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IN THE COURT OF COMMON PLEAS, ASHLAND COUNTY, OHIO  
GENERAL DIVISION

ANNETTE SHAW  
CLERK OF COURTS  
ASHLAND, OHIO

**TOBIAS FARMS TRANSPORTATION  
LTD,**

**Appellant,**

**CASE NO. 12-CIV-378**

**vs.**

**PERRY F. TANNER JR., et al.,**

**Appellees.**

**JUDGMENT ENTRY**

This matter came before the Court on an administrative appeal from the Ohio Unemployment Compensation Review Commission ("Commission") pursuant to R.C. 4141.282. The Commission found that Appellee Perry F. Tanner, Jr. ("Tanner") was discharged from his employment with Appellant Tobias Farms Transportation, LTD ("Tobias") without just cause.

The Commission affirmed the September 7, 2012 decision of hearing officer Paulette Johnson, adopting her findings. Ms. Johnson found, in her decision of September 7, 2012, the following:

1. Tanner worked as an Account Executive/Salesperson for Tobias.
2. On February 27, 2009, Tanner signed an employment agreement which included confidentiality, no-disclosure and non-compete clauses.
3. In April, 2012, Tobias learned that Tanner had brokered freight with Tobias' customer. Tobias received cancelled checks which substantiated that Tanner had been brokering with a customer.
4. Tobias approached Tanner with the findings of the investigation. At first, Tanner denied the allegations. However, Tanner admitted to the allegation after the employer presented the cancelled checks to him.

5. Tobias decided to retain Tanner as an employee.
6. On April 19, 2012, Tobias sent Tanner a letter with an Amended Confidentiality Non-Competition and Non-Solicitation Agreement.
7. The April 19, 2012 Tobias letter read, “[y]ou will need to sign this Agreement no later than Monday, April 23, 2012 in order to remain employed.”
8. The Amended Non-Competition Covenant was substantially more restrictive than the 2009 agreement.
9. The proposed covenant read that claimant would not be able to “render services to or on behalf of any entity providing services of the same nature or type as those provided by Tobias Farm within the twelve month period preceding Tanner’s termination of employment.”
10. Tanner refused to sign the amended agreement.
11. On April 27, 2012, Tanner was discharged by Tobias because Tanner refused to sign the 2012 amended confidentiality and non-competition agreement.

Hearing officer Johnson further concluded, based on these findings, that Tanner was not terminated for his actions in violating the 2009 agreement, but was rather terminated for refusing to sign the 2012 amended confidentiality and non-competition agreement.

On appeal to the court of common pleas, the standard of review in an unemployment compensation benefits case is stated in R.C. 4141.282(H), which 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 modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

A court's power to review the Review commission's decision is strictly limited. Determinations of factual questions are primarily reserved for the hearing officer and the Review Commission. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947). A decision supported by some competent, credible evidence will not be reversed as being against the manifest weight of the evidence. *Angelkovski v. Buckeye Potato Chips Co.*, 11 Ohio App.3d 159 (1983). The Review Commission's decision cannot be reversed simply because reasonable minds might reach different conclusions. *Tzangas, Plakas & Mannos v. Ohio Bur. Of Employ. Serv.*, 73 Ohio St 3d. 694 (1995).

While there is some indication of employee misconduct in this case, there is sufficient, credible evidence in record to support the hearing officer's finding that Tobias did not terminate Tanner based on his misconduct, but rather for failing to agree to the terms of the 2012 amended confidentiality and non-competition agreement, and thereby was discharged without just cause. The Court would specifically point to Mr. Tobias' testimony on page 20, line 1 of the hearing transcript, whereby Mr. Tobias appears to indicate Tanner did not admit to any misconduct until after the April 19, 2012 letter was written. The letter given by Tobias to Tanner contained an ultimatum to either sign a new confidentiality and non-competition agreement, or be terminated.

Accepting the facts as determined by hearing officer Johnson, and as accepted by the Commission, the Court further finds that the decision of the Commission is not unreasonable nor unlawful, because the termination was, based on the those facts, without just cause. But for Mr. Tanner's refusal to sign the 2012 agreement, he would arguably still be employed by Tobias. See *Swegheimer vs. Board of Review*, 5<sup>th</sup> Dist. Stark No. CA-6148, 1983 Ohio App. LEXIS 13622 (Mar. 31, 1983).

The Court therefore AFFIRMS the decision of the Review Commission and finds in favor of the Appellee, Perry F. Tanner, Jr. Costs assessed to Appellant Tobias Farms Transportation LTD.

It is so ordered.



Ronald P. Forsthoefel, Judge

Cc: Attorney Valerie Anne Lang  
Attorney Matthew James Malone  
Attorney Laurence R. Snyder