

AWARD FOR EMPLOYER ON PUBLIC POLICY CLAIM

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the agreement entered into by the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARD as follows:

Claimant contests her “double demotion” from foster care manager supervisor in December 1996. She claims that the employment action was unfair, deceptive and retaliatory. She concedes, however, that she was an at-will employee.

The employer asserts that Claimant was demoted for legitimate business reasons – poor performance and possible endangerment of the children which the employer services.

The Arbitrator credits almost all of the testimony by the parties, particularly by the agents and employees of the employer. For the reasons set forth below, there are no disputed issues of material fact and therefore this Arbitrator is compelled to find that the Claimant is entitled to no relief.

Since the Claimant concedes that she was an at-will employee, the employer was entitled to take lesser actions than discharge, with or without cause. The law is clear on this point and the Arbitrator has no discretion under the facts of this case, as well as the law, to deviate from this principle. That is to say, if the employer could terminate the Claimant with or without cause, it logically follows that the employer may take a lesser adverse employment action with or without cause. This proposition is amply supported by Michigan law.

The only constraint on the employer’s ability to take adverse employment actions, including demotion, against the Claimant are (1) state and federal statutory, constitutional and

regulatory prohibitions against unlawful conduct and (2) common law exceptions to the at-will doctrine. The Claimant has identified no state or federal statutory, constitutional or regulatory prohibitions which apply in this case. This leaves only the matter of common law exceptions as a possible basis for relief to the at-will doctrine.

The only applicable common law basis for relief is the discharge in violation of public policy doctrine which provides that an employer may not discharge an employee, or take other adverse employment action, if the employer intends to contravene public policy by taking such action. See Garagvalia v Centra, Inc, 211 Mich App 625, 630 (1995). For instance, an employer may not discharge an employee because that employee opposes violations of law or because that employee invokes constitutional statutory, regulatory or common law rights.

The employer contends that the discharge in violation of public policy doctrine is just that -- a discharge doctrine -- and does not apply to less severe employment actions such as demotion. Although there appears to be some support for this notion in federal decisions construing Michigan law, this precedent is not binding on Michigan courts, particularly if there is Michigan law on point. Nonetheless, the majority rule in other jurisdictions apparently is that the discharge in violation of public policy doctrine does not apply to non-discharge cases. See cases discussed in Moberly and Doran, "The Nose of the Camel: Extending the Public Policy Exception Beyond the Wrongful Discharge Context," 13 *The Labor Lawyer*, No. 2, Fall 1997, p. 371. See also Garavaglia at 630 where the Court of Appeals approved a jury instruction which references adverse employment actions as well as discharge.

This Arbitrator does not need to resolve this common law issue as the Claimant conceded that the employer's actions were motivated by "business necessity." She went on to explain that

she believed the employer was demoting her because it wished to reduce the number of supervisors from 3 to 2.

Toward the end of the arbitration the Claimant asserted that her voicing a concern that patients were not receiving quality care “could have” played a part in her demotion.

The Arbitrator finds this testimony unpersuasive in that it is mere speculation and inconsistent with prior testimony of the Claimant as well as the testimony of Ms. [Samantha Stevens], a former employee. Ms. [Samantha Stevens] testified that she observed Ms. [Lois Lane] to have taken a different tact towards the Claimant after the Claimant contacted Executive Director [Jill Munroe] in July 1996 to seek assistance because she was reluctant to approach Ms. [Lois Lane]. She was reluctant because Ms. [Lois Lane] was overwhelmed by personal tragedies. Ms. [Samantha Stevens] “felt that” Ms. [Lois Lane]’s change in behavior toward Claimant occurred because Claimant went behind her [[Lois Lane]’s] back to Ms. [Jill Munroe]. If Ms. [Lois Lane] had retaliated against the Claimant because she went “behind her back” to the Executive Director, this would be unfortunate, but it would not have been illegal under the discharge in violation of public policy doctrine.¹

The point of the above recitation is that the Claimant, through her testimony and the testimony of her witnesses, asserted no factual basis to support a public policy claim even if the testimony is accepted as true.

The Claimant has failed to assert any facts which, even if true, would support a public policy claim. Accordingly, the Arbitrator is constrained by the law to make an award in favor of the employer.

¹ It should be noted that the Arbitrator expressly finds that Ms. [Lois Lane] did not retaliate against the Claimant for any reason, illegal or otherwise.

The Arbitrator was impressed with the competence and dedication of all persons that appeared at the Arbitration. He hopes that the parties can find a productive way to move forward together in service of the employer's clients. The Claimant, with her talent and obvious pride in her work, can no doubt continue to provide meaningful contributions to the employer's mission.

In summary, the Arbitrator finds in favor of the employer. The fees of the Arbitrator and the expenses and costs of the American Arbitration Association are all to be divided equally between the parties.

This Award is in full settlement of all claims (and counterclaims) submitted by either party against the other in this arbitration.

DATED: _____

SIGNED: _____
James K. Fett