

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

FILED
January 11, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

MAXINE O. MASON) SEVIER COUNTY
) 03A01-9508-CV-00270
Plaintiff - Appellant)
)
v.) HON. BEN W. HOOPER, II,
) JUDGE
)
KENNETH M. SEATON and)
wife LAUREL SEATON, d/b/a)
GRAND HOTEL)
)
Defendants - Appellees) VACATED AND REMANDED

JAMES H. RIPLEY OF SEVIERVILLE FOR APPELLANT

DOUGLAS L. DUTTON and AMY V. HOLLARS OF KNOXVILLE FOR APPELLEES

O P I N I O N

Goddard, P. J.

This is a suit seeking damages for wrongful discharge pursuant to "The Public Protection Act of 1990," T. C. A. 50-1-304, commonly known as the Whistle Blower Act, and the "Occupational Safety and Health Act of 1972," T. C. A. 50-3-106. The Trial Court granted the Defendants a summary judgment insofar as the complaint sought relief under the Whistle Blower Act.

Thereafter, he entered a Rule 54 judgment rendering his disposition a final judgment, and as such subject to an appeal as of right.

T. C. A. 50-1-304, as pertinent to this appeal, provides the following:

50-1-304. Discharge for refusal to participate in or remain silent about illegal activities, or for legal use of agricultural product-- Damages-- Frivolous lawsuits.--(a) No employee shall be discharged or terminated solely for refusing to participate in, or for refusing to remain silent about, illegal activities.

(b) As used in this section, "illegal activities" means activities which are in violation of the criminal or civil code of this state or the United States or any regulation intended to protect the public health, safety or welfare.

(c) Any employee terminated in violation of subsection (a) shall have a cause of action against the employer for retaliatory discharge and any other damages to which the employee may be entitled.

The Trial Court construed the language in Subsection (a)--"refusing to remain silent about, illegal activities."--in accordance with two unreported cases from the Western Section of this Court sitting in Nashville which hold that the employees must have been expressly or implicitly directed to remain silent before they were entitled to claim the benefits of the statute.

The evidence taken in a light most favorable to the non-moving party, as we are required to do in reviewing the propriety of a grant of summary judgment, discloses that the

Plaintiff, Maxine O. Mason, was terminated because she contacted authorities relative to safety violations where she was employed -- specifically that her employer, Grand Hotel, locked doors confining her in the laundry room where she worked.

The cases relied upon by the Trial Court are Leeman v. Edwards, filed in Nashville on October 14, 1994, and Merryman v. Central Parking System Inc., filed in Nashville on November 13, 1992.¹ Both of these cases hold that it is necessary that the employer expressly or implicitly direct the employee to remain silent before the Act comes into play.

In all deference to our brethren in the Western Section, we believe they have too narrowly construed this statute which is obviously remedial and must be liberally construed. Big Fork Mining Co. v. Tennessee Water Quality Control Board, 620 S.W2d 515 (Tenn. App. 1981). While we would readily concede that the construction placed upon the words "refusing to remain silent"² by the foregoing cases is a conceivable one, and perhaps technically correct, we do not believe it is an appropriate one. It seems to us that the evil sought to be remedied by the Legislature is broader than the one recognized by the Western Section. As we interpret the statute, it seeks to encourage an employee to speak out about illegal activities, whether that

¹ No application for an appeal to the Supreme Court was made by the employee in either case.

² The American Heritage Dictionary gives the following definition of refuse: "To decline to do, accept, give, or allow."

employee has previously been told to remain silent by his employer or not.

We accordingly conclude the statute as we construe it prohibits the action of the Defendants and summary judgment was improperly granted.

In conclusion, we respectfully suggest that this is an appropriate case for the Supreme Court to grant an application for appeal and resolve the conflict between the Sections of this Court.

For the foregoing reasons the judgment of the Trial Court is vacated and the cause remanded for further proceedings not inconsistent with this opinion. Costs of appeal are adjudged against the Defendants.

Houston M Goddard, P. J.

CONCUR:

Herschel P. Franks, J.

Charles D. Susano, Jr., J.