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No. A10-~~85~~ 88

STATE OF MINNESOTA
IN COURT OF APPEALS

Tashika Sykes,
Relator

vs.

Northwest Airlines, Inc.
Respondent,

and

Department of Employment & Economic Development,
Respondent

REPLY BRIEF OF APPELLANT TASHIKA SYKES

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INTRODUCTION

Relator Tashika Sykes (Sykes) has provided sufficient evidence to show that she quit her employment at Northwest Airlines to accept substantially better terms of employment from Green Cultural Communities (GCC). The arguments raised by Respondent Minnesota Department of Employment and Economic Development (Respondent) are not supported by the relevant case law or the testimony from the unemployment hearing.

LEGAL ARGUMENT

I. Respondent improperly applied the standard set forth in *McCoy v. County of Ramsey* and in *Welshons v. Superior Truck Auto and Marine, Inc.* in concluding that Sykes did not quit her employment to accept other covered employment that provided substantially better terms and conditions of employment.

Contrary to Respondent's assertion, the decisions in *McCoy v County of Ramsey*[1] and *Welshons v Superior Truck Auto and Marine, Inc.*[2] do not support the denial of unemployment benefits to Sykes. Unlike Sykes, the employee in *Welshons* did not quit his job for one that provided substantially better pay. Instead, he quit his job to take a position that paid him $3.00 less per hour, although he testified that he had the opportunity

[1] *McCoy v County of Ramsey* (2007 WL 1248135 (Minn. App. 2007), Respondent's Appendix A19-21
[2] *Welshons v Superior Truck Auto and Marine, Inc.* 2008 WL 2104454 (Minn. App. May 20, 2008), Respondent's Appendix A15-18

to make commissions. The *Welshons* Court held that a shorter commute and better working conditions together with a $3.00 per hour wage reduction were not substantially better terms of employment[3]. In *McCoy*, the employee quit her position with Ramsey County for a nanny position that paid her 33% less; reducing her wages from $24.12 per hour to $16.25 per hour.[4] McCoy argued that the fact that she would have less stress and have more time with her children should be a consideration when comparing the nanny position to the Ramsey County job for the purpose of determining eligibility for unemployment benefits. The Court in *McCoy* held that although the statute contemplates a comparison of the terms and conditions of the positions in question, it does not contemplate a comparison of which position is more suitable to the personal needs of an individual employee.[5] Under Respondent's argument, each benefit of an employer would have to be quantified and then compared, whether or not such benefit had any monetary value to the employee seeking to better his or her financial condition.

Unlike McCoy and Welshons, Sykes is not requesting that the Court take into account benefits when determining whether she is eligible for unemployment benefits. Sykes did not leave her employment with Northwest to improve her quality of life; she quit her job at Northwest because she had been offered a substantial increase of pay that equates to a 16.67% increase over that which she made at Northwest. This increase in salary was not slightly better, it was substantially better. Sykes continued to receive from Northwest the same group health insurance she would have received from Northwest had she

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[3] *Id.* at 3.
[4] *McCoy,* at 1
[5] *Id.* at 2

continued to work there.[6] Therefore, it was unnecessary for Sykes or this Court to take into account the cost of health insurance when comparing the financial benefits of GCC to those offered by Northwest. While Respondent alludes to the fact that Sykes would have had to pay $1000 in monthly premiums if she had purchased an individual plan, there was no reason for Sykes to purchase her own plan when Northwest had agreed to cover her until she was at least 62.[7] In comparing the tangible benefits of the pay offered by GCC with the pay Sykes received at Northwest, the salary from GCC was clearly substantially better.

II. The evidence does not support Respondent's argument that Sykes knew the position at GCC was insecure.

Respondent argues that Sykes took the position at GCC knowing that it was insecure. Respondent contends that because Sykes had previously been a volunteer at GCC, she somehow should have known that GCC's funding was precarious and that the position she was offered would not last[8]. This contention has no support in the record. Furthermore, it is unreasonable to charge Sykes with the knowledge of GCC's financial condition or its reliance on additional funding merely because Sykes had previously been an unpaid volunteer with GCC. In fact, Sykes was just as likely to believe that the Northwest position was more precarious than the one offered by GCC. Northwest had already publicly announced its merger with Delta and its plans to relocate to Georgia. Compounding this knowledge, Sykes had been offered an "Early Out" benefit which would

[6] Transcript, or T, at 15
[7] Respondent's Brief, at 9
[8] Respondent's Brief, at 7

reasonably have led her to believe that her job at Northwest was in jeopardy. If Sykes had lost her job at Northwest and had not accepted the Early Out, presumably she would also have lost the opportunity to continue her health care through Northwest except through COBRA and then for only a few years and at Sykes' sole expense. Given Sykes' medical issues, this surely would have put in her in a more precarious situation. Instead, Sykes made the best decision she could have at the time. She looked at the financial benefits of both jobs and took the one at GCC. Sykes should not be penalized when the new job did not last through no fault of her own.

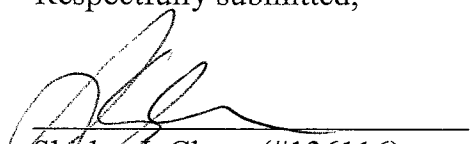
The fact that Sykes testified that she had a "back-up" plan, also does not lead to the conclusion that she suspected her new employment would not last. It would be reasonable for any person to consider back-up positions when considering employment at any time, and especially so during the 2009 recession.

CONCLUSION

Unemployment Law Judge Eila Savela's decision in this case is not supported by the record. Relator Sykes took a position that offered her substantially better terms and conditions of employment. Sykes requests that the Court reverse the decision of the ULJ and award Sykes unemployment benefits.

Dated this 5th day of May, 2010

Respectfully submitted,



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