

02-255-0D
MATTHEW HODGHTALING -vs- FAIRMAN DRILLING COMPANY

MATTHEW HOUGHTALING,
Plaintiff

:IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

Vs.

:No. _____ C.D. 2002

02-255-CD

FAIRMAN DRILLING
COMPANY,

Defendant

:CIVIL ACTION - LAW

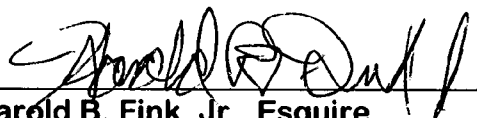
FILED

P R A E C I P E

FEB 21 2002
m/200/Att Fink pd
80.00
William A. Shaw writ to
Prothonotary Sheng

TO THE PROTHONOTARY, CLEARFIELD COUNTY, PENNSYLVANIA:

Please cause a Writ of Summons to issue against the defendant in
the above-captioned cause.


Harold B. Fink, Jr., Esquire

Harold B. Fink, Jr., P.C.
P. O. Box 403, 32 Main Street
Port Allegany, PA 16743
(814) 642-2595
Supreme Court I.D. No. 10232

Dated: 2/13/02

COPY

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

SUMMONS

Matthew Houghtaling

Vs.

NO.: 2002-00255-CD

Fairman Drilling Company

TO: FAIRMAN DRILLING COMPANY

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 02/21/2002

William A. Shaw
Prothonotary

Issuing Attorney:

Harold B Fink
P.O. Box 403
Port Allegany, PA 16743

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12151

HOUGHTALING, MATTHEW

02-255-CD

VS.

FAIRMAN DRILLING COMPANY

PRAECIPE & SUMMONS

SHERIFF RETURNS

NOW MARCH 11, 2002 AT 11:51 AM EST SERVED THE WITHIN PRAECIPE & SUMMONS ON FAIRMAN DRILLING COMPANY, DEFENDANT AT EMPLOYMENT, RD#1, HELVETIA RD., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CRAIG AKERS, P.I.C. A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & SUMMONS AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: COUDRIET

Return Costs

Cost	Description
------	-------------

35.69	SHFF. HAWKINS PAID BY: ATTY.
-------	------------------------------

10.00	SURCHARGE PAID BY: ATTY.
-------	--------------------------

Sworn to Before Me This

30th Day Of April 2002

William A. Shaw

So Answers,

Chester A. Hawkins
by Mandy Hamer

Chester A. Hawkins

Sheriff

FILED

APR 30 2002

William A. Shaw
Prothonotary

MATTHEW HOUGHTALING,
Plaintiff

**:IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

Vs.

:No. 255 C.D. 2002

**FAIRMAN DRILLING
COMPANY,**
Defendant

:CIVIL ACTION – LAW

:JURY TRIAL DEMANDED

TYPE OF PLEADING: COMPLAINT

FILED ON BEHALF OF: Plaintiff

COUNSEL FOR THIS PARTY:

Harold B. Fink, Jr., Esquire
Harold B. Fink, Jr., P.C.
P. O. Box 403, 32 Main Street
Port Allegany, PA 16743
(814) 642-2595
Supreme Court I.D. No. 10232

Dated: 5/16/02

FILED

MAY 20 2002
m11:471 noc
William A. Shaw
Prothonotary

[Handwritten signature]

MATTHEW HOUGHTALING,
Plaintiff

**:IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

Vs.

:No. 255 C.D. 2002

**FAIRMAN DRILLING
COMPANY,**
Defendant

**:CIVIL ACTION- LAW
JURY TRIAL DEMANDED**

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

**Office of the Court Administrator
Clearfield County Courthouse
230 E. Market Street, Suite 228
Clearfield, PA 16830
(814) 765-2641, Ext. 5982**

MATTHEW HOUGHTALING,
Plaintiff

**:IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

Vs.

:No. 255 C.D. 2002

**FAIRMAN DRILLING
COMPANY,**
Defendant

:CIVIL ACTION – LAW

:JURY TRIAL DEMANDED

C O M P L A I N T

**AND NOW COMES the plaintiff MATTHEW HOUGHTALING, through
his attorney Harold B. Fink, Jr., Esquire, to complain against the
defendant as follows:**

**(1) The plaintiff is an adult person who resides at 144 High
Street, Westfield, Tioga County, PA.**

**(2) The plaintiff has reason to believe that the defendant is a
corporation, the State of incorporation of which is unknown to the
plaintiff, the main business office of which is situate at R.D. #1,
Helvetia Rd., Dubois, Clearfield County, PA, and the main business of
which is the drilling, servicing and capping of gas and oil wells.**

(3) The plaintiff became re-employed with the defendant corporation on or about the 20th day of January, 2001 as a roustabout and was placed at a well site situate in or about Watkins Glen, New York.

(4) Up to the date and time of his discharge specifically described hereinafter, the plaintiff performed any and all work requested of him in a proper and workmanlike manner.

(5) During the time of his employment aforesaid, the plaintiff was paid the sum of \$18 per hour for an eight-hour day, 40 hour week, or a gross pay of \$720.

(6) The plaintiff was discharged by the defendant through its foreman and agent, Jeff White, at the end of plaintiff's first week of work for a reason which specifically implicated, undermined and violated public policy.

(7) Inherent in the particular job assigned to the plaintiff by foreman White at the Watkins Glen site was the use of a chemical mixture containing, inter alia, caustic acid which was used in mixing the mud that was to be placed down the "hole". The plaintiff had already suffered burns in the inner aspect of the upper portion of both legs and both feet caused by the contact with the "mud mixture" being blown up out of the hole.

(8) On other similar jobs to the ones on which plaintiff was working, plaintiff had always been afforded the protection of safety apparel including but not limited to gloves and safety glasses.

(9) Shortly after suffering the burns aforementioned, the plaintiff requested of foreman White to provide the plaintiff with safety apparel as above-described.

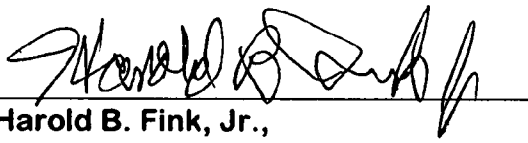
(10) The plaintiff was immediately and summarily discharged by foreman White who was then acting within the scope of his employment for and on behalf of Fairman Drilling solely for the reason that plaintiff made the request for the safety apparel.

(11) From the date of the wrongful discharge as above-described to the date hereof the plaintiff has been unemployed with the exception of performing odd jobs wherever he can find them for which he has received an average of \$96 per week.

(12) Plaintiff has reason to believe, and therefore hereby avers, that he will suffer a continuing loss of income, that is he will not be able to earn as much as he would have had he not been wrongfully discharged, for an unknown period of time and to an unknown extent.

(13) Plaintiff has further reason to believe that the wrongful discharge will adversely affect his employability throughout the length of his "employment life expectancy".

WHEREFORE, plaintiff demands judgment against the defendant in a sum in excess of the local arbitrable amount.



**Harold B. Fink, Jr.,
Attorney for Plaintiff**

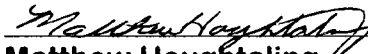
COMMONWEALTH OF PENNSYLVANIA:

:

COUNTY OF MC KEAN

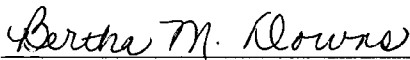
:

MATTHEW HOUGHTALING, being duly sworn according to law,
deposes and says that the facts set forth in the foregoing Complaint are
true and correct to the best of his information, knowledge and belief.

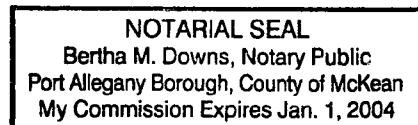

Matthew Houghtaling

Sworn to and subscribed before me

this 9th day of May, 2002.



Notary Public



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

MATTHEW HOUGHTALING,	:	
Plaintiff	:	
	:	
vs.	:	No. 255 C.D. 2002
	:	
FAIRMAN DRILLING COMPANY,	:	
Defendant	:	

PRELIMINARY OBJECTIONS

AND NOW, comes the Defendant, Fairman Drilling Company, and files Preliminary Objections to the Complaint as follows:

DEMURRER

Plaintiff has failed to state a cause of action recognized by law of the Commonwealth of Pennsylvania. Specifically, Plaintiff has averred a cause of action based upon the wrongful discharge of a non-contracted employee (Plaintiff), and further claims damages as a result of such wrongful discharge. Wrongful discharge under Pennsylvania law, within the fact situation as averred by the Plaintiff, is not a recognized cause of action as Pennsylvania is strictly an "employment at will" jurisdiction.

WHEREFORE, Defendant demurs to Plaintiff's Complaint and requests such suit be stricken.

MOTION TO STRIKE

Ultimately, as a claim for damages in Paragraphs 12 and 13 of Plaintiff's Complaint, damages are averred for a continued income loss, and for an adverse effect on employability for Plaintiff's employment life expectancy. Plaintiff is not under any physical or

mental disability which would impact future earnings. Pennsylvania does not acknowledge an adverse effect on future employability as a recognized claim for damages.

WHEREFORE, Defendant requests your Honorable Court to strike all claims for income loss because of an adverse effect on future employability.

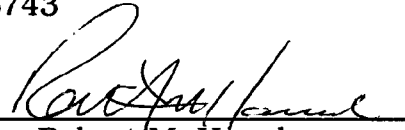
A handwritten signature in black ink, appearing to read "Robert M. Hanak", is written over a horizontal line.

Robert M. Hanak
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on the th~~21~~ day of May, 2002, a true and correct copy of the attached PRELIMINARY OBJECTIONS was sent via first class mail, postage prepaid, to the following:

Harold B. Fink, Jr., Esq.
P. O. Box 403
32 Main Street
Port Allegany, PA 16743


Robert M. Hanak
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

MATTHEW HOUGHTALING

-vs-

FAIRMAN DRILLING COMPANY

:
:
:
:
:

No. 02 – 255 – CD

FILED

NOV 14 2002

OPINION AND ORDER

William A. Shaw
Prothonotary

Plaintiff above-named was employed by Defendant and was discharged from employment during the month of January 2001. Shortly prior to said discharge Plaintiff had complained about the safety equipment issued to him and in his Complaint alleges wrongful discharge as a result of these requests. Defendant has filed Preliminary Objections to the Complaint demurring to the contents thereof and in the alternative containing a Motion to Strike.

The Demurrer alleges that in light of the fact that Pennsylvania is an “employment at will” jurisdiction and that Plaintiff has not alleged any exceptions to said doctrine, his Complaint must be dismissed.

Both parties agree that Plaintiff was an “at will” employee of Defendant and that absent any exceptions to this rule, his discharge can be for any reason or no reason at all.

Plaintiff claims in paragraph 6 of his Complaint that his discharge was in violation of public policy and therefore he should be entitled to recover damages he claims for his alleged unlawful discharge. Plaintiff alleges that his discharge was in violation of a clear mandate of public policy in this Commonwealth and in support thereof alleges that Defendant violated the provisions of the Federal Occupation Safety and Health act of 1970, 29 U.S.C.A §651, which he further alleges is a proclamation of public policy. This Court, in sustaining Defendant’s Demurrer and dismissing Plaintiff’s Complaint relies on the Pennsylvania

Supreme Court decision in *McLaughlin v. Gastrointestinal Specialists, Inc.*, 561 Pa. 307, 750 A.2d 283 (2000) wherein in a case very similar to the one at bar in that the only allegation of violation of public policy by appellant therein was that her termination violated OSHA standards, but not our own Pennsylvania Court statutes or court decisions governing Health and Safety. Therein the Supreme Court stated:

For the reasons that follow, we affirm the Superior Court. We stress that Appellant has raised in her statement of issues to this Court only whether federal OSHA prohibits retaliatory discharge and whether a Pennsylvania court has jurisdiction to decide a matter arising from federal OSHA. We have not been presented with any issue of public policy arising from a Pennsylvania statute governing Health and Safety, and we are therefore constrained to decide only those issues.

As a general proposition, the presumption of all non-contractual employment relations is that it is at-will and that this presumption is an extremely strong one. An employee will be entitled to bring a cause of action for a termination of that relationship only in the most limited of circumstances where the termination implicates a clear mandate of public policy in this Commonwealth. With this background in mind, we turn to the specific arguments of the Appellant.

Appellant contends that the Superior Court erred because OSHA's anti-retaliation provisions are implicated regardless of whether she complained to the agency or her Employer because the agency has promulgated administrative regulations that prohibit Employer from firing her. She then concludes that OSHA's regulations indicate that an Employee's complaints to an employer are protected activity pursuant to the anti-retaliation provisions of OSHA, therefore, she has stated a claim for a wrongful discharge pursuant to the law of this Commonwealth. We reject Appellant's arguments. Further, we do not believe that in her Complaint, or in her arguments to our courts, she has articulated that her termination threatens a clear and substantial public policy in this Commonwealth. Therefore, as a matter of law, she could not overcome the presumption that Employer was free to fire her at will.

Our previous cases in this arena have not directly addressed the issue of what constitutes “public policy,” but we have stated in cases outside of the wrongful termination context that “public policy is to be ascertained by reference to the laws and legal precedents and not from supposed public interest.” Shick v. Shirey, 716 A.2d at 1237, quoting Hall v. Amica Mutual Insurance Company, 538 Pa. 337, 648 A.2d 755, 760 (1994). Implicit in the previous determinations of this Court is that we declare the public policy of this Commonwealth by examining the precedent within Pennsylvania, looking to our own Constitution, court decisions and statutes promulgated by our legislature. See the cases of Mamlin v. Genoe, 340 Pa. 320, 17 A.2d 407 (1941), Lurie v. Republican Alliance, 412 Pa. 61, 192 A.2d 367 (1963), and Hall v. Amica Mutual Insurance Company, 538 Pa. 337, 648 A.2d 755 (1994) for a general discussion of sources of public policy.

However, in the proceedings below, the Superior Court implied that an Employer’s termination of an employee in violation of a federal statute was against the public policy of this Commonwealth. Appellant urges us to adopt this reasoning, but refers us to no statute, constitutional premise, or decision from this Court to support the proposition that federal administrative regulations, standing alone, can comprise the public policy of this Commonwealth. Moreover, Appellant has not shown how her discharge undermines any particular public interest of this Commonwealth. At most, she made an internal complaint to her employer, and not to any public agency within the Commonwealth. She points to no Pennsylvania statutory scheme that her discharge would undermine. We believe that it is of no moment that federal regulations may provide administrative protection to employees who make safety violations to their employers unless of course the employee is able to articulate a particular policy within the Commonwealth that is threatened.

Here, however, Appellant has not shown any policy of this Commonwealth that is violated, and has not established how a private report to an employer would undermine the workings of any Commonwealth agency or any statutory mechanism within the Commonwealth. Indeed, in Geary v. United States Steel Corporation, 456 Pa. 171, 319 A.2d 174 (1974), this Court refused to accept the premise that an employer, who might have terminated an employee in retaliation for making internal reports regarding the safety of a product, threatened the public policy of this

Commonwealth to such an extent that it outweighed the presumption of at-will employment.

Accordingly, we hold that in order to set forth a claim for wrongful discharge a Plaintiff must do more than show a possible violation of a federal statute that implicates only her own personal interest. The Plaintiff in some way must allege that some public policy of this Commonwealth is implicated, undermined, or violated because of the employer's termination of the employee. Public policy of the Commonwealth must be just that, the policy of this Commonwealth.

We believe that it is a mistake to baldly point to a federal statute or administrative regulation and, without more, proclaim this as the public policy of the Commonwealth, such that every violation of any federal code, or statute becomes the basis for seeking a common law remedy against an employer.

As our previous jurisprudence has shown, this Court has steadfastly resisted any attempt to weaken the presumption of at-will employment in this Commonwealth. If it becomes the law that an employee may bring a wrongful discharge claim pursuant to the "public policy" exception to the at-will employment doctrine merely by restating a private cause of action for the violation of some federal regulation, the exception would soon swallow the rule. While, of course, this Commonwealth can not enact laws that contravene federal law, we are not required to override our longstanding policy regarding common law at-will employment and thus provide a common law remedy for wrongful discharge simply because Congress provides a federal statutory remedy to be brought in a federal forum. Rather, we hold that a bald reference to a violation of a federal regulation, without any more articulation of how the public policy of this Commonwealth is implicated, is insufficient to overcome the strong presumption in favor of the at-will employment relation.

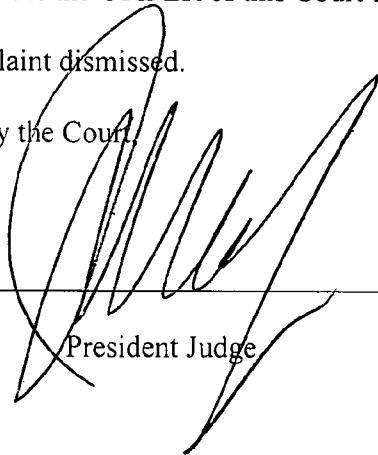
In light of the above, this Court is convinced that Plaintiff's allegations of violation of OSHA standards do not constitute a contravention of Pennsylvania public policy and will grant Defendant's Preliminary Objections in the nature of a Demurrer. In view of this ruling, Defendant's Motion to strike will not be addressed.

WHEREFORE, the Court enters the following:

ORDER

NOW, this 13th day of November, 2002, following argument and briefs into Preliminary Objections in the nature of a Demurrer filed on behalf of Defendant above-named. and in accordance with the foregoing Opinion, it is the ORDER of this Court that said Objections be and is hereby granted and Complaint dismissed.

By the Court,



President Judge

FILED

018:44 SD
NOV 14 2002

1cc Atty Harold Fink
1cc Atty Hanax
1cc ~~A~~ D. Mikesell

William A. Shaw
Prothonotary



MATTHEW HOUGHTALING,
Plaintiff

**:IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

VS.

:NO. 255 C.D. 2002

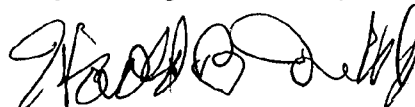
**FAIRMAN DRILLING
COMPANY,**
Defendant

:CIVIL ACTION – JURY TRIAL DEMANDED

MOTION FOR RECONSIDERATION

AND NOW comes the plaintiff to move Your Honorable Court to reconsider its Order of November 13, 2002, which was received by the plaintiff's counsel on November 18, 2002 based upon the contents of the Post Argument Memorandum filed by plaintiff, which Your Honorable Court did not have at the time the Order was entered, viz., November 13, 2002.

Respectfully submitted,



**Harold B. Fink, Jr.,
Attorney for Plaintiff**

FILED

m 11:18-AM
NOV 22 2002

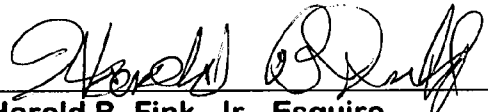
NO
CC
[Signature]

**William A. Shaw
Prethontary**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Motion for Reconsideration was sent via United States Postal Service, first class mail, postage prepaid, on the 20th day of November, 2002, to:

Robert M. Hanak, Esquire
P.O. Box 487
Dubois, PA 15801



Harold B. Fink, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

MATTHEW HOUGHTALING

vs.

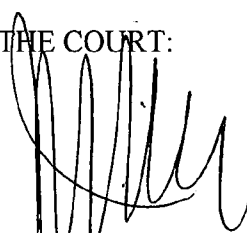
FAIRMAN DRILLING COMPANY

:
:
: No. 02-255-CD
:
:

ORDER

NOW, this 26th day of November, 2002, upon consideration of Plaintiff's Motion for Reconsideration, a Rule is hereby issued upon Defendant to Appear and Show Cause why the Motion should not be granted. Rule Returnable is scheduled the 27 day of December, 2002, at 1:30 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



JOHN K. REILLY, JR.
President Judge

FILED

NOV 26 2002

William A. Shaw
Prothonotary

FILED

06:38 PM
NOV 20 2002

2 cc. Atty H. Fink

W. Massey's service memo

William A. Shaw
Prothonotary

[Signature]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

MATTHEW HOUGHTALING

-vs-

FAIRMAN DRILLING COMPANY

No. 02 - 255 - CD

ORDER

NOW, this 29th day of January, 2003, upon consideration of Motion for Reconsideration filed on behalf of Plaintiff above-named, and argument and briefs thereon, it is the ORDER of this Court that said Motion be and is hereby dismissed in accordance with the Opinion and Order of this Court dated November 13, 2002.

By the Court,

President Judge

FILED

JAN 29 2003

William A. Shaw
Prothonotary

FILED

01/31/2003
JAN 29 2003

William A. Shaw
Prothonotary

ICC Atty Fink

ICC Atty Haran

~~CC~~