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COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON

RODNEY J. BAKER,

Appellant,

v.

PIERCE COUNTY PUBLIC TRANSPORTATION
BENEFIT AREA CORPORATION,

Respondent.

PETITION FOR REVIEW

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I. IDENTIFY OF PETITIONER

Petitioner Rodney Baker is an individual residing in Pierce County, Washington. He was the appellant in Washington State Court of Appeals, Division II, Case No. 49720-4-II.

II. CITATION TO COURT OF APPEALS DECISION

Petitioner Rodney Baker seeks review of the unpublished decision issued in Washington State Court of Appeals, Division II, Case No. 49720-4-II, (Rodney Baker v. Pierce County Transportation Benefit Area Corporation) issued on April 24, 2018. A copy of decision is attached as Appendix A to this Petition pursuant to RAP 13.4 (c)(9).

III. ISSUES PRESENTED FOR REVIEW

Did the Court of Appeals fail to follow Washington court precedents on terminations “for cause” and summary judgment when it affirmed the dismissal of Rodney’s Baker suit for wrongful discharge in violation of an implied contract?

IV. STATEMENT OF THE CASE

Pierce Transit hired Rodney Baker in June 2000. CP at 507. In March 2006, Pierce Transit established a Department of Public Safety. CP at 508. It named Baker Chief of Public Safety and Transit Police. *Id.*

A. Chief Baker Oversees Budget for Liaison Officers

Part of Chief Baker's job description included overseeing programs and administering the programs within "budgetary limitation." CP at 534. Pierce Transit CEO, Lynne Griffith, acknowledged that this was part of Chief Baker's duties. CP at 545. One of the programs Chief Baker oversaw was the coordination with other law enforcement agencies in a community policing effort. CP at 512-513. Pierce Transit had a contract with the Tacoma Police Department to provide liaison officers in the amount of one full time equivalent to coordinate the use of off-duty officers for the community policing effort. This liaison position consisted of two Tacoma police officers for 20 hours per week. Baker oversaw the administration and budget for the program. *Id.*

In 2012, one of the liaison officers for the Tacoma Police Department approached Chief Baker regarding the program. CP at 513. The liaison pointed out that due to the on-call nature of the liaison position, accounting for time was administratively difficult and that officers were routinely working more than 20 hours per week, with a significant portion of this time being spent simply accounting for their time. CP at 514, 591. The liaison proposed that the officers be paid at a flat rate within the budget already established. *Id.* Understanding his authority to manage the program's budget, Baker agreed to this proposal. The officers began reporting 10 hours of work on Saturdays and Sundays. In reality, the officers were on call and performing work throughout the week. CP at 513-514; 593-594.

B. Pierce Transit Audits Chief Baker's Unit

In the fall of 2013, Pierce Transit conducted an audit of payroll records in Chief Baker's unit, including those of the Tacoma police liaisons. CP at 516-517, 547. Pierce Transit discussed with Chief Baker several concerns which came up because of the audit. CP at 517-519. Pierce Transit was concerned about the number of hours which the Tacoma officers were reporting. *Id.* It was also concerned about how Chief Baker used a rubber stamp and staff persons to approve timecards. *Id.* Chief Baker provided explanations for the hours and time card approval process. *Id.* He discontinued the use of the rubber stamp. The Tacoma liaison officers changed how they reported hours. CP at 519-520. At no time during the discussion about the audit and change in practices did Pierce Transit inform Chief Baker he was potentially being subjected to discipline regarding these practices. CP at 520.

C. Pierce Transit Discharges Chief Baker

In September 2013, Doug Middleton replaced Lynne Griffith as Chief Baker's supervisor. CP 509. On November 19, 2013, Pierce Transit placed Chief Baker on paid administrative leave. CP at 520; CP at 561. Pierce Transit commissioned an outside law firm to investigate the time card issues. CP at 521. The investigator from this law firm, Jeffery Coppersmith, interviewed Chief Baker twice. CP at 521. Coppersmith's report later stated that Chief Baker had "likely exceeded his authority

under the Pierce Transit Code when he authorized the Tacoma Police Department liaisons to work, “on salary,” without obtaining the approval from the CEO or the Board.” Coppersmith concluded that he had “not found evidence establishing that Chief Baker [or others] over-reported, falsified, or improperly approved hours for off-duty officers.” CP at 258.

On February 25, 2014, Pierce Transit issued a letter to Chief Baker informing him that it was contemplating discipline, “up to and including dismissal.” CP at 563-564. The letter specifically referenced Section 8 of the Personnel Manual. CP at 564.

On March 5, 2014, Chief Baker submitted a response to the pre-disciplinary letter. CP at 566-569. On March 20, 2014, Pierce Transit issued a termination letter to Chief Baker. CP at 571-582. This termination letter, like the pre-disciplinary letter, made explicit reference to Section 8 of the Personnel Manual. *Id.* Pierce Transit’s termination letter to Chief Baker also included a copy of Section 8 of the Personnel Manual. CP at 579-581.

D. Pierce Transit Treats Lynne Griffith Differently

Beginning in June 2013, Pierce Transit was aware that it was being investigated by the Washington State Auditor’s office for unauthorized payments of administrative leave time. CP at 462-463; 504. On December 17, 2013, during the same period that Pierce Transit was investigating time card issues in Chief Baker’s unit, it received a report from the Washington State Auditor’s office regarding this audit. CP at 94-104. The

report found that CEO Lynne Griffith had improperly authorized over \$120,000 worth of paid administrative leave time. CP at 100-101.

Pierce Transit accepted the Auditor's findings and promised to "direct management to ensure compliance with codified personnel policies." CP at 342-343. Pierce Transit also promised that it had "made immediate changes to its practices and procedures to address the Auditor's concerns."

On January 13, 2014, Pierce Transit formally approved the response to the Auditor's report. CP at 339. At the same time, Pierce Transit approved a personnel evaluation of CEO Lynne Griffith. *Id.* This personnel evaluation was overwhelmingly positive; it did not mention the State Auditor's findings of wrongful approval of paid administrative time. CP at 345-349. Pierce Transit did not consider disciplining CEO Griffith over the unauthorized payment of administrative leave time. CP at 309.

E. Procedural History

On February 27, 2015, Chief Baker filed a Complaint against Pierce Transit. CP at 1-4. The Complaint made a claim for Breach of Contract/Wrongful Termination. CP at 3. Pierce Transit filed a motion for summary judgment. The trial court granted the motion. CP at 749-754. Chief Baker appealed the trial court's decision. CP at 755. On April 23, 2018, the Court of Appeals affirmed the trial court's dismissal of Chief Baker's case. Appendix A. The Court of Appeals only analyzed the issue

of whether Pierce Transit had “cause” to terminate Chief Baker. Appendix A at 8 fn 4.

V. ARGUMENT

This Court should take review of this matter because the Court of Appeals’ decision conflicts with this Court’s ruling in *Baldwin v. Sisters of Providence*, 112 Wn.2d 127, 139, 769 P.2d 298, 304 (1989) that the standard for deciding whether an employer fired an employee “for cause” is whether this decision was “fair and honest” and in “good faith.” This good faith standard necessarily requires looking beyond the employer’s stated reason for the termination and weighing factors which the Court articulated in *Civil Serv. Comm’n v. City of Kelso*, 137 Wn.2d 166, 969 P.2d 474 (1999). Because the Court of Appeals failed to properly apply this standard, its decision conflicts with this Court and other appellate court’s prior decisions. Thus, review is appropriate pursuant to RAP 13.4(b)(1-2).

Similarly, the Court of Appeals’ failure to give deference to the facts produced by Chief Baker and to draw inferences in favor of Chief Baker conflicts with this Court and other published appellate court decisions regarding the standard to use to decide cases on summary judgement. *See Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982); *Ruff v. King County*, 125 Wn.2d 697, 704, 887 P.2d 886 (1995).

A. The Court of Appeals failed to follow this Court's and other published appellate decisions on the standard for "for-cause" terminations.

In its cases on the subject, this Court has used the terms "for-cause" and "just-cause" interchangeably. This Court has defined "cause" for the purposes of employment decision-making as "a fair and honest cause or reason, regulated by good faith on the part of the party exercising the power." *Baldwin v. Sisters of Providence*, 112 Wn.2d 127, 139, 769 P.2d 298, 304 (1989). The Court went on to hold that "a discharge for "just cause" is one which is not for any arbitrary, capricious, or illegal reason and which is based on facts (1) supported by substantial evidence and (2) reasonably believed by the employer to be true." *Id.*

The Court elaborated on the "cause" standard in *Civil Serv. Comm'n v. City of Kelso*, 137 Wn.2d at 166. "Whether there is just cause for discipline entails much more than a valid reason; it involves such elements as procedural fairness, the presence of mitigating circumstances, and the appropriateness of the penalty. Seven factors are considered in determining whether there was just cause for discipline, including whether the employer applied its rules even-handedly, and whether the degree of discipline was reasonably related to the seriousness of the infraction given the employee's record of service." *City of Kelso*, 137 Wn.2d at 173. "[W]hether an employer properly determined it had just cause for termination is a question for the trier of fact." *Lund v. Grant Cty. Pub. Hosp. Dist. No. 2*, 85 Wn. App. 223, 228, 932 P.2d 183, 185 (1997).

The Court of Appeals in this matter cited, out of context, a portion of this Court’s opinion in *Gaglidari v. Denny's Rests.*, 117 Wn.2d 426, 438, 815 P.2d 1362, 1369 (1991) for the proposition that evidence regarding employee’s good faith belief that his conduct did not rise to the level of terminable offense as irrelevant to the question of whether a termination was for cause. *See* Appendix A at 9. In *Wlasiuk v. Whirlpool Corp.*, 81 Wn. App. 163, 178, 914 P.2d 102, 112 (1996), Division I rejected a similar attempt at reading *Gaglidari* as modifying the *Baldwin* standard to place undue deference to the employer’s reason for termination. Instead the *Wlasiuk* court properly held that a fact finder is the proper party to determine whether or not an employer acted in good faith in terminating an employee for cause. *Id.*

Division III reached a similar conclusion. It stated, “The hospital’s interpretation of *Gaglidari*, suggesting the sole focus of the inquiry is on the evidentiary basis of the employer’s decision, would defer to the employer on the question of the legitimacy of the *reason* for the discharge, and would dramatically upset the balance between the employer’s and employee’s interests.” *Lund v. Grant Cty. Pub. Hosp. Dist. No. 2*, 85 Wn. App. 223, 230, 932 P.2d 183, 186 (1997) (emphasis in the original). The *Lund* court went on to hold that the whether an employer has met the burden of “good faith,” meaning not “unlawful,” “arbitrary,” or “capricious” is question for the trier of fact. *Id.* In *Lund*, the Court ruled that different treatment of employees is evidence of an “arbitrary” decision. *Id.* In the present case, the different treatment of Lynne Griffith

was arbitrary in that she was found to have mismanaged employee payroll and was not fired; she was not even disciplined.

The Court of Appeals stated that it applied the test in *Baldwin* to determine whether a reasonable fact finder could find that Pierce Transit did not fire Chief Baker for cause. The court focused on the “employer’s reasonable belief” and “substantial evidence” language in *Baldwin* to rule that there was no question that Chief Baker had been fired for cause. The court cited but completely ignored the “good faith” requirement of *Baldwin*. It also ignored the summary judgment standard requiring Pierce Transit to demonstrate that there was no question as to the “good faith” reason for the termination. The Court of Appeals focused on the fact that Chief Baker admitted to some of the conduct alleged to be wrong, but ignored evidence that suggested a lack of good faith on Pierce Transits’ part in terminating him. It ignored language in Chief Baker’s job description which gave him discretion to manage the liaison program. It ignored evidence that Pierce Transit treated its Chief Executive Officer, Lynne Griffith, differently based on a similar allegation of mismanagement. It ignored the fact that Chief Baker had a lengthy record of service with no discipline. It ignored the timing of Chief Baker’s termination which followed Pierce Transit’s knowledge of an investigation and wrong-doing of Lynne Griffith. It ignored the procedural irregularities of the investigators including not even speaking with Lynne Griffith, Chief Baker’s supervisor for much of the period in question.

All of this ignored evidence was more than sufficient for a juror to reasonably conclude that Chief Baker was not fired for cause. Only the Court of Appeals' ignoring this Court's precedent of a "good faith" requirement for "for-cause" terminations caused it to rule otherwise.

B. The Court of Appeals failed to follow the summary judgment standard.

This Court reviews summary judgment orders de novo. *Utter ex rel. State v. Bldg. Indus. Ass'n of Wash.*, 182 Wn.2d 398, 406, 341 P.3d 953, 957 (2015). The purpose of summary judgment is to avoid a useless trial. *Olympic Fish Prods. v. Lloyd*, 93 Wn.2d 596, 602, 611 P.2d 737, 740 (1980). When considering a motion for summary judgment, the trial court must consider all the facts in the light most favorable to the non-moving party; in this case, Chief Baker. *Sellsted v. Washington Mutual Savings Bank*, 69 Wn. App. 852, 859, 851 P.2d 716 (1993); *See Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). Only when reasonable minds can reach but one conclusion may the court grant summary judgment. *Ruff v. King County*, 125 Wn.2d 697, 704, 887 P.2d 886 (1995).

Summary judgment is appropriate only if there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). A material fact is one upon which the

outcome of the litigation depends. *Eriks v. Denver*, 118 Wn.2d 451, 456, 824 P.2d 1207 (1992). The moving party, Pierce Transit, bore the burden of showing there is no material fact at issue. *Safeco Insurance v. Butler*, 118 Wn.2d 383, 823 P.2d 499 (1992).

In the present case, the Court of Appeals issued a conclusory opinion that purported to apply the *Baldwin* standard in deciding this case. However, the court's improperly ruling that an employer's reasoning by itself is enough to support granting of summary judgment led it disregard the summary judgment standard this Court has promulgated for years.

Applying the *Baldwin* and *City of Kelso* standards to this case: the primary reason that Pierce Transit gave for terminating Chief Baker was that he had changed the payment and reporting arrangements with the liaison officers without express authorization from others at Pierce Transit. But managing this program within the budget was one of Chief Baker's duties. Chief Baker did not change the budgetary amount of the program. Chief Baker had a good faith belief that he could manage the program in a cost-effective way. There was no allegation of any malfeasance on the Chief's part. CP at 258. There was also no allegation that Chief Baker's actions adversely affected the operations or budget of Pierce Transit. The Court of Appeals simply ignored this evidence in its decisions. The Court of Appeals chose to simply accept Pierce Transits self-serving

explanations for the termination at face value. This is direct violation of the summary judgement standard. A reasonable juror could conclude that Pierce Transit had given Chief Baker authority to alter payment arrangements with officers as part of his duties in managing the budget. Even if a juror concluded that Chief Baker exceeded his authority, there was still enough evidence for the juror to conclude that Chief Baker's termination was not for "just cause."

While Pierce Transit's investigation appeared to be superficially procedurally fair, in fact Pierce Transit Manager Doug Middleton refused to consider key evidence. This included statements from the liaison officers involved. CP at 595. Middleton had only begun to supervise Baker in September 2013. CP at 509. Middleton did no follow-up investigation following the Coppersmith report. CP at 363. While Middleton did apparently attempt to reach out to Lynne Griffith regarding Baker, Griffith refused to cooperate. CP at 366; 482-483. Presumably, this was because Griffith was aware that she was under investigation for improperly authorizing \$120,000 in administrative leave time. Based on these facts, a reasonable juror could conclude that Pierce Transit's investigation of this matter was procedurally unfair. The trial court and Court of Appeals did not even mention this evidence in their opinions.

The discipline issued by Pierce Transit was not applied even-handedly. Lynne Griffith received no discipline for violating the law in making \$120,000 in unauthorized payments. Where an employer did not discipline other employees for similar acts, there is an issue of triable fact as to whether the discharge was arbitrary, and therefore not “for cause.” *See, Lund*, 85 Wn. App. at 230. A reasonable juror could conclude that even if Chief Baker had exceeded his authority in changing the time-keeping practices and payment arrangements for the liaison officers, his termination for these violations was not even-handed treatment. A reasonable juror could also conclude on these same facts that termination was an inappropriate punishment given the infraction. Thus, summary judgment was inappropriate.

The Court of Appeals did not even mention the *Kelso* “for cause” factors in its opinion. The court also failed to mention the evidence suggesting the Pierce Transit’s termination of Chief Baker was not good in faith. These errors illustrate the need for this Court to take review of this case. The Court should clarify that, for purposes of summary judgment, a court must consider all evidence that would suggest that an employer’s termination was not in “good faith” in the light most favorable to an employee opposing summary judgment.

VI. CONCLUSION

Because the Court of Appeals failed to follow this Court's rulings and other published appellate court decisions on in the standard evaluating "for cause" termination, Petitioner Rodney Baker requests the Court accept review of this case. The Court should adopt Division I and Division III's rejection of a reading of *Gaglidari* as modifying the *Baldwin* standard. The Court should clarify that courts must consider the *Kelso* factors to determine "good faith" in applying the *Baldwin* standard. Chief Baker requests the Court reverse the Court of Appeals and remand this matter for trial.

RESPECTFULLY SUBMITTED THIS 24th day of May, 2018.

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APPENDIX A

April 24, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

RODNEY J. BAKER,

Appellant,

v.

PIERCE COUNTY PUBLIC
TRANSPORTATION BENEFIT AREA
CORPORATION,

Respondent.

No. 49720-4-II

UNPUBLISHED OPINION

SUTTON, J — Rodney J. Baker appeals the superior court’s order granting summary judgment to Pierce County Public Transportation Benefit Area Corporation (Pierce Transit) on his claims of wrongful termination and breach of contract. Baker argues that there are genuine issues of material fact that preclude summary judgment because Pierce Transit could only discharge him “for cause” and it did not discharge him “for cause.” We hold that there is no genuine issue of material fact, that Pierce Transit discharged Baker for cause, and we affirm the superior court’s order granting summary judgment and dismissal of his wrongful termination and breach of contract claims.

FACTS

I. PIERCE TRANSIT’S PERSONNEL MANUAL

Pierce Transit is a municipal corporation that provides public transit in Pierce County. Pierce Transit has a personnel manual. Section 8.0 of the personnel manual governs discipline and

lists several causes that are grounds for Pierce Transit to discipline or terminate an employee. The discipline section states that “[t]hese guidelines will be used in determining discipline. [Pierce Transit] reserves the right to decide specific actions based upon individual circumstances and facts of each case.” Clerk’s Papers (CP) at 728. In Section 8.1.3, the personnel manual states that “[i]f the hiring authority believes a situation exists requiring the immediate termination or suspension of an employee, the hiring authority should carefully document the reasons for such a decision.” CP at 728. Lastly, section 8.5 states that “the hiring authority may discharge a regular employee for disciplinary reasons including but not limited to those set forth above.” CP at 730. There is no reference to “progressive discipline” in the discipline section or in the personal manual.

II. BAKER’S DUTIES

In 2000, Pierce Transit hired Baker. In 2006, Baker’s position at Pierce Transit was Chief of Public Safety and Transit Police. In this position, Baker reported that his job duties included monitoring and authorizing expenditures in accordance with budgetary limitations and coordinating the community policing effort with other law enforcement agencies. To coordinate the community policing effort, Pierce Transit contracted with the Tacoma and the Lakewood Police Departments to hire off-duty officers. Pierce Transit also contracted with the Tacoma Police Department to provide one full-time liaison officer position. Tacoma Police Department Officers, Mark Feddersen and James Smith, signed a contract with Pierce Transit to become liaison officers and they split the 40 hour per week liaison officer position. The contracts specified that the liaison officers and the off-duty officers for the community policing effort were to be paid on an hourly basis. Baker knew that both the liaison officers and the off-duty officers were to be paid hourly and that it was his responsibility, as the supervisor, to review and approve their timecards.

In 2012, Officer Feddersen approached Baker and proposed that he and Officer Smith be paid a flat rate instead of an hourly rate, effectively making them salaried employees of Pierce Transit. Baker agreed to change the contracts and convert them to salaried employees without notifying the Finance Department, his chain of command, or the person who was authorized to sign these contracts for Pierce Transit. Baker then implemented a new billing system that allowed Officers Feddersen and Smith to individually report ten hours of work every Saturday and Sunday, even though they worked sporadically throughout the week. At times, they both reported over 20 hours of time worked per week for the 40 hour per week liaison position that they shared.

III. AUDIT OF TIME REPORTED BY LIAISON OFFICERS

Liz Passmore is a Finance Assistant Manager at Pierce Transit. On September 12, 2013, Baker's assistant reported to Passmore that the liaisons' and off-duty officers' timecards were not reviewed by anyone and it appeared that the officers were reporting excessive hours. She also reported that Baker instructed her to "rubber stamp" his signature to approve the timecards. Because of these allegations, Pierce Transit conducted an internal audit of the timecards.

On October 21, Passmore completed an initial draft audit report. Her draft audit report raised the following issues related to the pay for the liaison and off-duty officers:

- Timecards are not being reviewed by [Baker] . . . and a signature stamp is being used [for Baker's signature]. The result is that timecards do not have the required approval.
- The Daily Field Activity Report (DFAR) for [Officers Feddersen and Smith] do not match the hours reported and paid on the timed card.
- The hours actually reported as worked for the pay period for [Tacoma and Lakewood Police Departments] were significantly higher than the hours scheduled by Pierce Transit.

CP at 195. The draft audit report also noted that both Officers Feddersen and Smith had reported between 40 to 75 hours every pay period in 2013. That same day, Baker met with Kathy Sullivant, Pierce Transit's Finance Manager, and Wayne Fanshier, Pierce Transit's Chief Financial Officer, to discuss Passmore's draft audit report. In that meeting, the managers discussed the number of hours that the liaison and off-duty officers had been reporting and Baker's "rubber stamp" process. They agreed to meet again after Baker discussed the draft audit report with Officers Feddersen and Smith. On October 23, Passmore emailed her draft audit report to Baker, who then sent the report to Officers Feddersen and Smith. On October 26, Officer Feddersen emailed Baker and explained that he and Officer Smith considered themselves to be "de facto salaried employees" of Pierce Transit. CP at 227.

On October 31, Baker met with Passmore, Sullivant, Fanshier, and Officers Feddersen and Smith to discuss their responses to the draft audit report. Sullivant's notes from that meeting state that the liaison officers filled out their time cards by individually reporting 10 hours of work on Saturday and Sunday because Baker had told them to do so, and that Baker "indicated that he considered them to be salaried employees." CP at 215. On November 7, Passmore again met with Baker's assistant. Baker's assistant described her discomfort with the "rubber stamp" process created by Baker, and she alleged that one of the liaison officers appeared to have misreported his hours.

IV. THE INVESTIGATION AND BAKER'S ADMINISTRATIVE LEAVE

Pierce Transit hired outside counsel, Jeff Coopersmith, to conduct an investigation. On November 19, Pierce Transit placed Baker on paid administrative leave pending completion of the investigation. Coopersmith interviewed Baker twice during his investigation. Baker

acknowledged that he was familiar with the Pierce Transit personnel manual and that he had relied on Section 8.0 when he had considered disciplining subordinates that he supervised.

On February 5, 2014, Coopersmith released a report. It stated that “Baker likely exceeded his authority under the Pierce Transit Code¹ when he authorized [Officer Feddersen and Officer Smith] to work ‘on salary,’ without obtaining approval from the CEO or the Board.” CP at 258. Coopersmith stated that he had “not found evidence establishing that [Baker, Officer Feddersen, or Officer Smith] . . . over-reported, falsified, or improperly approved hours for off-duty officers.” CP at 258. He noted that there was no evidence of malfeasance because there was no tracking information that could confirm or deny the veracity of the approved hours. Coopersmith concluded that Baker had abdicated his responsibility to review the timecards and ensure that they were accurate, and that, as a result, no one was reviewing the liaison officers’ hours to ensure that their timecards were accurate.

On February 13, Baker and his personal attorney met with Baker’s Supervisor, Doug Middleton and Alberton Lara. Doug Middleton was Pierce Transit’s Chief Operating Officer (COO) and Alberton Lara was Pierce Transit’s Chief Administration Officer and the head of Human Resources. During the meeting, they discussed Baker’s actions and provided him an opportunity to respond to the Coopersmith investigation.

¹ All references are to the version of the Pierce Transit Code in effect at the time of Baker’s termination. CP at 33 n.22. The current Pierce Transit Code can be located here: https://library.municode.com/wa/pierce_transit/codes/code?nodeId=PIERCE_TRANSIT_WASHINGTONCO.

V. PIERCE TRANSIT NOTICE TO BAKER AND PRE-TERMINATION MEETING

On February 25, Middleton sent a letter to Baker advising him that Pierce Transit was considering taking disciplinary action against him, up to and including dismissal.

- 1) While being aware of the hourly pay basis of the contracts with Tacoma Police officers working for Pierce Transit as off-duty police and the need for daily time keeping, without authority, you changed the terms of such contracts without notifying Finance or anyone else in your chain of command or who was authorized to sign such contracts.
- 2) Failure to follow directions regarding payroll issues for Transit Security Officers.
- 3) Lack of understanding of the limits of your administrative or other authority for contracting and otherwise; lack of awareness of [Pierce Transit] contracting authority under the Pierce Transit Code; and lack of awareness of the binding nature of contract terms.
- 4) Your authorization of the use of your rubber-stamped signature by your administrative staff to sign payroll records that you did not verify yourself. Some of the time records differed from scheduled hours.
- 5) The Investigation revealed some instances of conduct that do not reflect well on a Chief of Police, such as failure to exercise appropriate judgment and leadership.
- 6) All issues addressed in the [Coopersmith] Investigation impact my assessment of potential disciplinary action

CP at 273-74. The letter also encouraged Baker “to take advantage of the opportunity to respond to the allegations and evidence” by March 4. CP at 274.

On March 7, Pierce Transit held a pre-termination meeting with Baker and his attorney. Baker submitted written responses to the allegations and stated that he believed that he had the authority to change the contracts and convert the liaison officers to a salary system. Baker did not rebut the bases for the disciplinary action that Pierce Transit was considering taking.

VI. BAKER’S TERMINATION AND LAWSUIT

On March 20, Pierce Transit terminated Baker and notified him by letter. The termination letter cited violations of the following three provisions: section 8.2.2 (Willful violation of the

provisions or policies of the Agency.), section 8.2.5 (General incompetency or inefficiency in the performance of your duties.), and section 8.2.15 (Mishandling of employer revenues.). CP at 261. In the termination letter, Middleton wrote that he “heard nothing that justified [Baker’s] decision to give up oversight of the payroll and unilaterally change terms of [Pierce Transit’s] contracts. Additionally, [Baker] did not seem to understand or appreciate that the scope of [his] authority is limited.” CP at 571.

Baker filed a complaint against Pierce Transit for sex discrimination under the Washington Law Against Discrimination (WLAD),² and for wrongful termination and breach of contract allegedly based on “the Pierce Transit Code and the contract between Plaintiff and Defendant by terminating Plaintiff without cause.” CP at 3-4. Pierce Transit filed a motion for summary judgment and dismissal. After considering the motion and Baker’s response, the superior court granted the motion. Baker appeals the superior court’s order granting summary judgment and dismissal of his wrongful termination and breach of contract claims.³

ANALYSIS

Baker argues that there is a genuine issue of material fact as to whether Pierce Transit discharged him “for cause.” Br. of Appellant at 15. Pierce Transit argues that based on its internal audit and investigation, it reasonably concluded that Baker willfully violated the terms of its

² Ch. 49.60 RCW.

³ Baker does not appeal the superior court’s dismissal of his claim for sex discrimination.

personnel manual, and thus, Pierce Transit discharged him “for cause.” We agree with Pierce Transit that Baker was discharged for cause.⁴

We review a summary judgment ruling de novo, viewing the facts and all reasonable inferences from the evidence in a light most favorable to the nonmoving party. *Scrivener v. Clark Coll.*, 181 Wn.2d 439, 444, 334 P.3d 541 (2014). A superior court properly grants summary judgment where the pleadings, declarations, or affidavits show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. CR 56(c). If reasonable minds could reach different conclusions about a fact, a genuine issue of material fact exists. *Youker v. Douglas County*, 178 Wn. App. 793, 796, 327 P.3d 1243 (2014). A material fact is one that controls the litigation’s outcome. *Youker*, 178 Wn. App. at 796.

“In a summary judgment motion, the moving party bears the initial burden of showing the absence of an issue of material fact.” *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). If the moving party meets his or her initial burden of showing the absence of a genuine issue of material fact, then the burden shifts to the nonmoving party. *Young*, 112 Wn.2d at 225. If the nonmoving party “‘fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial,’ then the trial court should grant the motion.” *Young*, 112 Wn.2d at 225 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986)).

⁴ Baker also argues that the personnel manual created an implied contract, that the manual only allows Pierce Transit to discharge him “for cause,” and that Pierce Transit did not effectively disclaim any implied contract. Because we hold that Pierce Transit discharged Baker “for cause,” we do not reach these arguments.

“Just cause” is defined as a fair and honest cause or reason, regulated by good faith on the part of the party exercising the power. *Baldwin v. Sisters of Providence in Washington, Inc.*, 112 Wn.2d 127, 139, 769 P.2d 298 (1989). A discharge “for cause” is based on facts supported by substantial evidence, reasonably believed by the employer to be true, and not for any arbitrary, capricious, or illegal reason. *Gaglidari v. Denny’s Restaurants, Inc.*, 117 Wn.2d 426, 438, 815 P.2d 1362 (1991) (quoting *Baldwin*, 112 Wn.2d at 769). Whether someone was discharged “for cause” is a question for the trier of fact, unless there is no genuine issue of material fact. *See Baldwin*, 112 Wn.2d at 132.

Baker does not dispute the facts relied on by Pierce Transit to support his termination. Instead, he defends his conduct by claiming that he believed he had the authority to change the contracts and convert the liaison officers to a salary system. But Baker’s “reasonable belief” that he had the authority to change the way the liaison and off-duty officers reported their time is not legally relevant. In evaluating just cause, it is the employer’s belief that is relevant, not the employee’s belief. *Gaglidari*, 117 Wn.2d at 438.

In terminating Baker, Pierce Transit cited sections 8.2.2, 8.2.5, and 8.2.15 of the personnel manual. Section 8.2.2 states that it is a cause for discipline if an employee willfully violates the provisions or policies of Pierce Transit. In the termination letter, Pierce Transit described why it believed that Baker had willfully violated the provisions or policies. Specifically, the letter stated that the willful violation

occurred when you changed the terms of [Pierce Transit]-issued contracts without approval or authorization. While being aware of the hourly pay basis of the contracts with officers working for Pierce Transit as off-duty police and the need for daily time keeping, without authority, you changed the terms of such contracts

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without notifying Finance or anyone else in your chain of command or who was authorized to sign such contracts.

CP at 261.

Section 8.2.5 states that it is a cause for discipline if an employee is generally incompetent or inefficient in the performance of his or her duties. In the letter, Pierce Transit described why it believed Baker was generally incompetent or inefficient in his duties. Specifically, the letter stated,

Throughout this process you have insisted that you have the power and control to make the kind of decisions you made related to contracts in your area of responsibility, though you have never had this authority. Additionally, the decision to change the liaisons' status to "salaried" in order to allegedly save [Pierce Transit] money appears to be without valid basis and reflects poor decision-making and judgment.

CP at 261.

Section 8.2.15 states that it is a cause for discipline for an employee to mishandle Pierce Transit's revenue. In the letter, Pierce Transit described why it believed Baker mishandled Pierce Transit's revenue. Specifically, the letter stated,

You directed your staff to use a rubber stamp with your signature and without your review to process payroll, giving up oversight and verification of the hours being billed by off-duty police officers. Assigning administrative staff the task of rubber stamping time keeping records shows a severe lack of good judgment.

CP at 261.

Pierce Transit conducted an internal audit, an investigation, and had numerous in-person meetings with Baker where he did not deny his actions, and provided him an opportunity to defend himself and explain his actions. Pierce Transit's termination of Baker was based on violations of three personnel manual provisions and was supported by substantial evidence. Pierce Transit reasonably believed these facts to be true, and the termination was not done for any arbitrary,

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capricious, or illegal reason. Thus, viewing the facts and all reasonable inferences in the light most favorable to Baker, Pierce Transit discharged Baker “for cause.”

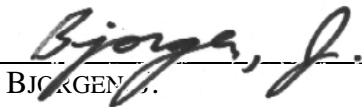
Because there are no genuine issues of material fact, the superior court properly granted Pierce Transit’s motion for summary judgment and dismissal of Baker’s wrongful termination and breach of contract claims. Therefore, we affirm the superior court’s order granting summary judgment and dismissal.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


SUTTON, J.

We concur:


JOHANSON, P.J.


BJORKGEN, J.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the below date, I caused to be served via email a true and correct copy of the foregoing Petition for Review on the individuals below:

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DATED this 24th day of May 2018, at Seattle, Washington.

/s/ Andie C. Scoggins
Andie C. Scoggins, Paralegal

CLINE & ASSOCIATES

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