage in the exact same manner as this incident on trailers I picked up, my course of actions never put my job in peril and never resulted in written or verbal warnings.

If in fact this had been such a flagrant violation of company rules why did my safety manager Shawn Marks handle this in such a completely different manner? He never took

any disciplinary action for this incident that Mr. Hadley opted to terminate me for. This is definitive proof of Mr. Hadley's animosity and I feel proves my claim that my handling of the situation had never in the past been brought to my attention as being procedurally incorrect.

DATED this 18th day of July 2008



Kurt J. Dypwick
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Missoula Mt 59801
Claimant / Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the foregoing APPELLANT'S / BRIEF,

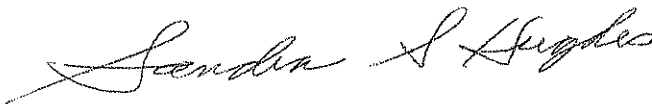
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THE SUPREME COURT OF THE STATE OF IDAHO
PO BOX 83720
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Claimant / Appellant

7-18-08



CERTIFICATE OF SERVICE - 1



SANDRA S. HUGHES
NOTARY PUBLIC-MONTANA
Residing at Missoula, Montana
My Comm. Expires July 26, 2008