

PENNSYLVANIA COURT OF COMMON PLEAS, CLARION COUNTY

Shick v. Shirey

25 Pa. D. & C.4th 481 · Decided July 24, 1995

SUMMARY

The court sustains preliminary objections to an at-will employee’s amended complaint alleging retaliatory discharge for filing a workers’ compensation claim. It concludes that Pennsylvania had not recognized a common-law cause of action for such a discharge and narrowly construes the public-policy exceptions to the at-will employment doctrine. The opinion distinguishes Pennsylvania appellate dicta and federal diversity decisions suggesting that such a claim might exist.

CASE DETAILS

COURT	Pennsylvania Court of Common Pleas, Clarion County
WRITING FOR THE COURT	Alexander, R.J.
JURISDICTION	Pennsylvania
DECIDED	July 24, 1995
DISPOSITION	other
PROCEDURAL POSTURE	Defendant filed preliminary objections to the amended complaint for failure to state a recognized cause of action. The court sustained the objections. After plaintiff moved for reconsideration and appealed, the court issued a supplemental opinion under Pennsylvania Rule of Appellate Procedure 1925(a).
STANDARD OF REVIEW	On preliminary objections challenging whether a complaint states a recognized cause of action, the court accepts the complaint's factual allegations as true and sustains the objections only in the clearest cases, free from doubt.
PRECEDENTIAL VALUE	Published Pennsylvania Court of Common Pleas decision; persuasive trial-court authority, not binding statewide precedent.
PARTIES	David L. Shick v. Donald L. Shirey

TOPICS

- wrongful termination
- workers compensation
- employment at-will
- pleadings
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Pennsylvania recognizes a common-law wrongful-discharge cause of action for an at-will employee allegedly fired in retaliation for filing or pursuing a workers' compensation claim.
2. Whether *Highhouse v. Avery Transportation's* recognition of a wrongful-discharge claim involving unemployment compensation altered the rule applicable to retaliatory workers' compensation discharge.

HOLDINGS

1. Pennsylvania does not recognize a common-law cause of action for discharge of an at-will employee in retaliation for filing or pursuing a workers' compensation claim. The amended complaint therefore failed to state a recognized cause of action.
2. *Highhouse* did not change the law applicable to Shick's claim because it involved unemployment compensation and relied on a statute containing a specific anti-waiver policy; its reference to *Macken* and workers' compensation retaliation was dictum.

KEY QUOTATIONS

"In sum, this court holds that Pennsylvania does not recognize a cause of action for the discharge of an at-will employee in retaliation for filing a workers' compensation claim." (503-504)

"Ultimately, the decision of whether or not to recognize such a cause of action belongs to the people of Pennsylvania, acting through their elected representatives, not the judiciary." (504)

FACTUAL BACKGROUND

Shick was hired by Shirey in October 1991 as an at-will employee without a written contract. After injuring his knee at work and receiving workers' compensation benefits, Shick was released to return to work on March 1, 1994. He alleged that Shirey told him on that date that he no longer had a job because he pursued his workers' compensation claim and sought lost wages and lost insurance benefits.

PROCEDURAL HISTORY

Plaintiff alleged that defendant terminated his at-will employment in retaliation for filing a workers' compensation claim. Defendant's preliminary objections to the original complaint challenged the wrongful-discharge theory and claims for emotional distress and attorney fees; plaintiff amended the complaint to eliminate the latter claims but continued to assert wrongful discharge. On July 24, 1995, the court sustained defendant's objections. Plaintiff moved for reconsideration based on *Highhouse v. Avery Transportation* and appealed on August 23, 1995; the court's September 28, 1995 supplemental opinion explained why *Highhouse* did not alter the result.

DISPOSITION

other

CASES CITED

- Bower v. Bower, 531 Pa. 54, 611 A.2d 181 (1992)
- Henry v. Pittsburgh & Lake Erie Railroad Co., 139 Pa. 289, 21 A. 157 (1891)
- Geary v. United States Steel Corporation, 456 Pa. 171, 319 A.2d 174 (1974)
- Cisco v. United Parcel Services Inc., 328 Pa. Super. 300, 476 A.2d 1340 (1984)
- Yaindl v. Ingersoll-Rand Co., 281 Pa. Super. 560, 422 A.2d 611 (1980)
- Turner v. Letterkenny Federal Credit Union, 351 Pa. Super. 51, 505 A.2d 259 (1985)
- Marsh v. Boyle, 366 Pa. Super. 1, 530 A.2d 491 (1987)
- Paul v. Lankenau Hospital, 524 Pa. 90, 569 A.2d 346 (1990)
- Clay v. Advanced Computer Applications Inc., 522 Pa. 86, 559 A.2d 917 (1989)
- Reuther v. Fowler & Williams Inc., 255 Pa. Super. 28, 386 A.2d 119 (1978)
- Field v. Philadelphia Electric Co., 388 Pa. Super. 400, 565 A.2d 1170 (1989)
- Kroen v. Bedway Security Agency Inc., 430 Pa. Super. 83, 633 A.2d 628 (1993)
- Darlington v. General Electric, 350 Pa. Super. 183, 504 A.2d 306 (1986)
- Macken v. Lord Corporation, 402 Pa. Super. 1, 585 A.2d 1106 (1991)
- Kuzel v. Krause, 658 A.2d 856 (Pa. Commw. 1995)
- Niehaus v. Delaware Valley Medical Center, 429 Pa. Super. 119, 631 A.2d 1314 (1993)
- Rabatin v. Columbus Lines Inc., 790 F.2d 22 (3d Cir. 1986)
- Wurst v. Nestle Foods Corp., 791 F. Supp. 123 (W.D. Pa. 1991)
- Strange v. Nationwide Mutual Insurance Co., 867 F. Supp. 1209 (E.D. Pa. 1994)
- Mulgrew v. Sears Roebuck & Co., 868 F. Supp. 98 (E.D. Pa. 1994)
- Bruffett v. Warner Communications Inc., 692 F.2d 910 (3d Cir. 1982)
- Rettinger v. American Can Company, 574 F. Supp. 306 (M.D. Pa. 1983)
- Michelson v. Exxon Research & Engineering Co., 629 F. Supp. 418 (W.D. Pa. 1986)
- Highhouse v. Avery Transportation, 443 Pa. Super. 120, 660 A.2d 1374 (1995)
- DeFelice v. Jones & Laughlin Steel Corp., 137 Pa. Super. 191, 8 A.2d 465 (1939)
- Blake v. Wilson, 268 Pa. 469, 112 A. 126 (1920)
- Shindledeker v. New Bethlehem Borough, 145 Pa. Super. 77, 20 A.2d 867 (1941)
- Jones & Laughlin Steel Corp., 137 Pa. Super. 191, 8 A.2d 465 (1939)
- Hunter v. Port Authority of Allegheny County, 277 Pa. Super. 4, 419 A.2d 631 (1980)
- Novosel v. Nationwide Insurance Co., 721 F.2d 894 (3d Cir. 1983)