

IN THE COURT OF COMMON PLEAS, JACKSON COUNTY, OHIO

TONY E. FANNIN

Plaintiff

-vs-

ASPLUNDH TREE EXPERT CO, INC.,
et al.

Defendants

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CASE NO. 12 CIV 0102

DECISION

FILED
COMMON PLEAS COURT
JACKSON, OH

MAR 27 2013

SETH I. MICHAEL, CLERK

This case is an appeal of a Decision of the Unemployment Compensation Review Commission. Appellant, Tony E. Fannin appeals the Decision of the Commission that he was discharged from his employment with just cause by Appellant, Asplundh Tree Expert Co., Inc. The parties filed briefs in support of their positions.

An appeal of the decision of the Unemployment Compensation Review Commission is made to the Common Pleas Court pursuant to ORC 4141.282. ORC 4141.282 (H) sets forth the standard of review. The Court hears this on the certified record from the Commission. The Court reviews the record to determine if the Commission's Decision was "unlawful, unreasonable, or against the manifest weight of the evidence..." If the Court finds the decision was "unlawful, unreasonable, or against the manifest weight of the evidence, the Court shall reverse, vacate, or modify the Decision, or remand the matter to the Commission. Otherwise, the Court shall affirm the Decision of the Commission."

Appellant, for his assignment of error states that the Decision of the Commission was unreasonable and against the manifest weight of the evidence and that the Decision was contrary to the disciplinary policy of the employer.

The basic fact of this case is that Appellant was discharged from his employment for tampering with the employee's GPS tracking system on his company vehicle. Appellant had permission to perform minor service on the vehicle, but the employer's position was that tampering with the GPS went beyond minor service and was destruction of company property.

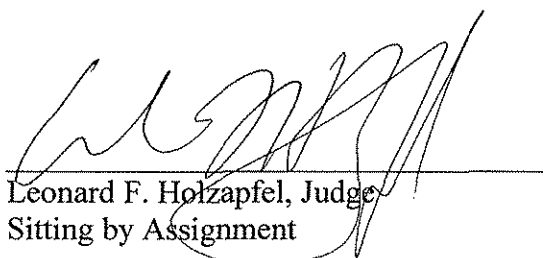
Appellant argues that the employer's discipline policy requires Appellee to receive a warning as the first step in the employer's four step process. The Employer's position is that Appellant's action was a "serious offense" and subjected the Appellant to immediate discharge.

The hearing officer, after testimony determined that the tampering with the employer's property was a serious offense, and that the subsequent discharge was with just cause.

In this case, the Court has reviewed the certified record, the brief of the Appellant, and the brief of Appellee, Director of the Ohio Department of Job and Family Services.

Based upon the review, the Court finds that the Decision of the Commission was not unlawful, unreasonable, or against the manifest weight of the evidence.

It is hereby ORDERED that the Decision of the Unemployment Compensation Review Commission is AFFIRMED.



Leonard F. Holzapfel, Judge
Sitting by Assignment

Distribution: AAG Hoskins
Attorney Henninger