IN THE COMMON PLEAS COURT OF SHELBY COUNTY, OHIO

FRESH UNLIMITED, INC. dba FRESHWAY FOODS	*	**CASE NO. 12CV000192**
	*	
Appellant,		
vs.	*	
		DECISION/JUDGMENT ORDER
AMANDA K. PIATT, et al	*	**ON APPELLANT'S APPEAL**
		STATE OF OHIO, SHELBY COUNTY SS
Appellees.	*	I, Michele K. Lumford, Clerk of the Common Pleas Court, do hereby certify to be a full, true and correct copy of the original as the same appears of record in my office.
* * * *	*	MICHELE K. LUMFORD, CLERK
		By Deputy

The above-captioned matter is before the Court on the appeal of Fresh Unlimited, Inc., dba Freshway Foods ("Freshway") of the decision of the Unemployment Compensation Review Commission's decision finding that Freshway did not have just cause to terminate Amanda Piatt ("Piatt") as a result of which the Commission awarded unemployment compensation benefits to Piatt. This court has the transcript of the proceedings for the Commission and the briefs of the parties in support of their respective positions.

For the reasons that follow this court finds that the decision of the Commission was unreasonable and against the manifest weight of the evidence. The decision of the Commission is reversed.

Statement of the Case:

In January, 2012, Piatt applied for unemployment benefits subsequent to her termination from her employment at Freshway. In February it was determined that Piatt was discharged for just cause, thereby she was not entitled to benefits. Piatt appealed that determination which was rejected in March, 2012. Piatt appealed the redetermination at which time the matter was referred to the Review Commission for hearing. After hearing, the hearing officer determined that Piatt was discharged without just cause and awarded her benefits. Freshway's appeal to the Commission was disallowed.

From that decision, Freshway timely appeals to this court.

Facts:

Piatt was hired by Freshway in September, 2005. Piatt's employment record is replete with disciplinary issues and problems.

On October 25, 2011, Piatt received an updated Freshway's associate handbook. She acknowledged receipt of the handbook.

Three days later, on October 28, 2011, she received a corrective action for "disruptive behavior." She acknowledged receipt of the corrective action. The disruptive behavior at issue in the October corrective action was conduct in which she struck another employee in an incident claimed to be horseplay. In January, 2012, Piatt received another corrective action involving "disruptive behavior." The "disruptive behavior" in the second incident was a situation in which Piatt and a coworker engaged in screaming and yelling profanity at each other. She refused to sign this corrective action.

Pursuant to company policy, Piatt's employment was terminated for receiving two corrective actions for the same offense within six months. The offense was engaging in disruptive behavior.

Freshway's policy provides that an employee who receives two corrective actions for the same offense within six months will be terminated. Freshway contends that Piatt received two corrective actions for the same offense i.e. "disruptive behavior" within six months resulting in her termination. During the hearing, Piatt admitted the conduct. She claimed in the hearing only that she felt that Freshway could have handled the situation differently.

The Commission's hearing officer concluded that since the conduct involving disruptive behavior in January, 2012 was different than the conduct involving disruptive behavior in October, 2011, the decision of Freshway to terminate employment was unjustified because the second corrective was not for the same offense as the first corrective action.

Law/Discussion:

R.C. 4141.282 provides, "...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."

The review by the court of the Commission's decision is limited. "...A reviewing court may not make factual findings or determine a witness' credibility and must affirm the Commission's finding if some competent, credible evidence in their record supports it. ...In other words, a reviewing court may not reverse the Commission's decision simply because "reasonable minds might reach different conclusion."" *Williams v. Ohio Department of Job and Family Services*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031 at ¶20.

In this case, it appears that there is little dispute as to the facts. Rather, the issue is an interpretation of Freshway's discharge on the grounds of "disruptive behavior." This court is not interpreting the evidence nor making factual determinations. Rather, the court is determining whether the interpretation of the Commission that the acts of Piatt did not constitute two of the same offense within six months is reasonable and supported by the record. The court should defer to the administrative agency's interpretation of matters uniquely within the expertise of the agency, *Municipal Construction Equipment Operators Labor Council v. City of Cleveland Civil Service Commission*, 9th Dist., No. 94605, 2010-Ohio-5849, ¶19. However, the issue before this court is not an interpretation of the agency's rules or regulations. Rather, this issue here is the interpretation of the employer's determination that the acts of Piatt in the two separate incidents constituted the same offense of "disruptive behavior."

Even in circumstances where the court would normally defer to an administrative agency's interpretation of its own rules, "...If an agency's interpretation is unreasonable and fails to apply the plain language of a statute or rule, then an appellate court need not defer to such an unreasonable interpretation." *HCMC, Inc. v. Ohio Department of Job and Family Services*, 179 Ohio App.3d 707, 2008-Ohio-6223, 903 N.E.2d 660 (10th Dist.).

Piatt was discharged because she engaged in two acts of disruptive behavior within six months. "Disruptive behavior" is not defined in Freshway's policy. It does not appear in the non-exclusive lists of offenses listed in the policy acknowledged by Piatt in October, 2011. Since "disruptive behavior" not defined, this court must look to the plain language and common understanding of the phrase "disruptive behavior."

Job and Family Services would require for there to be just cause for a termination that the conduct be the same kind of disruptive behavior. This court is of the opinion that such an interpretation is overly strict and would make it virtually impossible for an employer to use "disruptive behavior" as a reason for termination of employment. To follow the Commission's interpretation could result in the logical absurdity of an employee throwing a smoke bomb onto the plant floor on one day and emptying a box of marbles on the plant floor on another day and still not be subject to termination.

What's more, even under the Commissioner's interpretation of Freshway's policy this is the same conduct. Both incidents involved altercations or disputes that Piatt had with co-workers on the plant floor. The first involved Piatt attempting to strike one employee and actually hitting another. The second was also involved a dispute with a co-worker on the plant floor. Although not rising to the level of actual physical blows, the confrontation with the co-worker was verbally violent.

As noted in the *Williams* case, just cause for termination, "must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act. ...The Act's purpose is "to enable unfortunate employees, who become and remain *involuntarily* unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level."" *Williams* at ¶22. As the Supreme Court noted, ""The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. When an employee is at fault, he is no longer the victim of employer's whims, but is instead directly responsible for his own predicament. Faults on the employee's part separates him from the Act's intent and the Act's protection." ..." *Williams* at ¶23. As Ohio courts have determined, ". . . "just cause" is " 'that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.'" *Williams* at ¶22;

The case, sub judice, is unlike the case of *Graves v. Director Ohio Department of Job and Family Services*, 11th District, No. 2008-A-0066, 2009-Ohio-2085 cited by Job and Family Services in its brief. In that case, the employer did not follow its own disciplinary procedure. As a result, Job and Family Services and the courts found that the conduct of the employee, no matter how egregious, did not support termination. In this case, on the other hand, Freshway did follow its disciplinary procedure and policy. Freshway followed its policy procedure in citing Piatt and giving her a corrective action notice. Thereafter, Piatt engaged in another disruptive behavior within six months.

She was cited for that conduct as well and pursuant to the policy terminated.

Conclusion:

This court finds that the decision of the Commission that Freshway did not have just cause to terminate Piatt's employment is unreasonable and against the manifest weight of the evidence. The decision of the Commission is reversed and vacated.

Costs charged to Appellees.

The Clerk of this Court is directed to deliver copies of this Entry to all attorneys of record and any parties not represented by an attorney.

IT IS SO ORDERED.

Hon. James F. Stevenson, Judge
Shelby County Common Pleas Court

Pursuant to Civil Rule 58 (B), the Clerk of this Court is hereby directed to serve upon all parties not in default for failure to appear, notice of this judgement and the date of entry upon the journal of its filing. JFS/dlw

Judge