

FORMER VERIZON EMPLOYEE IN AND OUT OF COURT



An employee at Verizon crashed one of the company's trucks into a highway abutment. His eventual termination sparked a few lawsuits and corresponding appeals – even from the former employee's attorney. The accident in question occurred on May 23, 2006, while the employee was on his way to a job for Verizon. He was taken to the emergency room, where he admitted to having snorted heroin, which hospital tests verified. He told his supervisor that he wouldn't be coming into work for the next week. On June 1st, the supervisor, unable to reach the worker during that week, stopped by his parents' house, where he was staying, to fill out paperwork. The supervisor claims that the meeting was arranged, but the former employee alleged that the supervisor was hostile, trying to block the door when the man's father was closing it and yelling outside until the police asked him to vacate the property. The man was fired about three months later, the termination citing his accident. He responded by filing a Massachusetts workers' compensation claim for injuries sustained in the May 23rd accident and psychological harm from his supervisor – prior to the accident as well as the June 1st incident. An administrative law judge dismissed the former claim, as it was caused by his drug use, and saw no support for the allegation of on-the-job harassment. The judge accepted the



man's side of the June 1st events but did not find that the man had proven any resultant injury. The man appealed, stating that the June 1st incident should not have been considered and the finding be deleted. The appeal was denied by a review board and later by the Massachusetts Appeals Court, which believed that the incident was significant to the harassment claim. Before the appeals court's decision, the man had filed a second workers' compensation claim citing only the June 1st occurrence, but a judge rejected the claim as res judicata – a matter already judged. This was affirmed by a review board and the appeals court. Next was a lawsuit in state court against Verizon and the supervisor. Charges included intentional and negligent inflictions of emotional distress and trespassing against the supervisor, and respondeat superior liability for Verizon – meaning it was responsible for the supervisor's actions performed under the company's employment. Verizon and the supervisor removed the case to federal court, asserting that the claims were preempted by the Labor Management Relations Act and Section 185 of the U.S. Code and barred by the exclusivity provision of the Workers' Compensation Act. The district court agreed, dismissing the case and suggesting sanctions for a "frivolous" case. The judge called it "an indigestible third bite of the apple." The man's attorney accepted responsibility for the common law action. The attorney then appealed the decision to award Verizon legal fees of \$34,908.12 against the attorney himself. He argued that the civil action was a necessary result of the workers' compensation claim. However, that claim – in the first two suits – cited the June 1st incident, which had failed because the judge found no proof of harm. The incident was also clearly work-related, which was never truly debated, and was barred by the exclusivity provision. The appeals court referred to the civil lawsuit as "hopeless" and affirmed the district court's dismissal.