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APPELLATE COURT

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FILED

Roger Potter  
[REDACTED]  
[REDACTED]Trial Court Case: #25279714-3  
Case Type: Economic Security  
Case Number: A10-1965State Of Minnesota  
Court of Appeals

Your Honors

Argument:

This is an unemployment case dealing with a discharged due to supposed misconduct on the part of the employee Roger Potter.

The slight incident is actually the result of the employer Northern Empire Pizza dba Domino's and it's agent/manager [REDACTED] which lead to the unsatisfactory incident which caused the termination of Roger Potter.

If you read the first 5 pages of Roger Potters testimony it is clear that Roger asked the manager [REDACTED] to have a sit down with [REDACTED] concerning that day in the parking lot of [REDACTED] challenging Roger and yelling at him. [REDACTED] was negligent in his duties and did not have [REDACTED] and Roger for a sit down to discuss the matter and make sure nothing like this happened again and also to make sure the workforce was in harmony. By not having this meeting [REDACTED] was given license to be the way he wanted to be.

Another factor brought out in the first 5 pages is the manager [REDACTED] [REDACTED] telling/ordering Roger Potter to 'break' traffic laws and to 'get back' to the store from a delivery as fast as you can to have a good 'service time' for the store and that when Roger Potter told [REDACTED] [REDACTED] that he will follow traffic laws - Rogers hours were cut.

On pages 6 to 12 is the companies statement of what happened and you will see as Judge Eng said in the telephone hearing with [REDACTED] that there appears to be differences in [REDACTED] statements.

At no time did Roger Potter ever jab [REDACTED] in the back or with keys as [REDACTED] asserts. At no time did Roger Potter ever put his keys on a pizza delivery bag as [REDACTED] asserts except when it was the bag that Roger Potter was going to make a delivery in himself. On page 8 is what actually happened – in parenthesis.

On page 14 [REDACTED] does agree that Roger Potter's statement the events that Roger described do seem to have some bearing on the incident – I took this to mean that yes the manager was negligent in his duties as a manager to make sure the 'shop' was operating safely for all.

On the tape during the hearing you will hear Judge Eng describe [REDACTED] as a little punk and Roger Potter agreeing with the Judge as that is how [REDACTED] acted.

Concerning the statute 268.095 there is misconduct and also simple unsatisfactory conduct. In the bench and bar pages 15/16 – the concept is of 'deliberate violation' which embraces 'intentional and premeditated' acts of misconduct, and it also would cause a work stoppage. The employer should also anticipate behavior from their employees and that means all of them starting from the top down. If the manager fails to heed or listen to the requests of his fellow employees then that can and will lead to those employees who feel that they have free license. [REDACTED] the 'punk' as noted by Judge Eng probably thought that 'hey – since Dave didn't reprimand me then maybe I can do something that will get that 'old man' fired and me only minimal punishment. Roger Potter does admit to a moment of 'good faith error in bad judgment' and that is exactly what it was – a moment.

The night of the simple incident took no longer than 12 seconds with words and another 25 to 30 seconds with other words going out the back door. The first 12 seconds were right by the drivers punch out delivery station away from the front by 7 feet +/- . The pizza makers did not stop working – the manager [REDACTED]

██████ did admit that he heard something but did not stop to come over and check – this means that ██████ the manager did not think that this was that important to come and see what was going on and therefore reduced the incident to just that of a 'simple incident'.

The other factor that was brought out in the telephone conference is that Judge Eng asked ██████ when Roger Potter was terminated and I believe that Allen said the next nite – you will hear Judge Eng question this? And I believe that Judge Eng asked me and the incident happened at 5:30pm and Roger Potter was not terminated till the next nite at 5:30 pm but allowed to work till the rush was over 'to earn a little more'. Being that Roger Potter was not terminated on the spot – this also lends credence to the fact that it was not considered anything but 'simple unsatisfactory conduct' and therefore not misconduct.

Concerning the transcribed statement: On page 8 in the middle of that page is the statement 'Been given several warnings about his appearance and length of facial hair, which was to be trimmed down to an inch. ██████ and ██████ have given him several warnings for it, sent him home more than once to trim his facial hair'. This statement is partially true – I was sent home 'once' by ██████ to trim my facial hair after I had trimmed it – what is also true but not stated is that ██████ would sometimes come at Roger Potter with a ruler and a 'sick' laugh.

On page 9 middle bottom 'after that, I have a hand written not from the employer, from ██████. Roger Potter was terminated 04/10. He poked another employee with his car keys. He could not get along with the other employees.' This is not true, I did not poke any other employee, for if I would have I would have been fired before the ██████ incident.

On page 15/16 it is basically stated that there was only one physical incident and not another one. One page 17 ██████ is verifying that Roger Potter and ██████ did not see eye to eye on things – so again ██████ the manager should have sat Roger Potter and ██████ down – being that ██████ didn't he neglected his duty to keep a safe workplace.

On page 18/19 'Judge Eng asks [REDACTED] a question about an employee manual that was formally given to Roger Potter that states a 'zero tolerance policy' or did Roger Potter go thru training or orientation'. The only training Roger Potter went through was on how to answer the phones and work the order board. There was no class in not putting hands on fellow employees. Further down on page 18 [REDACTED] says that 'he's not sure that any type of altercation is covered'.

Under 268.095 subd. 6 employment misconduct is any intentional, negligent, or indifferent conduct. Roger Potter was not under any intentional plan or anger coming to work or on the job that night; Roger Potter was not negligent – he carried out his duties; Roger Potter was not indifferent to any situation he went to work to work.

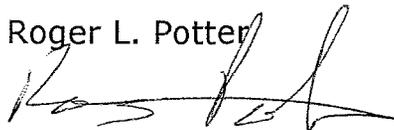
Of the conditions that are not misconduct: 1. simple unsatisfactory conduct – was this simple unsatisfactory conduct – yes. 2. conduct an average reasonable employee would have engaged in under the circumstances – yes – if [REDACTED] would have done the same thing to another senior I feel certain that that senior would have given [REDACTED] a slap, and then called their parents as I did. 3. good faith errors in judgment if judgment was required – yes.

Being that there was ought between Roger Potter and [REDACTED] and being that [REDACTED] was the manager [REDACTED] right hand man on nights, and being that after the first stand off between [REDACTED] and Roger Potter it is fair to conclude that since [REDACTED] was negligent in responding to Roger Potters request that [REDACTED] have a meeting with both [REDACTED] and Roger Potter present to settle and stop this type of dealing – that [REDACTED] could have thought – 'since I'm the managers right hand man and were sort of buddies if I do something to get that 'old man' fired – the most I'm going to get is a suspension'.

An analysis of the situation has lead me-Roger Potter to this conclusion for there was another smaller incident that happened involving doing the dishes in which I was doing them And was called away for a delivery – [REDACTED] came and saw the 'mess' and started screaming my name for leaving the dishes – [REDACTED] heard his screaming and just laughed and did nothing.

Thank You your Honors.

Roger L. Potter



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).