

IN THE COURT OF COMMON PLEAS  
MEDINA COUNTY, OHIO

COMMON PLEAS COURT  
12 MAY -7 PM 2:46

Jose Rodriguez	)	CASE NO. 11 CIV 1677
	)	
Plaintiff	)	
	)	
vs.	)	JUDGE JAMES L. KIMBLER
	)	
South Star Corp., et al.	)	
	)	Judgment Entry with Instructions
Defendant	)	to the Clerk

FILED  
DAVID B. WADSWORTH  
MEDINA COUNTY  
CLERK OF COURTS

**Procedural History**

This case is before this Court on an appeal from a decision of the Unemployment Compensation Review Commission (Commission) denying a request for a review of a decision by a Hearing Officer denying the Plaintiff's application for unemployment benefits. The appeal is made pursuant to R.C. 4141.282 (H).

**Standard of Review**

The duty of this Court, when considering such an appeal, is to decide whether the appellant has shown that the decision of the Commission was "unlawful, unreasonable, or against the manifest weight of the evidence". R.C. 4141.282 (H), *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Servs.*, 73 Ohio St. 3d 694 (Ohio 1995).

This Court may not rewrite the Commission's decision merely because it could or would interpret the evidence differently. *Kilgore v. Board of Review*, 2 Ohio App. 2d 69 (Ohio Ct. App., Jackson County 1965). What this Court must determine is whether the decision of the Commission is supported by evidence in the certified record. *Roberts v. Hayes*, 2003 Ohio 5903 (Ohio Ct. App., Summit County Nov. 5, 2003) at ¶12.

The determination of factual questions is primarily for the hearing officer and the Commission. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (Ohio 1947). A common pleas court hearing an appeal pursuant to R.C. 4141.282 cannot reserve the Commission's decision simply because it would have reached a different conclusion based on the evidence heard by the hearing officer. *Roberts v. Hayes*, supra. A reviewing court must affirm if some credible evidence supports the Commission's decision. *C. E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St. 2d 279 (Ohio 1978). A reviewing court must defer to the Commission's determination of purely factual issues that concern credibility of witnesses and the weight of conflicting evidence. *Angelkovski v. Buckeye Potato Chips Co.*, 11 Ohio App. 3d 159 (Ohio Ct. App., Franklin County 1983).

### **Discharge for Just Cause**

In this case South Star Corporation (South Star), through a supervisor, terminated Mr. Rodriguez when he said that he wouldn't work on a crew with a co-worker, Gary Hartman, who was in charge of the crew and who had used a racial slur when referring to him. This behavior had started several months earlier in May of 2010 when Hartman referred to him as a "hadji" and when Mr. Rodriguez asked him what that meant, he replied "little nigger."

Hartman kept using this term in referring to Mr. Rodriguez several times over the next several months. Mr. Rodriguez complained to company officials about this co-worker using that term.

In November of 2010 Mr. Rodriguez came into work and was told by Hartman that he was working with him. When he told this to Mr. Rodriguez he used the term "hadji". Mr. Rodriguez responded that he was not working with him and went and talked to the foreman. The foreman told him that he had to work with Hartman. When Rodriguez said that he wouldn't, the foreman fired him. On the day that he was fired there were six crews assigned to do work. The hearing

officer concluded that Mr. Rodriguez was fired for "just cause" because he said that he wouldn't work with Hartman.

The Court of Appeals for the Ninth Appellate District has explained the concept of discharging an employee for "just cause" in *Durgan v. Ohio Bureau of Empl. Servs.*, 110 Ohio App. 3d 545 (Ohio Ct. App., Lorain County 1996). In that decision the following language appears:

"R.C. 4141.29(D)(2)(a) prohibits the payment of unemployment compensation if the employee "has been discharged for just cause in connection with his work." "Just cause, in the statutory sense, is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." (Emphasis added.) *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694, 697, 653 N.E.2d 1207, quoting *Irvine v. State, Unemployment Comp. Bd. of Rev.* (1985), 19 Ohio St. 3d 15, 17, 482 N.E.2d 587"

*Durgan v. Ohio Bureau of Empl. Servs.*, 110 Ohio App. 3d 545, 549 (Ohio Ct. App., Lorain County 1996). The Ninth Appellate District recently quoted the language above with approval in *Clucas v. Rt 80 Express, Inc.*, 2012 Ohio 1259 (Ohio Ct. App., Lorain County Mar. 26, 2012).

The question becomes whether the reasons for both the actions of Mr. Rodriguez and South Star are justifiable. If Mr. Rodriguez was justified in refusing to work with Mr. Hartman, then Mr. Rodriguez was not guilty of insubordination when he refused to work with Mr. Hartman. In that case, his discharge would not have been with "just cause". On the other hand, if he was not justified in refusing to work with Mr. Hartman, then he was guilty of insubordination and his discharge would have been with "just cause."

In the case of *Civil Rights Comm vs. Pacific Inter Mountain Express Co.*, 1983 Ohio App. LEXIS 15746 (Ohio Ct. App., Summit County Mar. 30, 1983), the Ninth Appellate District Court of Appeals in a case out of Summit County found

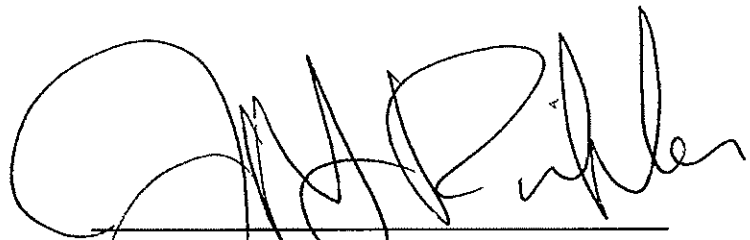
that an African-American employee who had been subjected to racial slurs from a supervisor and who refused to take a sobriety test when ordered to do so by the same supervisor had not been fired for just cause. Although the case did not involve a claim for unemployment benefits but instead concerned whether or not a Civil Rights Commission order should be sustained, this Court believes that the above decision is instructive.

This Court finds that the refusal of Mr. Rodriguez to work with a co-worker who was using racial slurs to refer to him was justified. This is especially true given the fact that there were other workers that could have been paired with Mr. Rodriguez other than Mr. Hartman.

Consequently this Court finds that Mr. Rodriguez was not insubordinate when he refused to work with Mr. Hartman. Therefore, he was not fired for "just cause." Since he was not fired for "just cause", the order of the Commission was unreasonable and against the manifest weight of the evidence.

It is the order of this Court that the decision of the Commission be reversed and that Mr. Rodriguez be found eligible to receive unemployment benefits. The Court further orders that South Star Corporation shall pay the costs of this action.

**So Ordered, Adjudged, and Decreed.**

A handwritten signature in black ink, appearing to read 'James L. Kimbler', written over a horizontal line.

**Judge James L. Kimbler**

**INSTRUCTIONS TO THE CLERK**

Pursuant to Civil Rule 58, the Clerk is hereby directed to serve upon the following parties, notice of this judgment and its date of entry upon the journal:

Daniel F. Maynard  
246 W. Liberty  
Medina, Ohio 44256

Scott H. Ruport  
3700 Embassy Parkway, Suite 440  
Akron, OH 44333

Stephen Brown  
326 North Court Street  
Medina, OH 44256-1868

Notice was mailed by the Clerk of Court on May 8, 2012.

Aorinda M. Lucas  
**DEPUTY CLERK OF COURT**