No. 90975-0

SUPREME COURT

OF THE STATE OF WASHINGTON

30545-7-III

CHARLES ROSE, Petitioner

v.

ANDERSON HAY AND GRAIN, Respondent

SECOND PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER AND DECISION

Petitioner, Charles Rose (hereinafter Rose) is a truck driver of a semi-truck and was employed by Anderson Hay and Grain (hereinafter AHG) who is one of the largest employers in Kittitas County. Rose was fired for refusing to falsify driving time records which act would hide the fact that he would be driving over the time limits for such drivers.

The Kittitas County Superior Court Judge dismissed the case against one of the largest employers in Kittitas County, AHG. The Court of Appeals Division III (Justices A.C.J. Brown, J. Lawrence-Berrey and J. Korsmo) affirmed the trial court on the basis that Appellant had an administrative remedy.

Petitioner then appealed the decision of Justices Brown, Lawrence-Berrey and Korsmo to the Washington State Supreme Court which remanded the decision to the Washington State Appeals Court III for reconsideration in light of *Piel v. City of Federal Way,* 117 Wn. 2d 604 (2013).

The Washington Court of Appeals Division III, after direction from the Washington State Supreme Court, Court of Appeals Division III ignored the Supreme Court's directive for

reconsideration in light of *Piel v. City Federal Way,* 117 Wn. 2d 604 (2013) and again dismissed the cause of action in a published opinion.

The *Piel* case, ignored by Division III allows a court claim and supports Petitioner's court claim in Superior Court. Without the slightest attempt to follow the directive of the State Supreme Court of Appeals, the Court of Appeals Division III persisted in a dismissal of Appellant's claim without a word of mention of the Supreme Court case of the *Piel* case, supra.

Petitioner, Rose, now appeals the decision of the Washington Court of Appeals Division III (Justices Brown, Lawrence-Berrey and Korsmo) to again dismiss the Appellant's claim. No Motion for Reconsideration was filed with said Justices.

II. ISSUES PRESENTED FOR REVIEW

A truck driver was fired for refusing to exceed the Federal sixty (60) hour time limit and refusing to file a falsified driving time record. A Federal Law clearly and unmistakably provides three remedies for the driver:

1) File a State Court action

2) File a Federal Court action

3) File a Complaint with the Secretary of Labor

The Federal Law left the choice entirely to the worker. A new Federal Judge chose to ignore the new Federal Law and dismissed the Court action and based on a prior law, not applicable, ruled that the only remedy was the administrative remedy. Her decision was issued after the time limit expired for the administrative remedy which was one of three options left entirely to the Appellant's choice.

The issues before the Court are as follows:

1. Whether the trial court ignored clearly stated Federal Law which pointed out that nothing under Federal law (including an administrative remedy) preempts or diminishes the remedies of any employee under State or Federal Law which include court actions.
2. Whether the State Supreme Court now limits a worker to an administrative remedy and denies access to a Court action when an employer orders and the employee refuses to falsify driving records and exceed driving time limits.
3. If a driver, employed by a trucking company headquartered in Kittitas County, is fired for refusing to fabricate lies to

hide the fact that he would be driving a semi-tractor trailer in violation of time limits for such drivers, does such claim present a viable common law tort claim in violation of public policies in State Court?

III. STATEMENT OF CASE

Appellant, Rose and Joe Peak were employed by Respondent, AHG as truck drivers transporting hay to Seattle and Tacoma, Washington from Ellensburg, Washington via highways and multiple freeways in the State of Washington. (CP 95, L 18-19)

Joe Peak gave a near death bed preservation deposition testifying that he had also been ordered by AHG to falsify time records so that, by the falsified record, he could hide the fact that he was driving over the time allowed for drivers without enough sleep making it unsafe for all drivers on the highways and freeways of the State of Washington. The safe driving time records are set by the Federal Government. Joe Peak then died shortly after his deposition.

Rose knew the drive time limits were appropriate because when he approached the 60 hour limit, his coordination and

reaction time was slowed and he had to fight the potential to fall asleep at the wheel (CP 96, Line 10-13) He abided by the time limit also because, if he failed to abide by the limit, he could lose his license to drive and he could pose a threat to oncoming traffic or traffic next to him on multilane roads. (CP 96, L 17-22) He also notes that his own experience as a truck driver on the time limit is backed up by Department of Transportation publications. (CP 96, L 20-25)

When Rose's supervisor asked him to take another load of hay to Seattle, he informed the supervisor if he did, he would be over the 60 hour limit. He was told that he would have to adjust his record of hours on the company forms to hide what his actual hours were (CP 97, L 4-9) He refused and was fired. (CP 97, L 9)

When Peak informed his supervisor that, he did not have enough hours (driving time limit) to complete a load, he contacted his supervisor, Tina (CP 109, L 2-6) In response, Tina told Peak, "You got to go...you got to make it work out...this can (container of hay) has to go" (CP 110, L 7-25) (CP 111, L 1-11)

His employment at AHG as a truck driver ended on 8/13/10 for the stated reason of AHG that he could not get along with other

drivers. (CP 104, L 12-21) Peak testified this was not true. (CP 104, L 21-23)

Rose contacted his attorney, was aware he could, under Federal law, file a Federal administrative claim or a Federal Court claim or a State Court claim. On the advice of his attorney, he chose to file a Federal Court claim. (CP 97, L 10-12)

The Federal law amended in 2007 left the choice to the Plaintiff as set out below.

AHG, through their attorney, filed a motion to dismiss based upon case law interpreting a prior limited version of Federal law. The new Federal District Court Judge dispensed with oral argument and granted the motion to dismiss on the unsupported theory that Rose was required to file administratively despite the new Federal Law spelling out that the administrative remedy did not preempt the right to a Federal or State Court claim.
The District Court Judge's decision came three months after the expiration of the time limit for filing for administrative relief.

Appellant then filed this matter in Kittitas Superior Court. The Kittitas County Superior Court Judge dismissed the case against one of the largest employers in Kittitas County, AHG. The

Court of Appeals Division III (Justices A.C.J. Brown, J. Lawrence-Berrey and J. Korsmo) affirmed the trial court on the basis that Appellant had an administrative remedy.

Petitioner then appealed the decision of Justices Brown, Lawrence-Berrey and Korsmo to the Washington State Supreme Court which remanded the decision to the Washington State Appeals Court III for reconsideration in light of *Piel v. City of Federal Way, 117 Wn. 2d 604 (2013).*

The Washington Court of Appeals Division III, after direction from the Washington State Supreme Court, Court of Appeals Division III ignored the Supreme Court's directive for reconsideration in light of *Piel v. City Federal Way, 117 Wn. 2d 604 (2013)* and again dismissed the cause of action in a published opinion.

IV. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Under an older Federal Statute, 49 USC 31105, only a Federal Administrative remedy was available.

> ...an employee may file a Complaint with the Secretary of Labor...60 days later the

> Secretary of Labor shall conduct an investigation...include findings and a preliminary order...30 days later (either party may object)...a hearing shall be conducted...a person adversely affected can Petition for Review...in the Court of Appeals (July 5, 1994)

Access to the Court was limited to a review of the Administrative decision. In 2007, 49 USC 31105 was amended in pertinent parts as follows:

> (F) (b) an employee <u>may</u> file a Complaint with the Secretary of Labor not later than 180 days after the ...violation
>
> (f) <u>No preemption</u>. <u>Nothing in this section preempts</u> or diminishes any other safeguards against discrimination, demotion, discharge, supervision, threat, harassment, reprimand, retaliation or any other manner of discrimination provided by <u>Federal or State Law</u>.

(g) Rights retained by Employee. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under and Federal or State Law.

(Emphasis added)

It is clear, the new Federal law 49 USC S 31105, amended in 2007, provided three separate avenues for such an employee to follow. Those remedies were an administrative remedy, a Federal Court action, or a State Court action.

The Defense has cited the unpublished decision of the new Federal Judge in State Court which decision has no basis for precedence. The Defense has cited no case law in State or Federal Court as a precedent under the new Federal Law. The Federal Court decision has no precedential value. (CP 77)

We cite the Federal Judge's decision for a different reason. The law, amended in 2007, clearly provides new and alternative remedies for such action which would be consistent with the public policy recognizing the danger of employers threatening to fire employees to hide and encourage safety violations. (CP 77)

We also cite the amended law to establish that Rose and his attorney did not sit idly by. A claim was reasonably filed in U.S. District Court. The District Court rendered its decision after first denying any oral argument and then dismissed the Federal Court action. (CP 84) The administrative remedy, now claimed by the Defense as an existing remedy, expired three months before her decision, and, it expired before the State Court actions was filed. Therefore, there is no administrative remedy for Plaintiff. (CP 78)

Preempt is defined as follows in Webster's New Collegiate Dictionary 1980:

2: to seize upon to the exclusion of others

3: to take the place of: Replace

The amended Federal law specifically states that nothing in 31105 preempts (takes away) or diminishes any other safeguards against discharge, suspension...retaliation or in any manner provided by Federal law or State law. The Federal law also does not diminish the right or remedies of any employee under any Federal or State law. Charles Rose filed a Federal Court claim under Federal law. (CP 78)

Additionally, it is clear the remedies under the administrative alternative were severely limited. In *Briones v. Ashland, Inc.*, 164 F.Supp. 228 (D. Mass. 2001) the facts showed that 164 F.Supp. 228 that an employee sued his employer under the 1994 version of the same act. It was amended in 2007 but the remedies stayed the same. (CP 78) (Emphasis added)

In *Briones*, supra, the Federal Court ruled as follows at 164 F.Supp. 232:

> Finally, the remedies available under the STAA's remedial provisions are not coextensive with the State law remedies. As indicated above, the remedies afforded by the STAA do not include emotional distress damages. Faced with the question to whether a similar provision of the ERA preempted an employee's action under Massachusetts common law for wrongful discharge, the Court of Appeals found the State claim was not preempted. *Norris v. Lumbermen's Mutual Casualty Co.*, 881

> F.2d 1144 (1st Cir. 1989). More importantly, the Court of Appeals expressly championed the need for the supplemental State remedy of punitive damages to protect whistle blowers and deter violators. See *Norris*, 881 F.2d at 1151. "Allowing whistle blowers to proceed in State Court indirectly promotes...safety by subjecting the employer to the threat of a substantial jury award if it retaliates against a whistle blower by wrongfully discharging him." *Norris*, 881 F.2d at 1151. Indeed, the Court of Appeals emphasized the importance of the supplemental State remedy holding that availability of a State law action strengthened and expanded the public policy of protecting whistle blowers.

In the instant case, Appellant alleged damages for mental distress, anguish, humiliation and loss of enjoyment of life. (CP 1-5) By the Federal Court decision cited above, these remedies are

not available under the administrative alternative. If the Supreme Court rules that these remedies are adequate, the point of this appeal is that, Appellant chose to file a Federal Court action which is patently in the new law. The dismissal of the Federal Court claim came after the time limit for filing an administrative claim. (CP 79)

Respondent cites *Korslund v. Dyncorp Tri-Cities SBRUS*, 156 Wn.2d 168, 125 P3d 119 (2005) as support.

In *Korslund*, supra, the fact showed that employees, Korslund, Miller and Acosta made a series of reports and complaints relating to health and safety issues at their employment, (156 Wn.2d 173) and, as a result, they allege retaliating actions, hostile work environment and threats of termination. (156 Wn.2d 175) (CP 80)

In *Korslund,* supra, our Supreme Court noted that the "Employment Security Department" found that ... Korslund had quit work with good cause and he was awarded unemployment benefits... Miller (worker) was placed on disability leave and Acosta remained at work but suffered from depression, nervousness, sleeplessness and anxiety (156 Wn.2d 175-176). The

Washington Supreme Court in Korslund noted that the Federal administrative remedy included "compensatory damage" citing 42 USC 5851 (b) (2) (B) (Korslund 156 Wn.2d 182) The three employees then sued Dyncorp for wrongful discharge in violations of public policy (156 Wn.2d 176). (CP 80)

The Respondent Corporation, in this case, relies on the fiction that there is an adequate alternative means of promoting the public policy to stop termination of drivers who refuse to file false time reports. The Supreme Court in *Korslund* ruled as follows at 156 Wn.2d 181-182:

> Here, we need not consider whether either Korslund or Miller has presented sufficient evidence to take the issue of constructive discharge to a trier of fact because the public policy cause of action is otherwise foreclosed in this case. As a matter of law, the plaintiffs have not satisfied the jeopardy element of the tort of wrongful discharge in violation of public policy because there is an

adequate alternative means of promoting the public policy on which they rely...

In order to establish jeopardy, "a plaintiff must show that he or she 'engaged in particular conduct, and the conduct directly relates to the public policy, or was necessary for the effective enforcement of the public policy.;" *Hubbard*, 146 Wn.2d at 713 (quoting *Gardner*, 128 Wn.2d at 945). The plaintiff has to prove that discouraging the conduct that he or she engaged in would jeopardize the public policy. *Ellis v. City of Seattle*, 142 Wn.2d 450, 460, 10 P.3d 1065 (2000). And, of particular importance here, the plaintiff also must show that other means of promoting the public policy are inadequate. *Hubbard*, 146 Wn.2d at 713; *Gardner*, 128 Wn.2d at 945.

While the question whether the jeopardy element is satisfied generally involves a

> question of fact, *Hubbard*, 146 Wn.2d at 715, the question whether adequate alternative means for promoting the public policy exist may present a question of law, i.e., where the inquiry is limited to examining existing laws to determine whether they provide adequate alternative means of promoting the public policy. See id. at 716-17. (Emphasis added)

Please note in *Korslund* at 156 Wn.2d 181, supra the Supreme Court dismissed *Korslund* because "there is an adequate alternative remedy (156 Wn.2d 181-182)" At the time the District Court Judge made her ruling, there was no administrative remedy. Even if there was, it was inadequate. (CP 82)

Further, in *Briones v. Ashland*, dealing with the same remedies, the Federal Court noted as follows about the remedies at 164 F.Supp. 228 (D. Mass. 2001) at P. 232;

> Finally, the remedies available under the STAA's remedial provisions are not coextensive with the State law remedies. As

indicated above, the remedies afforded by the STAA do not include emotional distress damages. Faced with the question to whether a similar provision of the ERA preempted an employee's action under Massachusetts common law for wrongful discharge, the Court of Appeals found the State claim was not preempted. *Norris v. Lumbermen's Mutual Casualty Co.*, 881 F.2d 1144 (1st Cir. 1989). More importantly, the Court of Appeals expressly championed the need for the supplemental State remedy of punitive damages to protect whistle blowers and deter violators. See *Norris*, 881 F.2d at 1151. "Allowing whistle blowers to proceed in State Court indirectly promotes...safety by subjecting the employer to the threat of a substantial jury award if it retaliates against a whistle blower by wrongfully discharging him." *Norris*,

881 F.2d at 1151. Indeed, the Court of Appeals emphasized the importance of the supplemental State remedy holding that availability of a State law action strengthened and expanded the public policy of protecting whistle blowers. (emphasis added)

Therefore, even if there is an administrative remedy, it does not include the only significant damages available in a State action. (CP 83)

The Federal law applicable to Plaintiff states in pertinent part as follows at 49 USCS section 31105 Employee Protections (Transportation Vehicle and Driver Protection):

a) Prohibitions

(1) A person may not discharge an employee ...because...

b) The employee refuses to operate a vehicle because:

(1) The operation violates a standard or order of the United States related to

commercial motor vehicle safety, health or security...

c) The employee accurately reports hours of duty.

(b) An employee alleging discharge... may file a complaint with the Secretary of Labor no later than 180 days after the alleged violations occurred...

(f) NO PREEMPTION. Nothing in this section (31105) preempts or diminishes any other safeguards against...discharge...provided by State or Federal law.

(g) RIGHTS RETAINED BY EMPLOYEE Nothing in this section shall be deemed to diminish the rights, privileges or remedies of any employee under any Federal or State law... (As amended August 3rd 2007)

A Federal District Court Judge dismissed the trial remedy distinctly pleaded and sought by the Plaintiff in Federal Court

despite the language cited above which leaves the option of remedy to the Plaintiff. (CP 84) The Federal law does not qualify the choice of filing in Court with any language to the effect that filing an administratively is a precondition to filing a Court action.

The Federal Court's ruling came three months beyond the time for filing an administrative claim effectively removing the argument that "there is" (*Korslund* P.181) an adequate alternative means of promoting public policy. (CP 84)

We respectfully ask the Court to review the Federal Law along with the unpublished opinion cited by the Defense.

Charles Rose did not sit on his hands. He hired an attorney. Similar to what the *Korslund* panel noted and considered, the Employment Security Department in this case noted that Charles Rose did not violate a reasonable rule of the employer by refusing to drive the load and he was entitled to Unemployment benefits. (CP 93-94) Specifically, we ask this Court to find that, at the time of the State Court filing, there was no adequate administrative remedy. (CP 84) Further, based on the Federal Court ruling in *Briones*, supra, and as distinguished by Korslund, there are no emotional distress damages available under the administrative

remedy (164 F.Supp. 228 at page 232) and the Federal Court of Appeals "championed" the need for supplemental State remedies. We therefore ask the Court to note this in its opinion and ruling that under these unique facts and law there is no adequate administrative remedy pursuant to *Korslund*, supra. (CP 85)

The Employment Security Department, in this case, also found in a contested hearing that there was no good cause to fire Charles Rose and he too was awarded unemployment benefits. (CP 85) Please note *Korslund* was cited by the Respondent in its Superior Court brief and the Washington Supreme Court considered the outcome in the Employment Security Department. (CP 85)

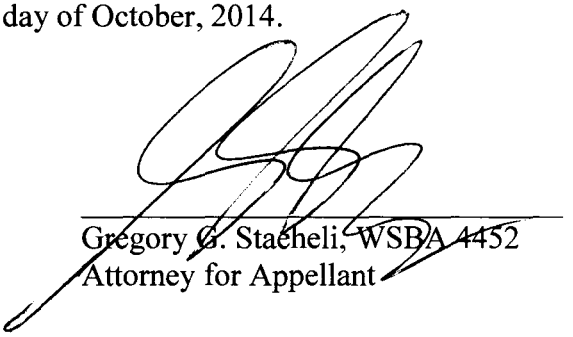
V. CONCLUSION

The Federal Law in this case is based on a clear and unambiguous statute. The decision of the Federal Court Judge has no precedential value. The Federal Judge ignored the clear language of the statute. The alternative administrative remedy expired before her opinion was filed. A Federal Judge clearly erred. The timing of her decision could not have been worse as the administrative remedy had expired. Appellant and his attorney

relied upon Federal Law. The State Superior Court ignored Federal Law and relied upon a decision of the Federal Court Judge which is not entitled to precedent. It is also runs completely counter to Federal Law and Federal Appellate Court decisions.

We ask the Washington Supreme Court to accept this case for a second review and not create a minefield for workers and their attorneys. The ultimate result is intimidation for workers, a reward for unscrupulous employers and danger to public safety. This is a travesty of justice.

Dated this 21st day of October, 2014.



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

CHARLES ROSE, Appellant, v. ANDERSON HAY AND GRAIN COMPANY, Respondent.	)	No. 30545-7-III PUBLISHED OPINION

BROWN, A.C.J. – Charles Rose sued his former employer, Anderson Hay and Grain Company (AHG), in Kittitas County Superior Court for his alleged wrongful discharge in violation of public policy after a similar suit was dismissed in federal court because he had failed to timely exhaust his federal administrative remedies. The state court dismissed his action, reasoning his federal administrative remedies would have been adequate to vindicate the public policy had he timely filed his administrative complaint. Mr. Rose appealed and this court affirmed. Our Supreme Court remanded the matter back to this court for reconsideration in light of that court's recent opinion in *Piel v. City of Federal Way*, 177 Wn.2d 604, 306 P.3d 879 (2013). *See Rose v. Anderson Hay and Grain Co.*, 180 Wn.2d 1001, 327 P.3d 613 (2014). On reconsideration, we again affirm the trial court.

FACTS

Mr. Rose worked as a commercial truck driver for AHG from March 2006 through November 2009. He alleges AHG terminated him for refusing to complete his shift, which he claims would have forced him to exceed the maximum allowed hours-of-service under federal regulations and would have further required him to violate federal regulations by falsifying time sheets.

On March 3, 2010, Mr. Rose sued in federal court, arguing his termination from AHG violated the Commercial Motor Vehicle Safety Act (CMVSA) (49 U.S.C. ch. 311). AHG requested dismissal based on 49 U.S.C. § 31105(b), which provides that the Secretary of Labor (secretary) has exclusive jurisdiction over initial complaints under the CMVSA. On August 6, 2010, the federal court dismissed Mr. Rose's complaint based on lack of jurisdiction. The dismissal came three months after the expiration of the time limit for filing for administrative relief. Mr. Rose did not pursue a federal appeal.

In September 2010, Mr. Rose sued in state court alleging wrongful termination in violation of public policy arising from alleged violations of 49 U.S.C. § 31105. Based partly on *Korslund v. DynCorp Tri-Cities Services*, 156 Wn.2d 168, 183, 125 P.3d 119 (2005), AHG requested summary judgment dismissal of Mr. Rose's claim, arguing he failed to satisfy the jeopardy element necessary to maintain a public policy claim. AHG further argued the CMVSA provides comprehensive remedies that serve to protect the specific public policy identified by Mr. Rose and even included punitive damages. Thus,

an adequate alternative means of promoting the public policy existed, which, as a matter of law, foreclosed Mr. Rose's public policy cause of action.

The trial court agreed and on April 18, 2011, the court granted AHG's motion for summary judgment and entered judgment dismissing Mr. Rose's complaint. The trial court partly reasoned that had Mr. Rose timely pursued his federal administrative remedies, they would have been adequate to vindicate the public policy, and concluded: "The remedies available under 49 U.S.C. § 31105(b) are adequate to protect public policy on which Mr. Rose relies as a matter of law." Clerk's Papers (CP) at 116. This court affirmed, holding "the trial court correctly dismissed Mr. Rose's claim of wrongful termination in violation of public policy in light of federal statutes protecting truck drivers who refuse to violate safety regulations." *Rose v. Anderson Hay & Grain Co.*, 168 Wn. App. 474, 478, 276 P.3d 382 (2012), *remanded*, 180 Wn.2d 1001, 327 P.3d 613 (2014). The Supreme Court remanded the matter to this court for reconsideration in light of *Piel.*

ANALYSIS

The issue is whether the trial court erred in summarily dismissing Mr. Rose's wrongful termination in violation of public policy action. He contends he presented a viable tort claim for wrongful termination in violation of public policy because the administrative remedies are inadequate.

We review summary judgment orders de novo, performing the same inquiry as the superior court. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004). The superior court properly grants summary judgment when no genuine

issue of material fact remains and the moving party is entitled to judgment as a matter of law. *Morin v. Harrell*, 161 Wn.2d 226, 230, 164 P.3d 495 (2007) (citing CR 56(c)).

In a summary judgment motion, the burden is on the moving party to demonstrate that summary judgment is proper. *Atherton Condo. Apartment-Owners Assoc. Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). We consider all the facts submitted and the reasonable inferences from them in the light most favorable to the nonmoving party. *Id.* And we resolve any doubts about the existence of a genuine issue of material fact against the party moving for summary judgment. *Id.* "Summary judgment is appropriate only if, from all the evidence, reasonable persons could reach but one conclusion." *Lilly v. Lynch*, 88 Wn. App. 306, 312, 945 P.2d 727 (1997).

To establish a common law claim of wrongful discharge in violation of public policy, the plaintiff must prove there exists a clear public policy (clarity element), discouraging the conduct in which the employee engaged would jeopardize the public policy (jeopardy element), and the policy-linked conduct caused the dismissal (causation element). *Korslund*, 156 Wn.2d at 178. At issue here is the jeopardy element. In order to establish the jeopardy element, the plaintiff must show that other means of promoting the public policy are inadequate. *Cudney v. ALSCO, Inc.*, 172 Wn.2d 524, 530, 259 P.3d 244 (2011). Protecting the public is the policy that must be promoted, not protecting the employee's individual interests. *Id.* at 538. In other words,

the test of whether a tort claim for wrongful termination in violation of public policy is viable is if means, other than a civil lawsuit, are inadequate to promote the public policy.

The federal CMVSA prohibits an employer from discharging an employee who refuses to operate a vehicle in violation of federal regulations or standards related to commercial vehicle safety. 49 U.S.C. § 31105(a)(1)(B). An employee alleging discharge in violation of this statute can file a complaint with the secretary no later than 180 days after the alleged violation occurred. 49 U.S.C. § 31105(b)(1). If the secretary determines that an employer violated the statute, the secretary can take affirmative action to abate the violation, reinstate the employee to the former position with the same pay and terms, and require the employer to pay compensatory damages, including back pay with interest and compensation for special damages sustained by the wrongful termination, including litigation costs, expert witness fees, and reasonable attorney fees. 49 U.S.C. § 31105(b)(3)(A). By its terms nothing in the statute preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by federal or state law. 49 U.S.C. § 31105(f). The Supreme Court cases of *Korslund*, *Cudney*, and *Piel* are instructive.

The plaintiffs in *Korslund* claimed they were wrongfully terminated for reporting safety violations, mismanagement, and fraud at the Hanford Nuclear Reservation. The court held that because the federal Energy Reorganization Act (ERA), provided an administrative process for adjudicating whistleblower claims and provided for

reinstatement, back pay, and other compensatory damages, an adequate remedy existed that protected the public interest. *Korslund*, 156 Wn.2d at 182-83.

In *Cudney*, the plaintiff claimed he was discharged after reporting that his supervisor was drinking on the job and had driven a company vehicle while intoxicated. The court held the Washington Industrial Safety and Health Act (WISHA) provided a sufficient administrative remedy, and that state laws on driving while intoxicated also adequately protected the public. *Cudney*, 172 Wn.2d at 527.

But, in *Piel*, the court held the administrative remedies available through the Public Employment Relations Commission (PERC) under chapter 41.56 RCW were inadequate, on their own, to fully vindicate public policy when a public employer discharges a public employee for asserting collective bargaining rights.

Unlike *Korslund* and *Cudney*, *Piel* involved a prior case holding PERC remedies failed to fully address the broader public interests involved because it protected personal contractual rights solely. 177 Wn.2d at 616-17 (quoting *Smith v. Bates Technical Coll.*, 139 Wn.2d 793, 805, 809, 991 P.2d 1135 (2000)). And unlike *Korslund* and *Cudney*, *Piel* involved a statute declaring PERC remedies supplement others and must be liberally construed to accomplish their purpose. *Id.* at 617 (quoting RCW 41.56.905). In those circumstances, the *Piel* court recognized a private common law tort remedy as necessary to fully vindicate public policy. *Id.* The *Piel* decision analyzed a single issue, "[a]re the remedies available to a public employee under chapter 41.56 RCW adequate as a matter of law, such that the employee may not assert a tort claim

for wrongful discharge in violation of public policy?" 177 Wn.2d at 609. The *Piel* court found that the "limited statutory remedies under chapter 41.56 RCW do not foreclose more complete tort remedies for wrongful discharge." *Id.* at 616.

The *Piel* court specifically reasoned its decision "does not require retreat from [*Korslund* or *Cudney*]." 177 Wn.2d at 616. The *Piel* court noted that the administrative schemes at issue in *Korslund* and *Cudney* were not previously found to be inadequate to protect public policy and, unlike PERC, did not include a provision stating that the "'provisions of this chapter are intended to be additional to other remedies and shall be liberally construed.'" *Id.* at 617 (quoting RCW 41.56.905). The *Piel* court recognized that *Korslund* found the ERA to have "comprehensive remedies," including back pay, compensatory damages, and attorney and expert witness fees. *Id.* at 613 (citing *Korslund*, 156 Wn.2d at 182). The ERA also contains a provision, similar to the CMVSA, that the ERA was not intended to affect "any right otherwise available to an employee under Federal or State law"; there is no similar safeguard for common law claims. 42 U.S.C. § 5851(h). *Piel* further recognized that *Cudney* found the remedies available under WISHA to be "more comprehensive than the ERA and . . . more than adequate." *Id.* (citing *Cudney*, 172 Wn.2d at 533). Accordingly, if a statutory scheme has language and remedies analogous to those at issue in *Korslund* or *Cudney,* the scheme is distinguished from *Piel* and has comprehensive remedies to protect the public interest.

In contrast, this court recently affirmed a trial court's denial of a defendant's request to dismiss a wrongful termination in violation of public policy claim, finding the plaintiff's case was "'the most compelling case for protection' under a public policy tort" because Mr. Becker would be personally responsible if he committed the crime that his employer requested. *Becker v. Comty. Health Systems, Inc.*, 2014 WL 3973083 at *9 (quoting Janie F. Schulman & Nancy M. Modesitt, WHISTLEBLOWING: THE LAW OF RETALIATORY DISCHARGE ch. 5.II.A.1, at 101 (2d ed. 2004). There, the employer ordered its chief financial officer, Gregg Becker, to submit false information to the U.S. Securities and Exchange Commission of a $4 million operating loss in 2012 while Mr. Becker projected a $12 million operating loss. *Becker*, 2014 WL 3973083 at *1. He resigned. *Id.* This court held that the jeopardy element of Mr. Becker's wrongful discharge claim was satisfied because there was no other means for promoting the public policy of honesty in corporate financial reporting. *Id.* at *10.

Here, the CMVSA "undisputedly" protects the public interest of "highway safety." *Int'l Bhd. of Teamsters v. Pena*, 17 F.3d 1478, 1483 (D.C. 1994). The CMVSA further prohibits an employer from discharging an employee who refuses to operate a vehicle in violation of federal regulations or standards related to commercial vehicle safety. Further, if it is determined an employer violated the statute, the Secretary of Labor can take affirmative action to abate the violation, reinstate the employee to the former position with the same pay and terms, and require the employer to pay compensatory damages, including back pay with interest and compensation for special damages

sustained by the wrongful termination, including litigation costs, expert witness fees, and reasonable attorney fees. 49 U.S.C. § 31105(b)(3)(A). By its terms, nothing in the statute preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by federal or state law. 49 U.S.C. § 31105(f).

Similar to the statute at issue in *Korslund*, the remedies that could have been available here under the CMVSA include reinstatement, compensatory damages, back pay with interest, litigation costs, witness fees, and attorney fees. 49 U.S.C. § 31105(b)(3)(A). The CMVSA provides for punitive damages, making its remedies more comprehensive than the ERA. 49 U.S.C. § 31105(b)(3)(C); *see Cudney*, 172 Wn.2d at 532 (WISHA remedies more comprehensive than the "guidepost" remedies of ERA and, therefore, more than adequately protect the public policy of protection of workers who report safety violations). Accordingly, the remedies available under the CMVSA more than adequately protect the public interest in commercial motor vehicle safety. Without satisfying the jeopardy element, the trial court correctly dismissed Mr. Rose's claim of wrongful termination in violation of public policy.

Affirmed.

Brown, A.C.J.

WE CONCUR:

Korsmo, J.

Lawrence-Berrey, J.