

To Whom It May Concern:

This is regarding appeal No. 10193 06 David Frank vs. Heartland Automotive Services, Inc. I am filing this brief based on the following items:

- 1) Jake Zaccoli's testimony has many conflicts in it. He stated on page 12 of the transcript that Jon Shinnick said, "he wasn't able to do the transfer case" when in fact he stated "he was having trouble with it due to a cross-member being in the way". I never said that the transfer case couldn't be done but that I didn't have time since I was doing my job and Jake's, greeting customers, and that Jon should try to find the correct tool, that bends, in order to do the transfer case. Kody Erickson was the upper bay technician and as such any communication from the lower bay technician, Jon Shinnick, would be to him yet Jake states numerous times that he was with Kody and heard the same exact thing. On page 13, Jake states the I completed the computer work when in fact I was in back talking to and escorting other customers to the waiting area. The upper bay technician, as defined by Jiffy Lube, is responsible for finishing up the invoice and sending it on to the cashier computer. Jake stated on page 21 that he communicated to me that the transfer case work was not done and that I was upset and made other comments yet later, on page 36, Jake states that he was working on another vehicle which was in fact in bay 3 the farthest bay from the one that this occurred on and the farthest from the office/lobby. Jakes states that this occurred 30 seconds before the billing occurred but then later says it was possibly more than 30 seconds, maybe 45 seconds but less than 1 minute. That he wasn't sure how many cars were in that morning by the time this occurred, what was going on in back of the store with cars.
- 2) Jiffy Lube has a unwritten habit of picking and choosing what they deem to be "against policy" since Chad Lundeen said I was discharged for charging a customer for a service that we didn't perform, even though it was by mistake, yet during my training Chad repeatedly instructed us to do what is called a drain and fill on transmissions and charging the customers for a full transmission service. This only stopped when a directive came from corporate that they were being investigated for this and that it shouldn't be done anymore.
- 3) On the invoice the transfer case service was the first item meaning that it was not added after the fact or removed after the initial entry. Jake said that I sent in the invoice for billing, prior to the vehicle being done. I was working on another vehicle that had come in looking at everything prior to talking to the customer. Kody was finishing up on the vehicle, which involves making a sticker, starting the vehicle, doing safety inspections and finishing up the invoice.
- 4) In regard to the tool needed the time involved in finding it would be too long since I had to run the upstairs, greet customers, host customers, do the billing and trying to find another person to work. Sometimes the tool can't be found easily since there is only one of them and there are three bays, a tool wall and tools sometimes fall into the walkway, which is greasy and full of oil. I told Jon to look for the tool, which would bend and fit on around the cross-member, not

to disregard doing the service. I had found out afterwards that Jon was discharged for doing the wrong service on a vehicle, about the same thing that occurred here.

- 5) Jake brings up company policy for doing work not authorized by Jiffy Lube but yet on the day of my discharge Jake was doing a radiator replacement, something he was not trained nor certified to do, against my direct orders since Chad over-ruled me and told him to do this. Jake had a problem following direct orders such as what his job was to the point he was about to be discharged about the time this occurred, as I stated in the transcript. I found out that Jake had discussed this with Chad and been assured that it would be taken care of.
- 6) On page 35 Jake states that there were "40, maybe 42 or 43 cars" done that day. That he couldn't remember the exact time of day "maybe 10, 11:00 at most". He is very sure about something's but others he is very vague about. He stated on page 36 that he was responsible for "performing extra services and also vacuuming cars, washing windows, that kind of thing". He excludes it was also his responsibility to greet cars out back but he was too busy to do that so I was. Yet he states in another section he had time to talk to me about the vehicle, checking on the billing out of the customer.
- 7) Invoices are not sent in to the cashier computer until such time that the vehicle is completed, including starting it and performing safety inspections yet on page 36 Jake states "Kody was actually working on the serpentine belt service when this invoice was finished and sent into the customer area with the cashier and everything." How could Jon have stated it wasn't done in this case since the customer would have been billed out prior to the vehicle service being completed? On Page 37 Jake states "Even if he was not the person to go bill the customer out, like I said, I told him 30 seconds, at most, before he went to bill the customer out that the service was not performed and that we could not do it." Jake, as stated earlier, said the invoice was sent in prior to the vehicle was done so how would we know if Jon did or did not complete the service.
- 8) We did, according to Jake, between 40 and 45 cars that day and that before 11:00 there were 15 to 20 cars done in a three-hour period, when in fact we had done 24-25 cars in that three-hour period. That is 5 to 7 cars and hour. That is a very fast pace for a shop that only has 4 workers, not the 5 scheduled. Jake agreed, on page 38, that invoices are not sent in until the vehicle is completed but he stated earlier it was sent in while the serpentine belt service was still being performed. The courtesy functions, as defined by Jiffy Lube, does not entail "watching what's going on in the shop", as Jake stated. They are to greet customers out back, bring vehicles in, clean them and drive them out.
- 9) The incident was reported to the corporate office on a Saturday. Per Jake the statement taken from Jon Shinnick was taken a day or two afterwards yet on page 40 he stated, "I believe it was Tuesday following that Saturday". Chad Lundeen did not come into the store from that weekend until the day that I was dismissed so Jon could not have given him a signed statement. I worked everyday in between, all day.

In conclusion, this incident was an isolated accident. Minnesota Statutes 268.095 states that an employee cannot be terminated for a good faith error. I was not the employee that submitted the invoice for billing; I am only guilty of trusting my employees to do the paperwork correctly. Jake had good cause for this to occur since he was promoted by Chad to Manager right away, Jon was no longer worried about me firing him for poor work and attitude. Jake was not happy working for me because he had to answer to me, per Chad, because it was my shop. There are many inconsistencies where Jake is absolutely positive of some information that would affect his but vague on other areas that would not.