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STATE OF WISCONSIN: CIRCUIT COURT: WASHINGTON COUNTY:
BRANCH II

RONALD J. BLACHOWIAK,

Plaintiff,

-vs-

(By telephone)
Case No. 91-CV-370

LABOR AND INDUSTRY REVIEW
COMMISSION and PATZ SALES,
INC.,

Defendants.

HON. JAMES B. SCHWALBACH
Presiding Judge

APPEARANCES: GREGORY J. STRASSER,
Attorney at Law,
appearing by
telephone on behalf
of the Plaintiff.

ROY W. KEITH,
Attorney at Law,
appearing by
telephone on behalf
of the Defendant,
Patz Sales, Inc.

ROBERT C. REED,
Attorney at Law,
appearing by
telephone on behalf
of the Defendant,
Labor and Industry
Review Commission.

Date of Proceedings:

December 30, 1991

1 THE COURT: Call the matter of the
2 case captioned Ronald J. Blachowiak, Plaintiff, Labor
3 and Industry Review Commission and Patz Sales,
4 Incorporated, Defendant; 91-CV-370. Would you state
5 your appearances for the record?

6 MR. STRASSER: Your Honor, this is
7 Attorney Gregory J. Strasser appearing for the
8 Plaintiff, Ronald J. Blachowiak.

9 MR. KEITH: And this is Roy Keith
10 appearing for Patz Sales, Inc.

11 MR. REED: This is Bob Reed for Labor
12 Industry Review Commission.

13 THE COURT: This-- Should be noted
14 that this is a case where there's been an appeal from
15 the Commission's decision to the Circuit Court. And
16 the basic basis for the appeal is that the Plaintiff
17 claims or alleges that there was -- wasn't a basis in
18 the record for the Commission's decision finding that
19 he had been discharged for misconduct. The Court
20 believes that-- It notes that this Court sits in the
21 role of an Appellate Court. This Court is not in a
22 position to substitute its judgment for that of the
23 Commission or make its own findings of facts other
24 than -- and must accept the facts found by the
25 Commission, unless those facts are absent of fraud or

1 in fact -- or unless there is no -- nothing on the
2 record to support the facts as found by the
3 Commission. The Court's satisfied that there is a
4 sufficient record made here for the facts that were
5 found by the Commission. And specifically to the legal
6 fact and conclusion that the Plaintiff was discharged
7 for misconduct and therefore not eligible for the
8 unemployment compensation. Court notes that it would
9 appear here that the discharged employee has admitted
10 to having rewrote -- rewritten, rather, a rejection
11 slip by a -- which was originally prepared by a fellow
12 quality control inspector. Changing the reason for
13 the rejection from -- which was originally blamed on a
14 supervisor or a foreman -- and changing that it was as
15 a result, I think, of some bent dyes or something that
16 would have been as a result of a machine operator.
17 There's no dispute that he rewrote that report at the
18 request of the foreman. That the Plaintiff never
19 verified or did his own research as to what the actual
20 reason for the rejection were. That he then affixed
21 the initials of the other quality control as having
22 written it, and that he then turned over the report to
23 the foreman for -- who apparently then had it, I guess,
24 placed in the official files of the company or
25 whatever. Under all those facts and circumstances,

1 this Court's satisfied that the finding of misconduct
2 is an appropriate finding by the Commission. There's a
3 substantial basis for it. Clearly as outlined in their
4 decision, the integrity of the quality control reports
5 is important to a company. The affixing of other
6 initials is -- also seems to be a serious matter. And
7 under those circumstances, I'm satisfied that the
8 finding that this was misconduct by the Commission is
9 appropriate and is supported by the record and by their
10 findings of facts. And therefore-- Is this a motion--
11 Therefore, the appeal by the Plaintiff is denied and
12 the decision of the Commission is affirmed. Okay. I
13 assume the attorney for the Commission will draft an
14 order in this regard?

15 MR. REED: I will do so, Your Honor.
16 However, I won't be back to work until January 2nd. If
17 there's no problem--

18 THE COURT: I assume that the
19 Plaintiff isn't going to be able to file their appeal
20 with the Court of Appeals before the 2nd anyway.

21 MR. STRASSER: That's correct, Your
22 Honor.

23 THE COURT: So just draft it and get
24 it to me and then we can go on.

25 MR. REED: Okay. One question. Do

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you have a five day rule or a ten day rule?

THE COURT: We have a five day rule. Which basically is that you submit the proposed order to the other counsel. If you don't hear an objection from them within five days, then send it to the Court.

MR. REED: Can I change this around by sending the original to the Court and copies to other counsel?

THE COURT: Sure.

MR. REED: And then use a ten day rule or five day rule?

THE COURT: Well, ours is generally five day.

MR. REED: Okay. Very good then.

THE COURT: Okay.

MR. REED: Thank you much, Judge.

MR. STRASSER: Thank you, Judge.

MR. KEITH: Thanks, Judge.

THE COURT: Bye.

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STATE OF WISCONSIN)
)
GREEN LAKE COUNTY)

ss

I, Kristi L. Schranz (Marose), do hereby certify that the foregoing is a true, complete and correct transcript of the foregoing matter heard over the telephone by the Honorable James B. Schwalbach at the Washington County Courthouse, Branch II, in the City of West Bend, State of Wisconsin, on December 30, 1991, and reduced to typewriting thereof.

Dated: *January 13, 1992.*

Kristi L. Schranz
Kristi L. Schranz
Circuit Reporter
Branch II