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COMMON PLEAS COURT

DEC - 6 - 2012

THE COURT OF COMMON PLEAS  
HOLMES COUNTY, OHIO

2012 DEC -6 AM 10:48

*Ronda P. Steind*

**GRAPHIC PUBLICATIONS, INC.**

**CASE NO. 12CV093**

**Appellant,**

**V.**

**WILLIAM R. HOUSTON, et. al.,**

**Appellees.**

**DECISION/JUDGMENT ENTRY ON  
NOTICE OF APPEAL OF GRAPHIC  
PUBLICATIONS, INC. OF THE  
DECISION OF THE STATE OF OHIO  
UNEMPLOYMENT COMPENSATION  
REVIEW COMMISSION OF JUNE 27,  
2012.**

**Journalized: Journal \_\_\_\_\_, Page(s) \_\_\_\_\_**

This case was commenced by the filing of a Notice of Appeal of Graphic Publications, Inc. of the Decision of the State of Ohio Unemployment Compensation Review Commission on July 19, 2012.

On July 30, 2012, the Court entered a briefing schedule which has been complied with by the parties.

On September 7, 2012, the Unemployment Compensation Review Commission filed a transcript of the administrative record in the case.

On September 24, 2012, Appellant-Graphic Publications, Inc. filed its brief in support of the appeal.

On November 13, 2012, the Director of the Ohio Department of Job & Family Services filed its brief.

The Court in making this decision has taken into account all matters in the record and the briefs of the parties.

This is an Administrative Appeal from the State of Ohio Unemployment Compensation Review Commission ("Review Commission") regarding a claim for unemployment compensation filed by Appellee William R. Houston ("Houston"), pursuant to R.C. 4141.282.

## **STATEMENT OF THE CASE:**

Houston filed an Application for Determination of Benefit Rights on January 16, 2012, which application was denied on February 13, 2012. See Record, Director's File.<sup>1</sup> Upon appeal, a Redetermination was entered affirming the denial of benefits. *Id.* Houston filed a further appeal and the case was transferred to the Review Commission on April 18, 2012. Thereafter, the matter was heard by Hearing Officer Paulette Johnson on May 9, 2012 and on May 15, 2012. Following the hearing, the denial of benefits was reversed and Houston was awarded unemployment compensation benefits. See Exhibit A. Graphic filed a Request for Review of the decision to the Review Commission which Request was denied by Order mailed on June 27, 2012.

Graphic filed this appeal with the Court on July 19, 2012.

## **STATEMENT OF THE FACTS:**

Houston worked at Graphic from August 10, 2010 through January 11, 2012 as the Sports Editor. Exhibit A; Tr. 1, p. 9, Tr. 2, p. 28. Mercer is a publishing company. Tr. 1, p. 9.

Around the end of December 2011, Michael Mast, Graphic's President and co-owner, sent out an e-mail to all Graphic employees regarding the state of the company. Tr. 1, p. 16, Hearing Exhibits A-1 through A-3. In that memo, Michael Mast informed Graphics employees that shortly after the New Year, *The Holmes County Journal*, one of Graphic's publications, would cease doing business. Hearing Exhibits A-1 through A-3.

Houston contacted his supervisor, Ann Swinderman ("Swinderman"), following review of the e-mail to ask whether he should be worried about the memo from Michael Mast. See Hearing Exhibits B-1 through B-2. On January 10, 2012, Houston spoke directly to Swinderman and was informed that Graphic was not going to be doing a whole lot of sports as of

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<sup>1</sup> Where, as here, the Director's file is part of the certified record, the reviewing court may consider it when deciding the administrative appeal. See e.g., *Davis v. Original DiCarlo's Pizza Crust Co.*, 2005-Ohio-2535, at PP6, 17, 2005 Ohio App. LEXIS (7<sup>th</sup> Dist.); *Gregg v. SBC Ameritech*, 2004-Ohio-1061, 2004 Ohio App. LEXIS 935 (10<sup>th</sup> Dist.).

sometime in February 2012 and that “she was trying to think of another role that [he] could fulfill in the company.” Tr. 2, p. 29. Later that morning, Houston asked Swinderman to come to his office at which time he said to her that “it sounds like there’s not going to be a whole lot of need for a sports editor if we’re not going to do a lot of sports” to which she answered that that was why she trying to figure out what else Houston could do for the company. *Id.*

Houston then went to talk to David Mast who occupied the office next to Houston’s. *Id.* David Mast is a co-owner and vice president of Graphic. Tr. 1, p. 20, Tr. 2, pp. 29-30. David Mast confirmed what Swinderman had stated to Houston regarding sports coverage once the *Journal* ceased operating. Tr. 2, pp. 29-30. David Mast also reiterated Swinderman’s comments regarding the fact that Graphic wanted to keep Houston in some capacity. Tr. 2, p. 30.

On January 11<sup>th</sup>, Houston went into David Mast’s office this time with some ideas as to how to provide real time sports coverage. *Id.* That same morning, Houston again went into David Mast’s office and told Mast that he thought that he was going to send out an e-mail to some readers and also some of the coaches. *Id.* David Mast testified, however, that Houston had informed him about the e-mails only after they were sent. Tr. 2, p. 62.

Houston did send out an e-mail that morning to approximately 15 individuals. Tr. 2, p. 36. The individuals in question were coaches that the Sports Department had “worked with closely, people that had given me a lot of feedback about uh sports coverage and, and how much they had enjoyed it. Um people we had worked with closely I thought you know if this is going to happen, I’d like to give them a voice before just blind siding them.” *Id.* The e-mail indicated that decisions were being made that day at Graphic regarding whether to continue sports. The e-mail further stated that if the reader wanted to save local sports coverage, he or she should write to Graphic’s President, its new General Manager, Michael Vachon, or Swinderman. See Hearing Exhibit C.

David Mast testified that when he heard about the sending of the e-mail, he “was very intrigued to see what the reply would be.” Tr. 2, p. 58.

He did not inform Houston that he thought that the sending of the e-mail was in violation of company policy as [he] “was not aware that this e-mail would’ve violated company policy.”, *Id.*

Houston provided copies of the responses that he received to David Mast. In response, Mast stated to Houston that “he thought they were interesting and he was printing some so that he could take them to show to Michael [Mast]. Um he said I think that this is a reflection of the work you and I have been doing, uh I think it’s really interesting what people think about the work that we’re doing um he never said anything about wow this is really, we’ve really kind of crossed the line here. He never said anything about violating company policy I mean.” Tr. 2, pp. 34-35. Houston frequently went to David Mast on issues due to Swinderman’s unavailability and the fact that Mast was Graphic’s vice president. Tr. 2, pp. 38-39.

Graphic has a written Employee Handbook. Tr. 1, p. 11, Tr. 2, p. 45. Houston acknowledged that he had signed a receipt indicating he had received the handbook. Tr. 2, p. 45. Section 308 of the Handbook contains a policy regarding confidentiality. That section states, in part that:

Our customers and suppliers entrust Graphic Publications with information relating to their business. The nature of this relationship requires such information be kept confidential. By safeguarding such information, Graphic Publications earns the respect and trust of its customers and suppliers. As an employee of Graphic Publications, you are obligated to maintain such information as confidential even after your employment has ended.

Any violation of confidentiality seriously injures Graphic Publications’ reputation and effectiveness. Therefore, please do not discuss Graphic Publications’ business with anyone who does not work for us or with anyone who does not have a direct association with the transaction. See copy of policy included in Director’s

File; Tr. 1, p. 11.

Houston testified that he did not believe that this section applied to what he was doing since he didn't deal directly with outside customers. Tr. 2, p. 45. He also indicated that the policy speaks "mainly to protecting secrets of our clients." *Id.*

When it was discovered that the e-mails had been sent out, Michael Mast immediately sent Houston home and took his company laptop from him. Houston was given no opportunity to explain to Michael Mast why he had sent the e-mails. Tr. 1, p. 14. Mast agreed that Houston had told him though that he didn't know the sports issue was an internal issue nor did he know that he had violated company policy. Tr. 1, p. 22. Indeed, Houston testified that one of the outside people with whom he discussed the situation had already been aware of the issue from a different Graphic employee. Tr. 2, p. 32. Prior to his termination, Houston had not been disciplined for any reason. Tr. 1, p. 15.

When a party appeals a decision of the Review Commission, R.C. 4141.282(H) limits this Court's scope of review to a determination of whether the Review Commission's decision is unlawful, unreasonable, or against the manifest weight of the evidence.

Specifically, R.C. 4141.282(H) provides:

The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate or remand the matter to the commission.

Otherwise, the court shall affirm the decision of the commission.

This limited standard of review was reiterated in the leading case on Ohio Unemployment Compensation Law, *Tsangas, Plaka and Mannor v. Ohio Bureau of Employment Services* (1955), 73 Ohio St 3d 694. In *Tsangas*, the Ohio Supreme Court stressed that:

The Board's role as fact finder is intact; a review in Court may reverse the Board's determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence. *Id* at 697.

Thus, when reviewing an appeal from the Review Commission, a Common Pleas Court must be mindful that the resolution of factual questions are reserved primarily for the Review Commission as the trier of fact. As a result, a review in Court is prohibited from making factual determinations or deciding the credibility of witnesses that cannot substitute its judgment for that of the Review Commission. *Id* at 696; *Irvine v Unemployment Compensation Board of Review* (1985), 19 Ohio St 3d 15, 18.

Under this limited standard of review, a review in Court may not rewrite the Review Commission's decision merely because it could or would interpret the evidence differently. *Kilgore v Board of Review* (1965), 2 Ohio Appellate 69, Paragraph 2 of the syllabus. In this regard, the Review Commission's decision cannot be reversed simply because reasonable minds might reach different conclusions. *Tsangas* at 697. The Court's only duty is to determine whether the Review Commission's decision is supported by the evidence in the record. *Kilgore, supra; Irvine* at 18. A decision supported by some competent credible evidence will not be reversed as being against the manifest weight of the evidence. *Id*.

In the present case Houston worked at Graphic from August 10, 2010 through January 11, 2012 as the Sports Editor. Exhibit A; Tr. 1, p. 9, Tr. 2, p. 28. Mercer is a publishing company. Tr. 1, p. 9.

Around the end of December 2011, Michael Mast, Graphic's President and co-owner, sent out an e-mail to all Graphic employees regarding the state of the company. Tr. 1, p. 16, Hearing Exhibits A-1 through A-3. In that memo, Michael Mast informed Graphics employees that shortly after the New Year, *The Holmes County Journal*, one of Graphic's publications, would cease doing business. Hearing Exhibits A-1 through A-3.

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Hearing Officer Johnson determined that Houston had not been terminated for just cause. In doing so, she indicated that she found David Mast's testimony to be "particularly persuasive." While the employer's confidentiality policy is reasonable, it was unfair to discharge an employee when even an owner of the company did not interpret the e-mail as a violation of company policy." Exhibit A.

Ohio Revised Code section 4141.282(H) reads as follows:

If the court finds that the decision was unlawful,

unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or modify the decision, or remand the matter to commission. Otherwise, the court shall affirm the decision of the commission.

In addition, Ohio revised Code Section 4141.29(D)(2)(a) reads in pertinent part as follows:


(D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:

(2) For the duration of the individual's unemployment if the Director finds that:

(a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work. . .

After reviewing the transcript and the briefs of the parties the Court finds that the decision of the Ohio Unemployment Compensation Commission was correct and the Graphic Publication's appeal is denied.

**SO ORDERED,**



**ROBERT D. RINFRET, JUDGE**

**Dated:**

**cc: All counsel and all unrepresented parties**

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