

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UNPUBLISHED OPINION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

No. 49720-4-II

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,

No. 49720-4-II

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.”

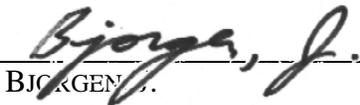
Because there are no genuine issues of material fact, the superior court properly granted Pierce Transit’s motion for summary judgment and dismissal of Baker’s wrongful termination and breach of contract claims. Therefore, we affirm the superior court’s order granting summary judgment and dismissal.

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.