

IN THE COURT OF APPEALS OF THE STATE OF MINNESOTA

DANIEL J. SCHEELER- RELATOR

VS

(1) DEZURIK WATER CONTROLS-RESPONDENT

(2) DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT-
RESPONDENT

INFORMAL BRIEF OF RELATOR

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MINNESOTA

PARTIES

Relator

DANIEL J SCHEELER

P.O. BOX 517

Lewistown, Montana

59457 Phone 406-366-2706

Respondent

(1) DEZURIK WATER CONTROLS

250 Riverside Ave N.

Sartell, Minnesota 56377

(2) DEPARTMENT OF

EMPLOYMENT AND

ECONOMIC DEVELOPMENT

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THE ULJ (RICHARD SEBO) DECISION WAS DETERMINED WITHOUT
DETERMING HOW THE LAYOFF WAS HANDLED BY DEZURIK WATER
CONTROLS. ALSO HOW ONE PERSON IS TREATED DIFFERENTLY THAN
TWELVE OTHER PEOPLE IN THE SAME LAYOFF.

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STATE OF MINNESOTA
IN COURT OF APPEALS

CASE TITLE:

Daniel J. Scheeler,
Relator (your name)

STATEMENT OF CASE OF
RELATOR

vs.

COURT OF APPEALS #: A06-715

DeZurik Water Controls
Respondent (employer's name),

DEPARTMENT OF
EMPLOYMENT & ECONOMIC
DEVELOPMENT #: 17877 05

Department of Employment & Economic
Development,
Respondent.

1. Agency of case origination.
Department of Employment and Economic Development
2. Jurisdictional statement.
Certiorari appeal.
Statute authority authorizing certiorari appeal and fixing time limit for appeal:
Minn. Stat. § 268.105, subd. 7(a)
3. State type of litigation and designate any statutes at issue.
Unemployment insurance, Minn. Stat. ch. 268
4. Short description of issues raised to the unemployment law judge:
Layoff procedures that the Union & Company have -
Mis understanding of these layoff procedures.
5. Short description of issues you are raising in this appeal. (This is meant to be a short outline of your argument. You can make a detailed argument in the brief you will file with this court later.)

I believe the ULJ's decision was faulty, because of inaccurate testimony. According to several Labor lawyers I have talked to, his decision was not made according to Labor law. Also, DeZurik Water Controls says it was not a voluntary layoff as I had thought.

STATE OF MINNESOTA
IN COURT OF APPEALS

OFFICE OF
APPELLATE COURTS

APR - 7 2006

FILED

CASE TITLE:

Daniel J. Scheeler,
Relator (your name)

PETITION FOR WRIT OF
CERTIORARI

vs.

COURT OF APPEALS #: APk-715

1) DeZurik Water Controls
Respondent (employer's name),

DEPARTMENT OF
EMPLOYMENT & ECONOMIC
DEVELOPMENT #: 17877 05

2) Department of Employment & Economic
Development,
Respondent

DATE OF DECISION: Feb. 28, 2006

TO: The Court of Appeals of the State of Minnesota:

Daniel J. Scheeler (your name) hereby petitions the Court of Appeals for a Writ of Certiorari pursuant to Minn. Stat. § 268.105, subd. 7, to review a decision of the unemployment law judge issued on the date noted above, upon the grounds that the decision was based on inaccurate testimony + evidence. My former Employer (DeZurik Water Controls) says, that they decide who gets laid off according to their business needs + I was not voluntarily laid off.

(Summarize why you are appealing. You will make a detailed argument in your brief that you will be filing later.)

DATED: April 3rd, 2006

Daniel J. Scheeler
(Signature of you or your attorney)

Daniel J. Scheeler
(Print your name)

P.O. Box 517
(Address)

Lewistown, Mt. 59457

Home 406-538-3811
(Telephone number)

Cell 406-366-2706

STATE OF MINNESOTA
IN COURT OF APPEALS

CASE TITLE:

Daniel J. Scheeler
Relator (your name)

WRIT OF CERTIORARI

vs.

COURT OF APPEALS #: A06-715

- 1) DeZurik Water Controls
Respondent (employer's name),
- 2) Department of Employment & Economic Development
Respondent.

DEPARTMENT OF
EMPLOYMENT & ECONOMIC
DEVELOPMENT #: 17877 05

DATE OF DECISION: Feb. 28, 2006

TO: Department of Employment & Economic Development:

You are hereby ordered to return to the Court of Appeals within 10 days after the date relator's brief is due the record, exhibits and proceedings in the above-entitled matter so that this court may review the decision of the unemployment law judge issued on the date noted above.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the respondent Department of Employment & Economic Development and upon the respondent or its attorney at:

DeZurik Water Controls
250 Riverside Ave. N. Sartell, MN. 56377
(address of employer or its attorney if it has one)

Proof of service shall be filed with the clerk of the appellate courts.

DATED: 4/11/06
Clerk of the Appellate Courts

By: A. Shosie
Assistant Clerk

MINNESOTA DEPARTMENT OF EMPLOYMENT
AND ECONOMIC DEVELOPMENT
Appeal Number 17877 05

In the Matter of:

DANIEL J SCHEELER,

Applicant,

and

SARTELL WATER CONTROLS INC,

Employer.

ORDER OF AFFIRMATION

BASED ON THE APPEAL FILES AND RECORDS, AND BECAUSE:

1. On January 6, 2006, the undersigned unemployment law judge issued findings of fact and decision in the above-entitled matter.
2. On January 23, 2006, DANIEL J SCHEELER filed a request for reconsideration asking the undersigned to reconsider that decision.
3. Minnesota Statutes §268.105, subdivision 2 sets out the procedure on a request for reconsideration.
4. The undersigned has fully considered the request and determined that the decision of January 6, 2006 is factually and legally correct.

IT IS ORDERED:

The findings of fact and decision issued on January 6, 2006 is affirmed.



Dated: February 28, 2006

RICHARD C SEBO
Unemployment Law Judge

jm

MEMORANDUM: Daniel J. Scheeler submitted additional documentation, including a portion of a labor agreement, which indicates that in the event of a reduction of forces, an employee subject to transfer to a lower rated job may take a layoff until work for which he is qualified is again available in the classification for which he was employed, and that such a voluntary layoff

Appeal Number 17877 05

shall not disqualify an employee for unemployment compensation benefits. The Unemployment Law Judge, however, may not, except for the purpose of determining whether to order another hearing, consider any evidence that was not submitted at the evidentiary hearing. Further, there is no evidence that Scheeler would have been transferred to a lower rated job, nor did Scheeler assert this in his request for reconsideration. It is also noted that the "layoff" was of a finite duration of up to 90 days. Regardless of what is said about eligibility for unemployment in the labor agreement, benefit entitlement is determined by Minnesota Statutes, and not any agreement by or between employers and employees.

RIGHT OF APPEAL

This order will become final unless you request review by the Minnesota Court of Appeals. Minnesota Statutes §268.105, Subdivision 7(a), provides:

- (a) The Minnesota Court of Appeals shall, by writ of certiorari to the department, review the unemployment law judge's decision, provided a petition for the writ is filed with the court and a copy is served upon the unemployment law judge or the commissioner and any other involved party within 30 calendar days of the sending of the unemployment law judge's order under subdivision 2.

Any party who would like a review must petition the Minnesota Court of Appeals directly for issuance of a writ of certiorari. Petitions must conform to the Court's rules. Inquiries should be made to:

Office of Minnesota Appellate Courts
 305 Minnesota Judicial Center
 25 Rev. Dr. Martin Luther King Jr. Blvd
 St. Paul, MN 55155
 (651) 296-2581

A review before the Minnesota Court of Appeals is conducted in accordance with the Minnesota Rules of Civil Appellate Procedure.

NOTICE TO THE APPLICANT

If unemployed, you must file your continued requests for unemployment benefits through WEBclaim or Teleclaim while any appeal to the Minnesota Court of Appeals is pending.

ARGUMENT

This case is not right or just, and is discriminatory. Why should thirteen people get laid off and me being the only one that is asked to pay it back. To me, this is being treated unfairly and being discriminated against. How can thirteen people collect unemployment benefits and only one; Dan Scheeler; be asked to pay it back. I accepted the layoff the same as the other twelve people did. I think to myself how can this possibly be right. Even my former employer; Dezurik Water Controls; (the respondent) sees that I'm not being treated the same as the other twelve people. Bob Lundell,(Human Resources representative at Dezurik Water Controls) was also dismayed by it. Bob Lundell, who conducted the layoff, sent a letter to the ULJ and explained how the layoff was handled. Bob Lundell explains in his letter how he thought he was conducting a normal layoff and not a voluntary as the ULJ (Richard Sebo) sees it. Apparently, the law changed without Bob Lundell knowing it. Bob Lundell says, I was not on a voluntary leave of absence, but was laid off based on the needs of the business. (See Exhibit A)

My union representative, Jim Kiser, of the International Association of Machinist and Aerospace Workers, District Lodge No.165, 4th St. North, St. Cloud, MN 56303 (phone 320-252-4654) also said I am being treated unfairly and wrote a letter to the ULJ (Richard Sebo), but the letter was sent after the first hearing. I don't think the ULJ accepted it. (See exhibit B).

I also called and talked to Tom Romens: integrity assurance director for the Department of Employment and Economic Development,(651-296-3626). He checked out my case, and also says I am being treated unfairly.

I contacted several lawyers and they all agree, this case is very unusual and don't understand the ULJ decision. I cannot afford a lawyer and even if I would win, his or her fees would eat up the award.

Regardless, I'm being treated unfairly, and being discriminated against, by being the only one of thirteen people that got laid off, being asked to pay it back. If your decision is not in my favor, please explain why, I am different than the other twelve people.

Recently, I received a letter from the OFFICE OF APPELLATE COURTS. This letter is "exhibit C". It explains more about the case and how Bob Lundell, Human Resources Manager at Dezurik Water Controls states that I was not on a leave of absence and that the employer takes the position that I'm eligible for benefits.

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).