

FORKLIFT OPERATOR ALLEGES RETALIATION, DEFAMATION



A forklift operator working at a warehouse in Mounds View, Minnesota, was fired for violating various company policies. His response? He sued his former employers for retaliation and a co-worker for defamation. Back in September of 2008, the plaintiff, who is white, testified on behalf of a black worker whose employment was recently terminated. The company had fired the black employee for repeatedly failing to sign a forklift checkout sheet. The man filed a lawsuit alleging racial discrimination, claiming that other employees likewise did not sign the sheet but had not been similarly disciplined. The plaintiff, along with a couple of other workers, essentially confirmed this claim in depositions. The company subsequently settled with the employee. Afterwards the warehouse general manager spoke to the three workers who had provided testimony and a fourth employee. Two of the men were issued disciplinary warnings, neither of whom were the plaintiff. A couple of months later, another worker had been authorized to begin and end his shifts one hour early. Some employees questioned the reasons for the shorter shifts, and the plaintiff complained to the general manager, who called the worker into his office. Following the meeting, the man went home and committed suicide. One of the man's friends began telling employees that the plaintiff's complaint was "the straw that broke the camel's back," stating that he "was the reason for [the man's] death." In the presence of other workers, the plaintiff confronted the employee making the allegations and acted in a hostile manner, bumping into him and challenging the man to strike him. Continued



aggressive conduct, witnessed by other workers, led the employee to file a written complaint against the plaintiff. The company's headquarters in Virginia sent an HR specialist to investigate. The specialist found an abundance of incidents of misconduct from the plaintiff, as alleged by fellow workers. These included: refusing to sign the company rules, yelling at an HR employee in 2004, physically intimidating another worker, stopping his forklift and staring at the worker who'd made the previous comments, and other claims. The HR specialist recommended termination, and the plaintiff was fired in April of 2009. A grievance filed by his union was not pursued. He filed a lawsuit against the company and the general manager for retaliation and the worker whom he had challenged for defamation. The district court ruled in favor of the defendants on both counts. On appeal, the plaintiff's argument for retaliation was that his misconduct was a pretext for his testimony in 2008. The appeals court, however, stated that the man had failed to prove a causal connection between the testimony given and his termination. With respect to the defamation, no one had disputed the comments made against the plaintiff. The court believed that the man's statements did not express "objectively verifiable facts." In other words, they were clearly speculation and not intended to be factual or convey the belief that they were fact. Accordingly, the appeals court affirmed the district court's grant of summary judgment for the company, the general manager and the employee in question.