STATE OF MICHIGAN

COURT OF APPEALS

ANTHONY M. KUDRICK,

Plaintiff-Appellant,

v

AMERICAN INTERNATIONAL AIRWAYS, INC., d/b/a CONNIE KALITTA SERVICES, INC., a Michigan corporation,

Defendant-Appellee.

UNPUBLISHED
December 27, 1996

No. 188134

Washtenaw County
LC No. 94-001367-NO

Before: Saad, P.J., and Griffin and M.H. Cherry*, JJ.

PER CURIAM.

In this wrongful discharge case, plaintiff appeals as of right an order denying his motion for partial summary disposition and granting summary disposition for defendant pursuant to MCR 2.116(C)(8) and (10). We affirm.

Plaintiff is a flight engineer. After a month of training, plaintiff, in the midst of his second week in the field, was assigned a flight to Miami. After receiving the assignment, plaintiff telephoned a member of defendant's crew scheduling department to question whether his assignment violated the "one in seven" rule, an Federal Aviation Administration (FAA) regulation mandating that airline workers take a day off when the previous six days have been spent aloft. The scheduler, who was awoken at home by plaintiff's 5:00 a.m. phone call, called his supervisor and then took plaintiff off the flight without mentioning the one in seven rule. Plaintiff was discharged the next day. In explaining defendant's decision to terminate plaintiff, defendant cited, inter alia, plaintiff's uncooperative attitude, poor motivation, abrasiveness, poor communication skills, and his failure to make an assigned flight.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff concedes that the flight he protested would not have violated the one in seven rule. Further, plaintiff maintains that he never refused to take the flight, but that he simply questioned whether the assigned flight would violate federal regulations.

On appeal, plaintiff contends that the trial court erred in ruling that plaintiff failed to state a cognizable claim that he was terminated in violation of the second and third policy exceptions to the employment "at-will" doctrine. We disagree. A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone; all well-pleaded factual allegations are taken as true, as well as any reasonable inferences or conclusions that can be drawn from the allegations. *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995); *Marcelletti v Bathani*, 198 Mich App 655, 658; 500 NW2d 124 (1993). The motion should be granted only where the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Peters v Dep't of Corrections*, 215 Mich App 485, 487; 546 NW2d 668 (1996).

"Generally, employment relationships are terminable at will, with or without cause, 'at any time for any, or no, reason.'" *Vagts v Perry Drug Stores, Inc*, 204 Mich App 481, 484; 516 NW2d 102 (1994); quoting *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692, 694-695; 316 NW2d 710 (1982). The second of the three policy exceptions to this rule applies "where the alleged reason for the discharge . . . was the [employee's] failure or refusal to violate a law in the course of employment." *Suchodolski, supra* at 695; *Garavaglia v Centra, Inc*, 211 Mich App 625, 630; 536 NW2d 805 (1995). The third exception applies "when the reason for a discharge was the employee's exercise of a right conferred by a well-established legislative enactment." *Suchodolski, supra* at 695-696; *Vagts, supra* at 484.

In the present case, plaintiff has adamantly and consistently maintained that he never refused to take the assigned flight. Thus, because he never "refused" to perform the act that he thought was illegal, plaintiff has failed to state a cognizable claim under the second exception to the employment at-will doctrine. See *Varga, supra* at 486. Furthermore, assuming without deciding that administrative regulations can constitute a "well-established legislative enactment" for purposes of the third exception to the at-will doctrine, plaintiff has failed to state a congizable claim under this exception, as well. The collage of FAA regulations, federal statutes, and employee handbook provisions that plaintiff cites to this Court do not confer rights or obligations relating to plaintiff's conduct.

Finally, because plaintiff has failed to state a claim on which relief can be granted, MCR 2.116(C)(8), plaintiff's argument that summary disposition was prematurely granted before discovery was completed is without merit.

Affirmed.

/s/ Henry William Saad
/s/ Richard Allen Griffin
/s/ Michael H. Cherry