

STATE OF MINNESOTA  
IN THE COURT OF APPEALS

COURT OF APPEALS CASE # A10-0517  
(TRIAL COURT CASE # 23846815-3)

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PATRICK H. KELLY,  
Relator

vs.

1) AMBASSADOR PRESS, INC. ,  
Respondent

2) DEPARTMENT OF EMPLOYMENT  
& ECONOMIC DEVELOPMENT  
Respondent

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**PRO SE INFORMAL BRIEF OF RELATOR PATRICK H. KELLY**

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**RELATOR:**

Patrick H. Kelly  


**RESPONDENTS:**

Ambassador Press, Inc.  
C/O Daniel R. Watchler  
Briggs and Morgan  
2200 IDS Center  
80 So. 8<sup>th</sup> Street  
Minneapolis, MN 55402

Department of Employment & Economic  
Development  
E200 First National Bank Building  
332 Minnesota Street  
St. Paul, MN 55101

## ARGUMENT – Part One – Good Cause

**“Good cause” is a reason that would have prevented a reasonable person acting with due diligence from participating at the evidentiary hearing.** (Tab 10, Minnesota Statute 268.105, subd 2 d)

The spirit of the unemployment law is not to punish a reasonable person’s actions. I submit to you that my actions were reasonable and that justice has been delayed and justice has been denied. Your Honors, I simply ask that you give my brief your attention.

I left Minneapolis on December 22<sup>nd</sup>, 2009 on the heels of the worst storm of the winter and with thoughts of family and Christmas. My son, Elliot had landed a job in Toronto and moved to Canada just prior to my father passing away. He was unable to attend the funeral and I had not yet met my first grandson Jules. I quickly loaded up my 1991 Volvo and drove North ahead of the weather, excited with the expectation of spending time with family. This was vacation time that I had scheduled with my employer prior to loosing my job in November. The trip was common knowledge for co-workers and the employer.

At the time I left for Toronto my understanding of my unemployment status was the letter from UNIM of December 7, 2009 (Tab 7, Determination of Eligibility). There was no indication that my employer intended to contest my eligibility for benefits or that I should be looking for something unusual to take place. It never occurred to me that my claim for benefits might be reversed before I returned from the holiday visit. The notice of the hearing is dated December 22, 2009 and I did not receive it until after my return on January 4, 2010 at which time the December 31<sup>st</sup>, 2009 hearing had already taken place.

There was no intent on my part to do anything that would jeopardize my unemployment benefits. The loss of my unemployment benefits meant that I had no income at the deepest part of the recession when the prospect of a new job was remote at best. It meant that I struggled to make house payments and meet other financial obligations. It meant that I could not even afford subsidized COBRA health and welfare coverage. It certainly would not be the action of a “reasonable” person to risk not attending the unemployment hearing and endure such hardship. There is no logical reason for me not to have responded to the notice

unless I did not know a hearing was taking place, which was the case. I had too much at stake to simply ignore the hearing. There was no one at my home to tell me about the mailing as I live alone.

While I was visiting my son I used his computer to log into my unemployment account. I did nothing different from that which I had done each week, there were no red flags or obvious change in my status that I noticed. Had I known that the employer had objected and a telephone conference hearing was scheduled on New Year's Eve morning, I certainly would have responded and rescheduled the hearing so I would have had time to prepare for it. We are talking about making one phone call that was worth far more to me than the employer.

The ULJ assumes I had knowledge of the hearing, talks about me being "abroad" and ignores all other evidence. This was a rushed and unfair process over a holiday period that has denied me my day in court (in actuality, a telephone conference call of less than one hours duration). I was told to provide unemployment with an email address but no email contact or update was ever received. I was later told emails are not sent by UIMN.

The ULJ erred in concluding that I knew of the unemployment hearing or should have known of the hearing scheduled on New Year's Eve morning. The Judge's refusal to grant me a hearing is far too punitive in a system that allows employers to make false statements without consequence, while an employee such as myself is denied benefits that provide life's necessities during a period of economic collapse. My employer waited until the very last minute to object to my eligibility, knowing I was out of town. The only obvious notification of a hearing is mailed to my home while I am away Christmas to New Year's. The law speaks exactly to my circumstances as regards "good cause" and I should have had the opportunity to defend myself because I had no knowledge of a hearing date being set.

In addition, I had charged the company in my letter requesting Reconsideration with presenting false testimony (Tab 5, Request ltr. for Reconsideration). The statements of my union representative back up my claims of false statements by the company.

## ARGUMENT – Part Two – False Statements

**“The unemployment law judge must order an additional hearing if an involved party shows that evidence which was not submitted at the evidentiary hearing: (1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or (2) would show that evidence that was submitted at the evidentiary hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.”** (Tab 10, Minnesota Statutes 268.105, subd 2 c)

At the New Year’s Eve hearing the ULJ asks the company representative Jeff Gray to provide four pieces of supporting evidence to his sworn testimony:

- 1) A quality sheet I was supposed to have signed
- 2) Warning notice over the Sept 8 Novations calendar that put me on notice for termination
- 3) Company Procedures or Policy
- 4) Written Communication from ATA temporary service provider Deb McKeown

The company did not submit the evidence before the record was closed but I am told it is part of the documents that the Appeals Court will provide to the Judges. I believe the documents submitted are an insult to the intelligence of the Court in light of what the ULJ asked for. The fax submission is a continuation of making very damaging statements and then not having evidence to back up those statements. The untimely documents, however, are revealing of how the company management operates. The inaccuracies in the company testimony are disturbing.

**“ He actually signed off on our quality sheet saying that he did. And in fact he did not. Because we require...”** (Transcript of Testimony Pg. 17, bottom of page)

The company submits (untimely) a Corrective Action Response form (Tab 9, Fax Transmission No. 0300, pg. 9) for a Famous Footwear job that was produced on 11/1/09 and reworked on 11/1/09. This is not a quality sign off form but a quality control feedback response form to assess why a particular problem occurred. Oscar and I did the rework and signed off. This has absolutely nothing to do with the Novations Calendar production in question and is just throwing paper at the Court. A final quality audit is done by the lead person or Manager as per company procedure.

The company submits a second untimely document (Tab 9, Fax Transmission No. 0300 pg. 12, untitled) which I can only assume is in support of their contention that I did not inspect correctly and is proof that I am guilty of misconduct. The submission is essentially a blank form with a post-it-note in the middle saying that I should have filled out some portion of the form. The exhibit reflects the negligence by the company rather than my own. The company spent \$50,000 on video surveillance equipment and could submit a video of me inspecting the product during the stitcher run or any other work done in the plant or premises. Instead, the company submits a blank form. I hope the court sees this for what it is.

**“...and did you tell Mr. Kelly that if this kind of incident happened again that he could be discharged?”**

**Yes I did. Very clearly, too.”** (Transcript of Testimony Pg. 14, bottom of page)

The Record of Verbal Warning supplied to the ULJ (Tab 9, Fax Transmission No. 0300 pg. 11) is a note to file and the document was never given to me. It makes no sense that the company would tell me “very clearly, too” that my job was in jeopardy and not give me a written warning and have me sign it. There were many employees that worked on the first Novations run and if I was solely responsible for a major mistake I would get a warning such as the one included with the company fax submission (Tab 9, Fax Transmission No. 0300 pg. 10, 6/4/2009) for a job called Maurices. This is the only piece of clean evidence submitted by the company and I did make a mistake on twelve kits out of over 1000. I accepted the written warning and signed the form. This occurred before the Novations run on my regular job in the Kitting Department. Assisting the Journeyperson on the stitcher was a job I did only occasionally. I have to emphasize that the promised evidence to the ULJ again does not support what the ULJ was told the evidence would reflect. No conversation took place where my job was threatened as stated in the quote above and the warning notice does not indicate my job was threatened.

**“And do you have any sort of policy or job description that states that he’s required to check these products or how that procedure works.”**

**Yeah. We have operational procedures.”** (Transcript of Testimony Pg. 18, bottom of page)

The company's document (Tab 9, Fax Transmission No. 0300 pg. 3, Work Instruction) sent the ULJ to support quality inspection requirements is actually a proposed ISO 9000 workstation document for the drill and shrink wrapper. If the company should ever attain ISO 9000 certification the procedure would be kept at the workstation and labeled other than "Uncontrolled Document". The Work Instruction does not reflect what the company's testimony was at hearing and, in fact, contradicts the sworn testimony of the company. Procedure 4.1.7 clearly states the final quality inspection is by a Journeyperson, Shift Lead or Manager. Procedure 4.2.3 states that continuity samples will be initialed by the operator. Again, it is what the company does not submit which is revealing. The evidence does not include any grounds for termination, much less a claim of misconduct.

The Vice President of my Union took the time to put together his understanding of the company action in support of my Reconsideration and I would like the court to understand the classifications in the contract and the responsibilities of each classification. Please review the evidence submitted by Fisk on Reconsideration (Tab 6, Reconsideration/Fisk, pg 1-3) explaining the Journeyperson's responsibility for operating machinery.

**"...Was he discharged as a result, was he mainly discharged as a result of these two incidents in September and November?"**

**Personally, I would think it was an accumulation of many things. Primarily, he contacted a vendor of ours directly on his own on a Sunday night and created kind of a problem for us here at the shop. We...**

**Okay, So I just, I need you to stop here. I, I don't have any documentation from you, as the employer, regarding what happened. Is there a reason for that?**

**We received this package on the 22<sup>nd</sup>, we did not have the five days allowable to get the information to you, because of the holiday, I'm assuming."**  
(Transcript of Testimony Pg. 19, bottom of page)

The company states that the "primary" reason for the charge of misconduct was a phone call to the "owner" of ATA, Deb McKeown (Tab 9, Fax Transmission No. 0300 pg. 8) on Sunday night but no date is specified. The email from Ms. McKeown is dated four days after I had been terminated by the company. McKeown is the office manager for ATA and does scheduling of temporary workers, she is not the owner of the company, an unnecessary

exaggeration. The email was solicited by the company after the fact in an attempt to find some basis to claim misconduct and justify termination. Ambassador does not work on Sundays.

McKeown's email states that "the conversation took place on Sunday night a few weeks ago" (Tab 9, Fax Transmission No. 0300 pg. 8). Counting back two weeks from Sunday, November 15<sup>th</sup> would put the date around November 1<sup>st</sup>, 2009. The testimony of the company is that the conversation occurred near the 11<sup>th</sup> of November. Contrary to the company's testimony part of my job in kitting was to work with temporary workers and I had frequent discussion with our vendors. The document is unsigned and I have not talked with McKeown since my termination. The insinuation that I could be successful in trying to override an order by Gray is false and I would never have thought to try. However, I am saying in this brief that the company has taken great liberty with the truth to justify an unjust termination and claims of misconduct. Consider the following company testimony:

**"An we felt that he really, really, really over stepped his bounds contacting our vendors. (Transcript of Testimony Pg. 20, bottom of page)**

**"I was called by the owner of Atlas Staffing on Monday, November 16. ..."**  
(Transcript of Testimony Pg. 20, top of page)

**"When did the actual incident occur?"**  
**"It was right around the same time frame as the 11<sup>th</sup>."**  
(Transcript of Testimony Pg. 22, top of page)

**"Okay. And you discussed this with him when?"**

**Well, actually the calendar situation kind of negated it, so I never actually got into any details with him on that phone call.**

**So you never mentioned it to him?**

**(unintelligible) he had been terminated.**

**I had a conversation with him prior to going to Chicago, because she had mentioned it to me in passing on the phone. And I had walked by him and asked Pat if he had called Atlas staffing, and he said no. And then I said, well, I was informed that you had made a phone call. I heard about it from Deb. And then I kind of let it drop." (Transcript of Testimony Pg. 22, middle of page)**

I apologize for belaboring this issue but the company has the better part of three pages of testimony on an event which they testify they first, did not question me on and then, yes, it was mentioned in passing. The company asks me about “Deb” who I would not know as “Deb” if it really was the case that I had no contact with the vendors. So how does the company feel “really, really, really” upset over the actions of an employee and then “let it drop”. It is by their sworn testimony that this event is the **primary incident** that justified claims of misconduct and termination. I have no idea how this has become so important in the mind of the company but the testimony, again, discredits the validity of the evidence as it is produced four days after the termination. The testimony itself is not believable because the company’s statements contradict one another.

My employer fabricates a case, in my opinion, on the direction of an arrogant and mean spirited manager and then a Judge reviews the case, dismisses all my evidence, sides with the company and denies me a hearing. I believed the evidence submitted on Reconsideration was overwhelming and I demonstrated good cause and should have been granted a new hearing. I beg your indulgence as I must push on and point out other unsubstantiated false claims made by the company in their testimony. A list of blatantly false testimony by the company:

- The Ace letter from ginger Knutson (Tab 9, Fax Transmission No. 0300 pg. 7) does not name an employee. The company knows that this letter has nothing to do with me and yet they submit it as evidence in support of a false claim that I ordered a slowdown. No disciplinary notice or suspension?
- The numerous references to me operating the stitching machine on the Novations Calendar job. I was not the machine operator. (Tab 6, Reconsideration/Fisk, Exhibit #'s 1 & 5)
- The claim that the company lost the Novations account when it is being run now as I am writing this brief. The letter from Novations has never been made available to the Union or submitted as evidence (Tab 6, Reconsideration/Fisk, Exhibit #6)
- Alleging I was suspended for other quality issues (Transcript of Testimony Pg. 12, bottom of page). I have never been suspended for a quality issue. Never. The company did not submit evidence because they have none.
- “We suspended him many times and this was kind of the last straw.” (Transcript of Testimony Pg. 27, bottom of page) This is blatantly untrue.

- “The product he was boxing was all defective” (Transcript of Testimony, bottom of page 9) Then the company later testified that the customer accepted the job and there were only 50 bad calendars. Company testimony:

“Four-fifths of the job was no good”

“No, it was the majority, almost 90 percent of it was no good.” (Transcript of Testimony, bottom of page 10)

Finally: “Over 50 of the books were bad and mixed into the job.” (Transcript of Testimony, middle of page 13)

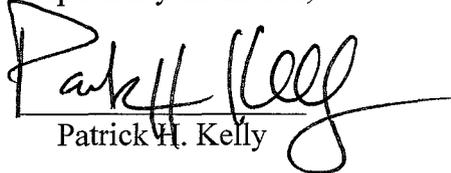
The company representative is shooting from the hip, first says the product was 100% defective and the defect obvious to the eye but then testifies it took 32 hours of inspection to find 50 bad books and the customer accepts the job. Which is it? The company suffered little or no economic loss and I was not responsible for the mistake because I was not running the machine. Please read the three page statement by my union representative prepared for Reconsideration at Tab 6, Fisk explains in detail the job classifications, seniority and flaws in the company’s discipline.

## ARGUMENT – Part Three – Conclusion

I have met the standard of “good Cause” and should have been granted a rehearing. The testimony of the employer is riddled with contradictions, backtracking and false statements. The employer’s unsubstantiated and contradictory claims are taken as fact yet my simple request for a rehearing is denied. I should have the right to confront my accuser and challenge damaging claims by my employer. The obvious false statements by the company should have generated a new hearing. The spirit of the law has not been fulfilled and the court should always strive to insure fair and just treatment. I implore you to give me my day in court so I may prove my case.

For all the forgoing reasons the March 4<sup>th</sup>, 2010 decision of the ULJ should be reversed.

Respectfully submitted,

  
Patrick H. Kelly

Dated: June 18<sup>th</sup>, 2010