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### Summary of Ozawa v. Vision Airlines, Inc., 125 Nev. Adv. Op. No. 16

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# **Ozawa v. Vision Airlines, Inc., 125 Nev. Adv. Op. No. 16 (Oct. 1, 2009)<sup>1</sup>**

## **EMPLOYMENT LAW – TORTIOUS DISCHARGE AND AT-WILL EMPLOYMENT**

### **Summary**

Consolidated appeals considering two issues: (1) whether to recognize a new exception to the at-will employment doctrine and to allow a claim for tortious discharge related to an employee's termination for attempting to organize his fellow employees; and (2) whether the district court abused its discretion in its resolution of respondents' request for attorney fees and costs.

### **Disposition/Outcome**

The Court answered the first question in the negative, declining to recognize a claim for tortious discharge because the appellant had an available federal statutory remedy. As to the second question, the Court affirmed the district court's denial of respondent's motion for attorney's fees, but reversed in part the district court's cost award.

### **Factual and Procedural History**

Ozawa was employed part-time and at-will as a pilot for Vision Airlines and Vision Aviation Holdings (collectively, Vision Airlines). During the time of his employment, Ozawa took a leadership role in petitioning for additional compensation for pilots required to attend training sessions. Shortly thereafter, Ozawa was contacted by Vision Airlines' director of human resources and, though the parties dispute the details, he subsequently resigned.

Ozawa filed a complaint in district court alleging retaliatory discharge, intentional infliction of emotional distress, and breach of contract. The district court dismissed the intentional infliction of emotional distress claim and granted summary judgment to Vision Airlines on the remaining claims of retaliatory discharge on the grounds that such a claim is not recognized by Nevada law and of breach of contract because Ozawa was an at-will employee. The district court subsequently denied a motion for reconsideration and denied in part and granted in part a motion by Vision Airlines for attorney fees and costs.

Ozawa appealed the order granting summary judgment to Vision Airlines. Vision Airlines cross-appealed from the attorney fees and cost order. The Nevada Supreme Court consolidated these appeals.

### **Discussion**

*The Ozawa Appeal: Summary Judgment was proper as Ozawa failed to avail himself of an available remedy in federal court*

An employer can dismiss an at-will employee with or without cause, so long as the dismissal does not offend Nevada's public policy.<sup>2</sup> While the Court has recognized certain exceptions to the at-will employment doctrine<sup>3</sup>, these exceptions are limited to cases where the employer's conduct violates a "strong and compelling public policy."<sup>4</sup>

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<sup>1</sup> By Nick Portz

<sup>2</sup> State v. Dist. Ct. (Anzalone), 118 Nev. 140, 151, 42 P.3d 233, 240 (2002).

<sup>3</sup> See D'Angelo v. Gardner, 107 Nev. 704, 719, 819 P.2d 206, 216 (1991) (adopting an exception based on Nevada public policy favoring "safe employment practices and the protection of the health and safety of workers on the job").

<sup>4</sup> Sands Regent v. Valgardson, 105 Nev. 436, 440, 777 P.2d 898, 900 (1989) (declining to create an exception to at-will employment doctrine for age discrimination).

Ozawa argued that NRS 614.090<sup>5</sup>, NRS 613.220<sup>6</sup>, and the National Labor Relations Act<sup>7</sup>, established a strong public policy in Nevada to protect workers' right to organize in order to enhance or protect the condition of their employment. However, the Court noted that mere identification of public policy is not the entire analysis, and as the Court explained in *D'Angelo*, the court will not recognize a claim for tortious discharge when an adequate statutory remedy already exists.<sup>8</sup> Because the Federal Railway Labor Act<sup>9</sup> provides a federal remedy, and because the Ninth Circuit Court of Appeals recognizes a private right of action under the Act<sup>10</sup>, the Court concluded Ozawa had an adequate remedy that he did not avail himself of, and therefore the Court affirmed the district court's grant of summary judgment on his claim for tortious discharge.

*The Vision Airlines Appeal: The district court's attorney fees and costs award*

Regarding the attorney fees, the Court reviewed the district court's analysis of the four-factor test set forth in *Beattie v. Thomas*.<sup>11</sup> After analyzing the record in the case, the Court concluded that proper consideration was given to each factor and the district court did not abuse its discretion in declining to award Vision Airlines attorney fees.

Regarding award of costs, Vision Airlines argued that the district court erred by (1) awarding costs to Vision Airlines based on an original, as opposed to amended, memorandum of costs; and (2) improperly granting Ozawa \$723.45 in set-off costs based on a claim by Ozawa of accrued vacation and paid time off. The Court, noting that Ozawa did not dispute the first claim, supplemented Vision Airlines award of cost based on the amended memorandum of costs. As to the second issue, the Court concluded it was an abuse of discretion for the district court to reduce its award of costs to Vision Airlines because the district court had already granted Vision Airlines summary judgment on all causes of action in Ozawa's complaint.

## **Conclusion**

Because Ozawa failed to avail himself of an available statutory remedy, the Court affirmed the district court's summary judgment and declined to recognize a tortious discharge claim for the alleged termination of Ozawa's employment with Vision Airlines based on his efforts to organize his coworkers. Further, the Court concluded that the district court did not abuse its discretion in declining to award attorney fee. However, the Court reversed and remanded, as an abuse of discretion, the district court's refusal to amend Vision Airlines' award of costs by reinstating the \$723.45 off-set costs and adding on the difference of the amended memorandum of costs and disbursements.

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<sup>5</sup> NEV. REV. STAT. § 614.090(1) (2007) (declaring as the public policy of Nevada that "it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint or coercion of employers... in self organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.").

<sup>6</sup> NEV. REV. STAT. § 613.220 (2007) (providing that no part of NRS Chapter 613 "shall be construed to restrict or prohibit the orderly and peaceable assembling or cooperation of persons employed in any profession, trade or handcraft for the purpose of securing an advance in the rate of wages or compensation or for the maintenance of such rate.").

<sup>7</sup> 29 U.S.C. §§ 151-169 (1935).

<sup>8</sup> *D'Angelo*, 107 Nev. at 720, 891 P.2d at 217.

<sup>9</sup> 45 U.S.C. §§ 151-188 (2006).

<sup>10</sup> See *Fennessy v. Southwest Airlines*, 91 F.3d 1359, 1365 (9th Cir. 1996).

<sup>11</sup> *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983) (In awarding attorney's fees, the court must review: (1) whether the plaintiff brought the claim in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both amount and timing; (3) whether it was grossly unreasonable or an act of bad faith for the plaintiff to reject the offer and proceed to trial; and (4) whether the fees sought are reasonable and justifiable).