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TOWSON UNIVERSITY v. CONTE:

A Jury's Role in a Wrongful Discharge Case Does Not Include that of Ultimate Fact-Finder

By: **Kimmeria Bayton**

The Court of Appeals of Maryland held that a jury's role in a wrongful discharge case does not include that of ultimate fact-finder. *Towson University v. Conte*, 384 Md. 68, 862 A.2d 941 (2004). Additionally, the court held that in a just cause employment context, a jury's role is to determine the objective reasonableness of the employer's decision to discharge. *Id.*

In 1996, Towson University ("University") hired Dr. Michael Conte ("Dr. Conte") as the director of the Regional Economic Studies Institute at the University ("RESI"). At the time of his hire, Dr. Conte signed an employment contract that detailed his duties as director, including his compensation, period of employment and the causes for which he could be terminated.

In 1998, several events occurred that led to the University's decision to terminate Dr. Conte. The majority of these events surrounded RESI's relationship with the State Department of Human Resources ("DHR"), RESI's primary revenue source. DHR, which was entitled to compensation for any income generated by RESI using DHR equipment, was concerned with the accounting of its compensation. DHR complained that the accounting was both inconsistent and incomprehensible. After unsuccessfully trying to resolve its issues with RESI through Dr. Conte, the relationship between DHR and Dr. Conte deteriorated. The provost, John Haeger, was informed, and although the University was able to settle the problems with DHR, it became very dissatisfied with Dr. Conte and blamed him for the \$2,300,000 reduction in DHR's contract the following year.

After an internal investigation and a meeting to discuss RESI's activities and accounting problems, Dr. Conte was informed of the University's intent to fire him and their request that he resign. Dr. Conte subsequently refused to resign and was sent a letter from the University provost explaining that incompetence and willful neglect of duty were the causes of his termination. After a brief hearing before

the University president, Dr. Conte was formally terminated on January 26, 1999.

Dr. Conte filed a complaint against the University in the Circuit Court for Baltimore County alleging, *inter alia*, that the University wrongfully discharged him and breached his employment contract. The trial judge refused the University's request to instruct the jury that if it found just cause to be required under the contract, the University was still permitted to fire Dr. Conte for "common law cause" or cause that goes to the "essence of the contract." The jury returned the verdict in favor of Dr. Conte, finding that the University failed to prove by a preponderance of the evidence that just cause existed under the contract to fire Dr. Conte.

The University appealed to the Court of Special Appeals of Maryland, arguing that the trial court erred in instructing the jury that the University was required to show just cause for the termination and by refusing to instruct the jury on common law cause. The Court of Special Appeals affirmed the circuit court's judgment. The Court of Appeals granted certiorari to consider whether a jury may examine or review the factual bases of an employer's decision to terminate an employee and whether Dr. Conte's employment contract was exclusive in its enumeration of the just cause for which Dr. Conte could be terminated.

The Court began its analysis by reviewing the language of the employment contract. *Id.* at 78, 862 A.2d 946. Dr. Conte's employment contract contained a provision that set the time period of his employment and a provision that permitted termination only for cause. *Id.* at 80, 862 A.2d at 948. Both provisions in the contract independently established that Dr. Conte was not an at-will employee. *Id.*

The Court also noted that the language of the contract was ambiguous as to whether the fact-finding prerogative lay with the University. *Id.* The Court found, however, that no matter how the contract was interpreted, the University still retained the fact-finding prerogative. *Id.* at 82, 862 A.2d at 948-49. Even so, because the contract was ambiguous, the court decided to assume that Dr. Conte's interpretation of the contract was correct and that it did not specify who had the fact-finding prerogative. *Id.* at 82, 862 A.2d at 949.

The Court next proceeded to distinguish just cause employment contracts, satisfaction employment contracts, and at-will employment contracts. *Id.* In at-will contracts, courts have held that "a jury cannot review any aspect of the employer's decision to terminate." *Id.* An

employer in an at-will contract may terminate an employee for any reason absent contravening public policy. *Id.* In a case involving a satisfaction employment contract, a jury cannot review the factual basis for an employer's termination, but it can review the employer's subjective motivation. *Id.* at 83, 862 A.2d at 950. The jury must determine whether the employer was truly dissatisfied with the employee's services or simply just feigning dissatisfaction. *Id.*

The Court of Appeals decided not to take the route of the lower courts in permitting the jury to review the factual basis for the employer's termination decision, but rather to review the objective motivation of the employer to ensure that they acted in good faith. *Id.* at 85, 862 A.2d at 950. The jury must determine whether the employer acted "reasonably" and make sure that its decision did not result from any arbitrary, capricious, or illegal reason. *Id.*

Next, the Court compared this case to two analogous cases. In *Toussaint v. Blue Cross & Blue Shield of Mich.*, 408 Mich. 579, 292 N.W.2d 880 (1980), the Michigan Supreme Court held that it is the trier of fact, not the employer, that determines whether there was sufficient cause to warrant the employees termination. *Towson University*, 384 Md. at 86, 862 A.2d at 951. That court found that if the employer were the final arbiter of the discharge, then its promise to discharge only for just cause would be meaningless. *Id.*

In *Simpson v. Western Graphics Corp.*, 293 Ore. 96, 643 P.2d 1276 (1982), however, the court held that when an employer contracts to discharge only for just cause it does not forfeit its right to be the ultimate fact-finder in determining whether just cause existed. *Towson University*, 384 Md. at 86, 862 A.2d at 951. The employer only need prove to the jury that the misconduct occurred by a preponderance of the evidence. *Id.*

The Court of Appeals agreed with the court in *Simpson* that an employer does not contract away his right to be the ultimate fact-finder with regard to an employee's workplace performance. *Id.* at 87, 862 A.2d at 952. The court reversed the holding of the Court of Special Appeals and decided not to interpret Dr. Conte's employment contract as granting the jury the authority to decide the factual bases for his termination. *Id.* Overall, the court found that, "if an employee is required to have in hand a signed confession or an eyewitness account of the alleged misconduct before it can act... effective decision making [would] be thwarted." *Id.* at 88, 862 A.2d at 953. In this case, the University alone was in the best position to determine if there were

sufficient facts present to indicate incompetence and willful neglect of duties. *Id.* at 89, 862 A.2d at 953.

In this holding, the Court of Appeals of Maryland effectively limits the number of these disputes that will be placed on its docket. Employees in these cases will be more likely to accept the decision of their employer after exhausting the remedies set forth in their contracts. To bring these cases to court, employees must have proof that their termination was not reasonable or was arbitrary, capricious or illegal.