

9-11-2008

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

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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,

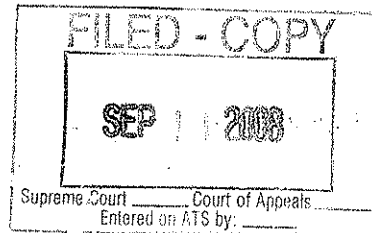
and

IDAHO DEPARTMENT OF LABOR,

Respondent.

**SUPREME COURT NO. 35027**

**APPELLANTS / REPLY BRIEF**



**BEFORE THE SUPREME COURT OF THE STATE OF IDAHO**

**For Claimant / Appellant**

Kurt J. Dypwick, *Pro Se*  
P.O. BOX 5662  
Missoula MT 59806

**For Employer/Respondent**

None

**For Respondent**

Tracey K. Rolfsen  
Deputy Attorney General  
Idaho Department of Labor  
317 W. Main St.  
Boise, Idaho 83735

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

KURT J. DYPWICK,

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vs.

SWIFT TRANSPORTATION CO., INC.,

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and

IDAHO DEPARTMENT OF LABOR,

Respondent

SUPREME COURT NO. 35027


CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2008 a true and correct copy of **Appellant's brief**, filed September 8th, 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  
C/O EMPLOYERS ADVANTAGE  
PO BOX 493683  
ERDDING CA 96049-3683

DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
317 W MAIN STREET  
BOISE ID 83735

  
\_\_\_\_\_  
Claimant / Appellant

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## **OPENING STATEMENT**

Your Honors I file another brief in response to the Deputy Attorney General, no less. In this entire process I have continually responded to new charges/claims and new interpretations of old ones. On only one occasion has the respondents even addressed the original reason for separation of employment. They have never addressed Mr. Hadley's perjury or misinterpretation of the incident. They have failed to hear this proof on the recorded phone appeal, instead focusing on snappy clichés like "squeaky clean" that were said to amuse/impress others as they were most certainly never said to me as Mr. Hadley suggested.

## **RESPONDENTS STATEMENT OF THE CASE**

I do the best I can in as this is all new to me. **On page 2, paragraph 3, statement of facts,** the last paragraph on page 2 continuing on page 3 begins with the log book. I'm not aware of any "Federal Law requiring me to note trailer damage in my log book". This is the first time this has been mentioned. What has failed to be addressed by Respondents at any time or even disputed by Mr. Hadley was the fact that I handled similar situations in the exact same manner as this one reporting the damage upon arrival at Destination Terminal.

## **ARRIVAL TIME**

Once again my arrival time in Salt Lake City is incorrect. This is important for several reasons. The most important one being that as I had previously done on other incidents, I reported the trailer damage to my home terminal manager, Shawn Marks on June 7<sup>th</sup>, 2007, in the morning. I was told to document incident and attach to trailer in ziplock as it

was raining. I never heard a word about the trailer until a full day later when I was contacted by Mr. Hadley. The very next paragraph is also wrong. I did not bring the trailer to the repair shop in Salt Lake City. I dropped it off at Shopko.

### **DRIVER'S MANUAL**

In regards to the Driver's Manual that wasn't, the Deputy General had good reason to not fully respond to my claims, there wasn't one. At the very least I have shown a different Handbook where a different number of policies existed. I have proven I received a used version of Handbook with pages missing and different verbiage, so to continually dismiss and ignore my ascertations hardly lend credence to the preponderance of evidence that they are held accountable too.

### **ARGUMENT**

**On page 5 last paragraph statement of facts,** I noticed that **A)** Mr. Hadley's "employers Safety Manager" became involved in my case. To begin with, he wasn't my safety manager. My safety manager was Shawn Marks who I had already reported the damage to. In fact Phoenix was even our corporate headquarters called by myself where I received a claim number. If this was such a serious mistake why did Shaw Marks or Phoenix take no action? I've come to my conclusions about this and documented evidence about it in the last brief I submitted and numerous others along the way. **B)** Mr. Hadley having a note explaining damage, the reporting of it a full day earlier, spoke to Shawn Marks for confirmation, had a claim number that I could only get by calling Phoenix, Mr. Hadley chose to misrepresent the incident from the start by falsely entering the wrong reporting date, not involving my safety manager, lying about my terminations reasons "log book and other things" not the original reason, and addressing a decision

that was impossible to make. Simply put I was terminated on Monday, 6 to 11 days, maybe even weeks before Mr. Hadley would even be able to review my log book. This was all documented during the phone interview under oath. Why hasn't this been pursued as perjury is beyond me. If I had been as deceptive as Mr. Hadley, I could have altered my log book or taken a small piece of sheet metal a dozen rivets and fixed the damage if I had actually caused it or felt I would be blamed for the damage. Why didn't I do this, easy because first, I'm honest and second, I felt I did nothing wrong as I have continually pointed out. I have handled this situation on previous occasions the exact same way. The only difference being Mr. Hadley chose to involve himself and misrepresent the incident from the start. Obviously Mr. Hadley carried hostility towards me from before mentioned Costco Driver meeting. C) On page 6 continuing paragraph describes burden of proof of charge of misconduct. How I committed a willful disregard of my employers interest is beyond me, but standards of behavior is a 2 part question answered by me as follows: 1) My conduct with this incident was no different than previous conduct with similar incidents. 2) I feel to deal with a situation the same way as before would meet any employers expectation. If than handling of the situation was wrong I should have been previously corrected and not held accountably by handbook regulation I had no way of knowing about.

### **DECISION AND ORDER**

**In Respondents Brief page 15 third paragraph the Supreme Court points out**

**"Employer's Expectations are ordinarily reasonable only when they have been**

communicated to the employee” Folks V Moscow School District No. 28) 129 Idaho 833, 838, 933 P.2d, 642, 647 (1997).

The following paragraph states in part willful malice need not be proven, but ends it with stating its employee can only be held accountable for breaching those expectations that he or she understood explicitly or implicitly and was capable of satisfying.

How can I be expected to satisfy a requirement I had no way of knowing about, and once again I handled this matter incident in the exact same way as previously done with no problems or training issues from my safety manager the day I reported damage to him.

The only problems arising from this incident occurred a day later when Mr. Hadley began falsifying reports due to an ongoing animus towards me. My only exceptions to the next few paragraphs are insinuations and verbiage (**Page 17 Paragraph 3**). Such as “According to Claimant” this is much more than that. Mr. Hadley on this audio admitted he had that note. Why he did fail to document properly? Let alone mention it’s existence until my question under oath at which time he tried to downplay it’s significance.

**Going to page 18 of Respondents Brief 1<sup>st</sup> paragraph** the Deputy District Attorney once again places the burden of proof on me to be responsible for me being in possession of an old outdated handbook with missing pages. **1<sup>st</sup> piece of evidence Page 29 of Respondents Brief Page 37** of same. They admit the difference but claim “regulation is probably on another page”. It is not and if it had been, I’m sure they would have admitted it into evidence as this would undermine my claim. Next paragraph, once again



goes to log book. I admit I did misunderstand the importance of noting damage in this fashion for predamaged trailers. As I have continually pointed out I did nothing different handling this incident than several others I came across as an employee of Swift Transportation. The only difference being Mr. Hadley's involvement.

Since the word common sense and reasonable have oft been used let's lay this to rest now. I can't see what would be more reasonable and make more common sense than to handle a situation in the exact same way as past incidents were reported. On the other hand for **an employer to terminate an employee with no chance to correct past accepted behavior (see page 33 of Respondents Brief)** is not only unreasonable but makes no common sense.

One other pertinent item just caught my eye. **Page 28 of Respondents Brief** "Acknowledgment and Agreement". When I in fact signed this agreement it very clearly states (last sentence paragraph 4) which handbook I would be held accountable for, the one I signed, not the one they produced. Page 35 last sentence of log rules and regulations also contains a DOT Regulations not in effect for some time before I was hired. With over 20,000 drivers I'm sure Swift could have found at least one copy of the version of handbook I was given, and it would take a great stretch of the imagination to think this wasn't done. Instead they have to debate "common sense" and infer it might or should be there. Hard to imagine any state seeing this as just!

### **IN CONCLUSION**

I will include in my closing statement what I feel are the 10 most relevant pieces of evidence submitted. I actually feel if the whole process was reviewed from start to finish only once conclusion would be reached.

**Exhibit 4) 1 of 2** pages the original reason for my termination, certainly no mention of Mr. Hadley's reason "log book and other things"

**Exhibit 5) page 8 of 13** Paper from my driver's manual mentioning DFSC and old class I was not required to attend or would have no way of even knowing about if this wasn't in my USED handbook. By the way, the copy I sent to the appeals examiner was two sided and showed this was written in the handbook.

**Exhibit 3) 1 of 16** An amended reason for my firing, since they have last say let's continue to add reasons as we go. As all we have to do is win the phone appeal and it is next to impossible for claimant to prevail regardless of the truth. This also puts the Labor Board and the Deputy Attorney General on our side. Talk about the cards being stacked against you! As employers Advantage is a professional termination company it's easy to see their strategy in hindsight.

**Exhibit 3) page 11 of 16** this is the agreement I signed upon academy release. This process certainly wasn't followed in regards to me and tends to lend credence to my claim.

**Exhibit 3) page 7 of 16** Once again let's dump fuel on the fire mentality. I never received this and was never warned on it. Interesting notation on bottom line where it asks for signatures. They only have my name typed in but also my safety managers. I could draw several conclusions to this. One thing beyond logic if you see where Swift identifies a problem 3 fuelings Falsified 10 logs violations shows the 5 step policy they are going to enforce fail to do so and state only one identified. Recurring problem may lead to further disciplinary action seems in whole a little more severe than what they

claim. I was terminated for and even contradicts their written remedy to cure the problem. Obviously Mr. Hadley wasn't looking to "Fix Problem".

**Exhibit 1 of 4 faxed to appeals examiner** Last mention of log book "problems" on my file. This has never been disputed by swift. Seems like I fixed any log book problem 5 months before I was terminated.

**Exhibit 3 page 8 of 16, 11-16-06 Costco meeting in question** where Mr. Hadley misled us. I inquired about acquiring a copy of taped meeting and was told it "wasn't available".

**Exhibit 3 page 10 of 16** description of incident where Mr. Hadley Falsified vital information such as occurrence date and reported date and who reported it.

**Faxed 3 of 4 Exhibit followed by Exhibit 3 page 12 of 16** There could be no more definitive proof of different handbooks existing and different policies. I have previously gone in great depth why it was necessary to question my common sense or inferring something existed. If it did exist they would have certainly found the appropriate handbook version and display it. What could be more simple?

In closing one of the Respondents claims I wasn't presenting anything new. Just asking you to re-weigh the evidence in my favor. In a way that's exactly what I'm asking you do to. Address, review and weigh all the evidence in its entirety. If this is done, I feel a fair finding in my favor would be reached.

Thank you your honors.

  
Kurt J. Dypwick

Idaho Department of Labor  
219 W. Main St.  
Boise ID 83735-0030  
Phone: (208) 332-8943  
Fax: (208) 334-6222

Auth By 00  
Issue ID# 1 Res. Code 020 Status  
Effective Date 07/15/2007 End Date 999999  
Issue ID# 2 Res. Code 021 Status  
Effective Date 07/15/2007 End Date 999999

**ELIGIBILITY DETERMINATION  
UNEMPLOYMENT INSURANCE CLAIM**

SSN: [REDACTED]

**CLAIMANT:**

KURT J DYPWICK  
1901 MOUNT STREET UNIT C  
MISSOULA MT 59801

**INTERESTED EMPLOYER:**

SWIFT  
C/O EMPLOYERS ADVANTAGE  
PO BOX 493683  
REDDING CA 96049

**DECISION**

The claimant is ineligible for benefits effective 7/15/2007. Eligibility may be re-established when the claimant has obtained bona-fide work and received wages in an amount of at least 14 times the weekly benefit amount after 6/8/2007 and then becomes unemployed through no fault of the claimant. The employer's account is held not chargeable for experience rating purposes for the claimant's benefits effective 7/15/2007.

**SUMMARY OF FACTS**

- The claimant was discharged for not reporting damage to a trailer before use.
- The claimant stated that he was not aware that he was to report the damage.
- The employer provided a copy of the handbook which states that any damage found is to be reported immediately.
- The claimant stated that he had a copy of the handbook and had read it 3-4 times.

The documentation furnished established the claimant's actions were in violation of company policy and fell below the standard of behavior the employer had the right to expect.

**LAW**

Section 72-1351(2)(a) of the Idaho Employment Security Law provides in part that for experience rating purposes, no charge shall be made to the account of such covered employer with respect to benefits paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer, or who had been discharged for misconduct in connection with such services.

Section 72-1366(5) of the Idaho Employment Security Law provides that a claimant shall be eligible for benefits provided that unemployment is not due to the fact that the claimant left employment voluntarily without good cause connected with his employment or that he was discharged for misconduct in connection with his employment.

8/8/2007

Date Of Mailing

8/22/2007

Last Day To Protest

**PROTEST RIGHTS**

If you disagree with this determination, you have FOURTEEN (14) DAYS from the date of mailing to file a protest. A protest must be in writing and signed by an interested party. The protest can be filed in person, faxed or mailed to any local Idaho Department of Labor Office. If the protest is mailed, it must be postmarked no later than the last day to protest. Email protests will not be accepted. If no protest is filed, this determination will become final and cannot be changed. If you have any questions about this determination or filing a protest, please contact any Idaho Department of Labor office.

**TO CLAIMANT:** If you have been allowed benefits and this determination is later reversed, benefits paid are subject to repayment. If this occurs in your claim, a Determination of Overpayment will soon be mailed to you. If this determination is protested, you should continue to report on your claim as long as you are unemployed.

**TO EMPLOYER:** This will be your only opportunity to protest this issue. You may not protest these findings after the decision becomes final. A future chargeability notice based on this issue will not provide new protest rights.

EXHIBIT # 4Page 1 of 2 Pages

42 = 6 WKS Under Dispatch (8)

20 Backing

1 WK = 7 Days

(58)

Road Test  
Solo

Safety Class, Logging  
benefits

DFSC = 30 Days After (MUST) 8 HRS  
(Driver Finishing Safety Class) Attend Paid

is always 2 week behind Tuesday Lathrop California

64 4 13  
**EMPLOYER'S ADVANTAGE, INC.**

Unemployment Insurance Administration, Representation and Human resource Services

P.O. Box 493683 Redding, CA 96049

Office (530) 222-1421 Fax (530) 222-8409

CLAIMANT: Kurt J. Dypwick

CLAIMANT SS#: [REDACTED]

Hire Date: 7/10/06

Term Date: 6/11/07

The claimant was terminated for violating company policies and procedures. The claimant ignored established safety guidelines set forth by the employer. The claimant was terminated for multiple preventable accidents/log violations and/or traffic violations. Copy of policy and procedures attached.

1. Rate of pay: .26 cents per mile
2. Driver Manager: Kathy Klaus

Paige Delles

PRINTED NAME

A Paige Delles

SIGNATURE

Claims Rep.

TITLE

7/25/07

DATE

EXHIBIT # 3

Page 1 of 16 Pages

SS# 573270571

DOT/Swift

**Daily Log Rules & Regulations**

The hours of service rules and regulations governing Drivers are part of the Federal Motor Carrier Safety Regulations (FMCSR), part 395 are as follows:

"No motor carrier shall permit or require a Driver of a commercial vehicle to drive for any period having been on duty seventy (70) hours in any eight (8) consecutive days."

For commercial Drivers operating locally within a 100 air mile radius from their home terminal the period is sixty (60) hours in any seven (7) consecutive days.

Commercial Drivers may not drive more than Eleven (11) hours or drive and be on duty more than Fourteen (14) hours without having Ten (10) consecutive hours off duty.

It is the policy of Swift Transportation that no Dispatcher, Driver Manager, or Operations Representative will schedule or assign a load without sufficient hours for the Driver to complete the trip legally and will not permit any Driver to exceed the eleven (11), fourteen (14), sixty (60), or seventy (70) hour limits.

It is the policy of Swift Transportation that all Drivers comply with FMCSR 392.3(i), "The Driver shall submit or forward by mail the original Driver's record of duty status to the regular employing motor carrier within 13 days following the completion of the trip."

Disciplinary action for log violations shall include but is not limited to:

- 1<sup>st</sup> Offense - Verbal Warning - Driver counseled and required to attend a log class
- 2<sup>nd</sup> Offense - Written Warning - Driver counseled
- 3<sup>rd</sup> Offense - 3 day suspension without pay
- 4<sup>th</sup> Offense - May Terminate/Place Out of Service or 5 day Suspension without pay
- 5<sup>th</sup> Offense - Terminate/Place Out of Service

Violations found to be Flagrant or Willful may result in immediate terminations of employment or lease agreement.

The above disciplinary action will occur within any twelve-month period of time.

"We can operate legally, provide service to our customers, and obtain enough miles to make a good paycheck, all we have to do is work smarter."

KURT DYRWICK  
Print Name

231661  
Driver/Employee Code

[Signature]  
Signature of Driver

715105  
Date

C-201

Revised 01/19/05

EXHIBIT # 3  
Page 4 of 10 Pages

Incident # 0000000122363

## Hours of Service Violation

Driver Name: KURT J DYENWICK

Date: 01/26/07

Driver Code: 231561

For Logs: 12/01/06 12/31/06

A recent audit has shown your logs are not in compliance as required under Part 393 of the Federal Motor Carrier Safety Regulations. Swift audits logs for compliance with the 11 hour, 14 hour and 70 hour rules as well as for missing logs or log falsification. Falsification checks are done by checking the hours logged on line 3 (Driving) and the miles driven between change of duty statuses and total miles driven. Swift also verifies fuel transactions are logged as on duty not driving in the correct city and state of the transaction. Below is a summary of violations.

Based on a 12 month reporting cycle this is violation

# 1

# Logs Expected	# Logs Received	# Viol Free	% Viol Free	# Logs Violation	% Logs Violation
31	31	21	68	10	32
# Logs Missing	% Logs Missing	11 Hr	11 %	14 Hr	14 %
0	0	2	6.45	6	19.35
# Fuelings Verified	# Fuelings Falsified	Fuel %	Speed	Speed %	Total % Violation
13	3	18.75	1	3.23	12

Due to the violations listed above you are subject to the Swift Corrective Action plan as listed:

- 1st Violation- Verbal Warning and must attend Swift Log Class  
 2nd Violation- Written Warning and Personalized Log Trainings  
 3rd Violation- Written Warning and a day suspension without pay  
 4th Violation- Complete Driver Safety Performance Review with appropriate action, including possible Termination  
 5th Violation- Complete Driver Safety Performance Review with appropriate action, including possible Termination

Compliance improvements must be immediate and sustained on any noted deficiencies. Recurrence of any identified performance related problem(s) may lead to further disciplinary action up to and including termination. Signing acknowledges this counseling has been conducted on the audit findings.

Manager Signature: MARKS

Shawn Marks

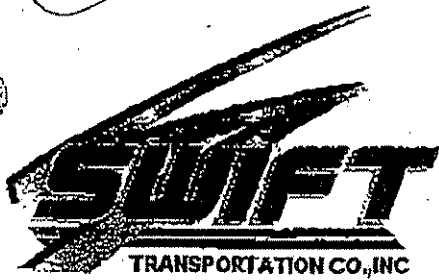
Date: 01/26/07

Driver Signature: KURT J DYENWICK

Date: 01/26/07



66  
10F4  
BUCKET # 3378-2007  
CLAIMANT / KURT DYPWICK  
APPEALS EXAMINER / GREGORY B. STEVENS  
6 (17)



February 27, 2007

SWFT Corporate

DYPWICK, KURT J - 231661  
PO BOX 1981  
LEWISTON, ID 83501

**Subject:** Congratulations

**Period Covered:** 01/01/2007 to 01/31/2007

Dear KURT,

I noticed that on Jan 05 you had a birthday. Happy birthday from all of us at SWFT Corporate.

Our records indicate that you had a violation free record from 01/01/2007 - 01/31/2007! All of us at SWFT Corporate commend you on your attention to detail and commitment to safety.

Professional drivers like yourself are a critical part of our success. Thanks again and keep up the great work.

If you have any questions contact your Safety Department. Drive safely.

Sincerely yours,

AUK

This letter was created based on the following criteria:

Violation Type(s) : 11 Hour, Unbroken Driving Time, 14 Hour, 11 Hour / 1 Day, Over 70 Hours / 8 Days, Team Falsification, Point To Point Speeding, Questionable Speed, Questionable Fueling, Driving Time Per Day, On-Duty Time Per Day, Mandatory Off-Duty Time Per Day, Mandatory Rest, Date, Mileage, Carrier Name, Carrier Address, Unit number, Signature, Shipping Information, Missing Log, Copy Log Received Inlieu of Original, Multi-Day Completed Correctly

10F4

NOTICE: The information set forth in this Document contains confidential and proprietary information of SWFT Corporate. Any unauthorized review, use, retention, disclosure or distribution is strictly prohibited. The data contained in this report is dynamic and may change based on actions taken by SWFT Corporate fleet safety personnel. Please ensure you have access to the most up-to-date data.

DYPWICK, KURT J

(67) DIRECTION HEADING: FROM WB HWY 12 TURNING ONTO NB JOCELYN STREET  
 HOW MANY LANES: WB-2 LANES NB-1 LANE  
 PASSENGER/CO-DRV: SOLO

1st  
 CONT.

V1 WAS MAKING A RT FROM HWY 12 ONTO JOCELYN STREET. THE LIGHT WAS GREEN.  
 V1 PS FRONT TOP TRAILER MADE CONTACT WITH A TRAFFIC TURN SIGNAL LEN.  
 NO DAMAGE TO V2 TRAILER, EMPTY TRAILER.  
 THE LEN CAME OFF, LIGHT IS STILL OPERABLE.

2nd Code/Number...: A (A/I) 1070329154645 Status: C

4/26/07 Co: 002

Type...: BK (?) BACKING Maj/Min: 2 (1/2) CC:

691

Occur. Date/Time: 3/29/07 14:36

Or/Dsp#: V681379 01 (?)

Rept. Date/Time: 3/29/07 15:46

Truck : 44213 Trailer #1:

536191

Reported By Type: D (?) DRIVER REPORT Term.: LEWID (?) Fleet: 09

Drv 231661 KURT J DYPWICK

Flt Mgr: LEW1 (?) Drv Mgr:

KLAUK

Gross Reserve.: .00 Pd: .00 Rcvry:

.00

Accident Desc.:

V1 WAS BACKING INTO DOCK PULLED FWD HIT SLICK SPOT TOUCHED V2 PC HOLDS  
 STEPS

ATAL:N SWIFT INJ:N CLMT INJ:N HAZ:N TOW:N DOT:N MAC 52:Y POLICE:

Preventable? : P(N/P/U) DOT Reportable?: N (Y/N/U)

Loc Desc:

Claims:

LONGVIEW FIBRE PAPER PKG 2200 N MAIN S V S

City/St...: SFUT (?) SPANISH FORK Rd Type: DO (?) DOCK

Road Surface.: SN (?) SNOWY

Div Hwy?: N (Y/N) Lanes:

Weather Cond.: SN (?) SNOW

District: NF (?) NN FXD BJCT

Cause Factor.: BA (?) IMPROP BACKING Photos?: Y (Y/N)

V1 WAS BACKING IN A SIDE BY SIDE DOCK

V1 WAS BLINDSIDE BACKING AND IT IS SNOWING

V1 WAS PULLING FWD AND DIDN'T REALIZE HE TOUCHED V2 TRK

AND PULLED THE PIECE THAT HOLDS THE STEP ON PS

2nd Preventable  
 Incident (Crash)

3rd Code/Number...: A (A/I) 1070608064813 Status: O

Co: 002

Type...: SR (?) STRAIGHT Maj/Min: 2 (1/2) CC: 691

Occur. Date/Time: 6/08/07 0:01

Or/Dsp#: W248907 01 (?)

Rept. Date/Time: 6/08/07 6:48

Truck : 44213 Trailer #1:

44008

Reported By Type: S (?) SHOP/YARD

Term.: LEWID (?) Fleet: 09

/ 231661 KURT J DYPWICK

Flt Mgr: LEW1 (?) Drv Mgr:

LAUK

3rd + Final  
 Preventable  
 Incident  
 (Crash)

EXHIBIT # 3

7/24/2007

Page 10 of 10 Pages

Paige Delles

From: <Don\_Vickery@swifttrans.com>  
 To: <pdelles@employersadvantage.net>  
 Sent: Tuesday, July 24, 2007 2:21 PM  
 Subject: 231661

DRIVER NAME KURT J DYPWICK  
 DRIVE CODE 231661  
 HIRE DATE 7/10/06  
 TERM DATE 6/11/07

TMGR LEWID  
 FMGR LEW1  
 DMGR KLAUK C Msg

Driver: 231661 KURT J DYPWICK  
 SSN.: [REDACTED] Hired: 7/10/06 Terminated:  
 6/11/07

KINGPIN # DATE DESCRIPTION  
 09/05/06 67724

PRE EMP AC HIST DATE DESCRIPTION  
 08/28/06 NO PREVIOUS ACCIDENTS / NO EXP... WILLDEA

VIOLATIONS DATE DESCRIPTION  
 01/18/06 SPEEDING CAR (MVR)... WILLDEA

SAFETY - MISC DATE DESCRIPTION  
 09/05/06 SIM Class Complete By 10/20/06 Per SAFETY  
 09/05/06 Release To Solo Group Log Class Required  
 09/05/06 MPLTR Completed on 09/05/06 Per BARTST  
 PLTR IN LEWISTON  
 10/20/06 SIM Completed on 10/20/06 Per HODGH  
 10/20/06 SIM Completed on 10/20/06 Per HODGH  
 DFSC/SIM  
 11/13/06 MPLTR Completed on 11/13/06 Per MILLAR  
 11/13/06 ATTENDED & WENT OVER COSTCO POLICY

LOCKOUT/TAGOUT &  
 MUST LOG ON DUTY NOT DRIVING WHEN IN HOLDING  
 PEN.,

HADLB  
 11/29/06 ATND: LCQT by 122906 Per LOPEP REF#  
 1061119104358  
 11/29/06 ATND: DDC by 122906 Per LOPEP REF#  
 1061119104358  
 12/11/06 DDC Completed on 12/11/06 Per SNAPP  
 12/27/06 LCQ Initial Extension Granted Per RUIZEL  
 12/29/06 LCQ Completed on 12/29/06 Per RUIZEL  
 TRAINER: PERJOR  
 12/29/06 SLC UT 00050.00 LCQT PERJOR  
 01/12/07 MPLTR Completed on 01/12/07 Per CASTLE  
 LOG CLASS WITH LETTY  
 01/12/07 MPLTR Completed on 01/12/07 Per MARKS  
 THIS DRIVER TOOK MPLTR ON 1/12 PER LOGS IN DEC

PE  
 01/25/07 LOG PCR Required per TMIDATA 0000000122363  
 01/25/07 LOG Group Class Req'd per TMIDATA 0000000122363  
 01/26/07 PCR Completed per 231661 0000000122363

EXHIBIT # 3  
 Page 8 of 10 Pages

## TRACTOR ASSIGNMENT

After you are assigned a truck it should be inspected and inventoried before you move it. The same process should be followed when you are returning a truck or swapping out trucks. You must fill out Tractor Equipment Check in/Out Sheet. Fill out the sheet completely, listing and diagramming all damage no matter how small. In addition to damage, list any equipment that is missing, or out of place. Anything that you do not want to be held responsible for must be listed on this form. A copy of this form should be sent to your Driver Manager. You should keep a copy of this form for each tractor you are assigned to as long as employed by Swift.

## SEAT BELTS

Section 392.16 of the D.O.T. Federal Motor Carrier Safety Regulations states as follows:

"A COMMERCIAL MOTOR VEHICLE WHICH HAS A SEAT BELT ASSEMBLY INSTALLED AT THE DRIVER'S SEAT SHALL NOT BE DRIVEN UNLESS THE DRIVER HAS PROPERLY RESTRAINED HIMSELF OR HERSELF WITH THE SEAT BELT ASSEMBLY"

It is Company policy for all Drivers and passengers to wear seat belts while driving, or riding. Sleeper safety belts are required to be used while vehicle is moving.

## WORK RELATED INJURIES

Steps to follow if you are injured on the job:

- Call the Claims Department at 800-467-2793 immediately. The phones are monitored 24 hours a day, seven days a week. This call opens the claim so our insurance company will initiate any treatments needed.
- If the injury is a non-emergency, you may be referred to a medical center for medical attention as needed.
- If the injury is an emergency situation, seek medical assistance first, then call the Claims Department as soon as you can safely do so.
- The Claims Department will connect you with the Insurance carrier that will handle the remainder of your claim and direct any additional actions needed by you or Swift.

## TEAMS

Any time there is more than one person in the truck, the person not driving MUST be buckled in the 2nd seat or sleeping in the bottom bunk. The top bunk is NEVER to be used when the truck is in motion!

30F4

DOCKET# 3378-2007

CLAIMANT/KURT DYPWICK

APPEALS EXAMINER/GREGORY B. STEVENS

2 SIDED COPY  
IMPORTANT!

## Swift Transportation Co., Inc. - Driver Manual

- suspension, revocation or cancellation of certain driving privileges which resulted from the conviction(s);  
(5) Indication whether the violation was in a commercial motor vehicle;  
(6) Location of the offense; and  
(7) Driver's signature

### PROHIBITION OF SPINNER KNOBS AND/OR SUICIDE KNOBS

The use of steering accessories commonly known as spinner knobs and suicide knobs have been identified by Swift Transportation as hazards and pose a risk to the safe operation of a commercial highway vehicle and the safety of the driver. Thus, Swift prohibits the installation and use of these devices on commercial vehicles being operated in the Swift fleet. Drivers of vehicles with spinner knobs must remove or have them removed immediately. Failure to comply with the Spinner Knob policy may result in disciplinary action up to and include the termination of employment or contract.

Although these devices may be beneficial while used on equipment in spotting operations and on forklifts, they have no significant use on a commercial highway vehicle. In fact, spinner knobs, mounted on a steering wheel, spinning out of control from the loss of power steering due to mechanical failure and/or the steering tire striking a fixed object, has broken fingers, hands and arms. Spinner knobs are also obstructions when trying to bring a vehicle under control in panic situations.

Exception: The spinner knob may be used when making an accommodation for a handicapped driver and in accordance with ADA requirements.

### DAMAGED EQUIPMENT

If you find a damaged tractor or trailer you are going to use, call Claims immediately and report the damage before leaving with the equipment. Get the claim number in case you are contacted later. If you do not report it you may be charged with the damage.

### TRACTOR ASSIGNMENT

After you are assigned a truck it should be inspected and inventoried before you move it. The same process should be followed when you are returning a truck or swapping out trucks. You must fill out Tractor Equipment Check In/Out Sheet. Fill out the sheet completely, listing and diagramming all damage no matter how small. In addition to damage, list any equipment that is missing, or out of place. Anything that you do not want to be held responsible for must be listed on this form. A copy of this form should be sent to your Driver Manager. You should keep a copy of this form for each tractor you are assigned to as long as employed by Swift.

### SEAT BELTS

Section 892.16 of the D.O.T. Federal Motor Carrier Safety Regulations states as follows:

**"A COMMERCIAL MOTOR VEHICLE WHICH HAS A SEAT BELT ASSEMBLY INSTALLED AT THE DRIVER'S SEAT SHALL NOT BE DRIVEN UNLESS THE DRIVER HAS PROPERLY RESTRAINED HIMSELF OR HERSELF WITH THE SEAT BELT ASSEMBLY"**

It is Company policy for all Drivers and passengers to wear seat belts while driving, or riding. Sleepers safety belts are required to be used while vehicle is moving.

### WORK RELATED INJURIES

Steps to follow if you are injured on the job:

- Call the Claims Department at 800-457-2733 immediately. The phones are monitored 24 hours a day, seven days a week. This call opens the claim so our Insurance company may arrange to initiate any treatment needed.
- If the injury is a non-emergency, you may be referred to a medical center for medical attention as needed.
- If the injury is an emergency situation, seek medical assistance first, then call the Claims Department as soon as you can safely do so.
- The Claims Department will assist you with the insurance carrier that will handle your claim and will direct any additional actions needed by you or Swift.

DATED this 8th day of September 2008



Kurt J. Dypwick  
P. O. BOX 5662  
Missoula Mt 59806  
Claimant / Appellant

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that a copy of the foregoing APPELLANT'S / REPLY BRIEF,  
was mailed, postage prepaid, this 8th day of September, 2008 to:

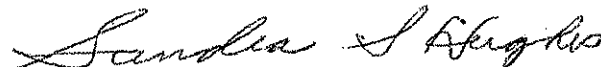
THE SUPREME COURT OF THE STATE OF IDAHO  
PO BOX 83720  
BOISE ID 83720-0101

TRACEY K. ROLFSEN  
DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
317 W. MAIN ST  
BOISE, IDAHO 83735



Claimant / Appellant

9-8-08



CERTIFICATE OF SERVICE - 1

SANDRA S. HUGHES  
NOTARY PUBLIC - MONTANA  
Residing at Missoula, Montana  
My Comm. Expires July 26, 2012



