

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

Darla Zarlino)	CASE NO. CV-14-819960
)	
Plaintiff)	JUDGE DICK AMBROSE
)	
v.)	
)	
Ohio Department of Jobs)	
and Family Services, et al.)	<u>JOURNAL ENTRY AND OPINION</u>
)	
Defendant)	

{¶1} This case involves a claim for unemployment benefits that was disallowed by the Ohio Unemployment Compensation Review Commission (UCRC) in favor of employer Barbasol, LLC, and against employee Darla Zarlino.

{¶2} Zarlino began working at Barbasol on 02/22/10 and, up until the events at issue in this case, was not subject to any disciplinary actions. On 04/29/13, Zarlino signed a form acknowledging the receipt of Barbasol's revised policy and procedures employee handbook, which states in part: "I understand it is my responsibility to read and become familiar with these procedures and polices contained in this handbook. I agree to comply with and follow these policies and procedures during my employment with [Barbasol]. I further understand that [Barbasol] retains the right to determine the proper discipline in every situation on a case-by-case basis if I violate these policies."

{¶3} On 05/02/13, Barbasol and its president, Atef Halaka, "separated employment." Subsequently, Zarlino and Halaka, who knew each other outside of work, continued to communicate via email. On 05/14/13, at 11:59 a.m., an email was sent from Zarlino's

Barbasol account to Halaka's personal email. The subject of this email was "FW: Perio 3rd QTR Pricing," and it contained an attachment "3rd QTR 2011 FINAL.xlsx." On 05/14/13, at 12:00 p.m., an email was sent from Zarlino's Barbasol account to Halaka's personal email with only the subject line stating "Confirm you received." Also on 05/14/13, and continuing to 05/15/13, there was a string of emails between Zarlino's Barbasol account and Halaka's personal email regarding the subject "DarlaZ Resume Final."

{¶4} On 05/15/13, between 3:45 and 4:00 p.m., Barbasol discharged Zarlino from employment for an alleged "Violation of [Barbasol's] Confidentiality Agreement – sending highly confidential documents to a former employee" and escorted her out of the building. There is evidence of an email dated 05/15/13 at 6:16 p.m. from Zarlino's Barbasol account to Halaka's personal email with the subject "bom per sku and material cost calculation form" and an attachment "BarbLLC BOM per SKU and Material Cost per Unit calc 2010.xls."

{¶5} Zarlino applied for unemployment benefits, and on 06/17/13, the Ohio Department of Jobs and Family Services (ODJFS) disallowed the claim, finding that Zarlino was discharged with just cause. On 07/31/13, ODJFS affirmed the determination. The UCRC held telephone hearings on 09/16/13 and 10/02/13. The UCRC issued a decision on 10/15/13 affirming the determination. On 12/12/13, this decision was again affirmed on review.

{¶6} Pursuant to R.C. 4141.282(H), this Court has jurisdiction to hear appeals from the UCRC. Claimants who are discharged from work for just cause are not eligible for unemployment benefits. R.C. 4141.29(D)(2)(a). "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." R.C. 4141.282(H).

{¶7} Barbasol alleges that the "Perio 3rd QTR" email contained confidential information and that Zarlino violated company policy by sending it. Asked if she sent this email to Halaka, Zarlino testified that "it appears" she did, but it could have been "an error" on her part. Barbasol alleges that the "bom per sku" email that was time stamped 05/15/13 at 6:16 p.m., after Zarlino was escorted out of the building, was never sent, but was recovered from Zarlino's work computer in the "drafts" file. Barbasol offered into evidence this draft and the string of emails between Zarlino and Halaka regarding Zarlino's resume to show that the two customarily communicated by email.

{¶8} Zarlino argues on appeal that the UCRC hearing officer deprived her of a fair hearing when he failed to enforce a subpoena she issued against Barbasol for various documents. However, the record shows that Zarlino waived her right to these documents during the 09/16/13 hearing after determining that they were unnecessary.

{¶9} Zarlino next states that, because she was not in the building at the time the "bom per sku" email was time stamped, this leaves open the possibility that someone else sent the "Perio 3rd QTR" email, which allegedly violated company policy, from her computer. Zarlino argues that Barbasol "failed to investigate" this scenario. However, the evidence in the record shows that Zarlino conceded that she sent the "Perio 3rd QTR" email to Halaka.

{¶10} Zarlino next argues that the information in the "Perio 3rd QTR" email was not confidential. Barbasol's employee handbook states the following regarding confidential information: "Do not disclose [Barbasol] confidential business information and trade secrets to persons outside of [Barbasol] without prior written authorization * * * .

Confidential information also includes non-public information about our suppliers, vendors, customers, and business partners that has been disclosed to the Company under obligations of confidentiality."

{¶11} The UCRC decision found that "On May 14, 2013, claimant sent an e-mail to Mr. Halaki [sic] with an attachment that contained a supplier's third quarter 2011 list of ingredients for each Barbasol product, their weight and cost. With the list of product ingredients, their weight and cost, the document effectively gave the formula for each product." The decision found that this information was a trade secret, which "violated the company's Confidentiality Policy and [was] in clear and willful disregard of the employer's interest."

{¶12} Zarlino next argues that Barbasol did not expect its employees to know the company's new policies, which were instituted in April of 2013; rather, Zarlino argues, employees were expected to "become familiar" with the policies. However, the Court finds that when Zarlino signed the acknowledgement form on 04/29/13, she agreed to "comply with and follow" the company policies.

{¶13} Zarlino's final argument is that Barbasol should have followed its progressive discipline policy and that her alleged violation did not justify termination. However, the Court finds that, by signing the employee handbook acknowledgement form, Zarlino

agreed to the following: "I further understand that [Barbasol] retains the right to determine the proper discipline in every situation on a case-by-case basis if I violate these policies."

{¶14} Accordingly, the Court finds that the UCRC decision finding that Barbasol's termination of Zarlino was for just cause is lawful, reasonable, and supported by evidence in the record. Therefore, the UCRC's decision is affirmed.

6/4/14


Date



Judge Dick Ambrose

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