Docket No. 20-6423

IN THE

SUPREME COURT OF THE UNITED STATES

Byron Lee - PETITIONER

vs.

AT&T SERVICES, INC. / PACIFIC BELL - RESPONDENT

ON PETITION FOR A REHEARING TO

THE UNITED STATES SUPREME COURT

Byron Lee

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Palmdale, CA. 93552

Docket No. 20-6423

Rehearing Petition

Several supreme court clerks confirmed the following documents complete a sucessful submitted rehearing petition: Cover page, rehearing petition, conclusion page, certification of counsel and proof of service.

INTRODUCTION

Respondent outrageous behavior begin with petitioner step II grievance meeting, held on December 16, 2015, when Simi Valley, CA. police officer testified, through a written sworn statement, that petitioner summon his supervisor, Lee Vagatai, to petitioner traffic citation location, to retrieve AT&T vehecle. The traffic officer testimony, went directly against respondent **original** 'for cause' termination reason (a failure to report his December 15, 2014 traffic citation to supervisor Vagatai.) Respondent **second** 'for cause' termination reason, was announed when respondent opposed petitioner unemployment claim. The CA. Employment Development Department (EDD) hearing officer wrote EDD reason for granting petitioner unemployment claim as following: Based on respondent 'for cause' termination reason (not following directions) was deemed an insufficient reason for termination. RespondentCHANGED 'FOR CAUSE' REASONS EACH TIME PETITIONER PRODUCED DIRECTLY DISPUTED EVIDENCE. Respondent **latest** 'for cause' termination reason is their **third** different 'for cause' termination reason given in petitioner grievence procedure, to support respondent wrongful termination. Accusing petitioner and CA. DMV Employer Pull Notice program, of a failure to notify Pacific Bell about a September 2014 druving license suspension. Respondent's third 'for cause' reason is used by the district court to base petitioner's FEHA, IIED and NIED elements decision.

Respondent description of their 30 days driving license policy, ommitted key facts about respondent driving license protection program. (1) The 30 Days grace period is an outside addendum to respondent 2012 CBA. (2) The unions requested a written copy from respondent, to inform its members of the policy details, but respondent denied the unions requests. (3) Respondent reason for denying the union request (according to local 9504 president Rick Kennedy), was respondent declared their field management team will verbally explain the 30 days driving license grace period policy to their supervised employees. (4) Petitioner was forced to sign a confidentiality statement to receive a written 30 days driving license grace period policy copy, doing the discovery period. Compared to a hand received copy of respondent's 2012 CBA, without signing a confidentiality statement. (5) Respondent allowed driving license suspended employees to use vacation days to cover their

suspended time period.

IIED

Appellee 9TH Cir. Ct. answer brief page 3 (APPENDIX O) cited: " **A district court abuses its discretion only if, the movant diligently pursued its previous discovery opportunities, and if the movant can show how allowing additional discovery would have precluded summary judgment** ", *Panatronic USA v. AT&T Corp.*, 287 F.3d 840, 846 (9th. Cir. Ct. 2002).

Respondent failed to include petitioner's 2012 - 2014 DMV employer pull notice history reports during discovery. Petitioner wrote an email to attorney of record, Mandana Massoumi and verbally requested those DMV employer pull notice reports from attorney Camillie Vasquez. Neither attorney confirmed or denied, the presence or absent of petitioner 2012 - 2014 DMV Employer Pull Notice reports disclosure requests. Petitioner visted Lancaster, CA. DMV to retrieve his Employer Pull Notice records, but was informed by a dmv clerk, those records are private employers account. Respondent refused every attempt to reveal petitioner 2012 - 2014 DMV EPN histoy report.

Petitioner's hearsay evidence list a Pacific Bell address as a contact point, concerning petitioner CA. DMV Employer Pull Notice program: **Pacific Bell, Sabina Gasca / Debra pantagua, 650 Robinson Ave Rm 402, San Diego CA 92103**.

Pacific Bell contact information is listed on Petitioner CA. DMV records, used as a contact address to Pacific Bell. There is a direct dispute against respondent ' not being notify ' claim against CA. DMV Employment Pull Notice program. Petitioner's hearsay evidence also list month, date and year CA. DMV Employer Pull Notice program notified Pacific Bell. The employer contact information is solely provided by respondent to CA. DMV Employer Pull Notice program.

Petitioner is requesting a limited scope decovery reopening. There are critical driving license evindence in respondent's CA. DMV Employer Pull Notice private account, concerning petitioner's CA. DMV notification history records, sent directly to Pacific Bell, that directly disputes respondent third ' for cause ' termination reason. This evidence would have presented the district court judge with enough controversy evidence to preclude a **total** summary judgement decision. A court order to release a certified copy of petitioner CA. DMV Employer Pull Notice history records, to be sent directly to this court or allow petitioner hearsay evidence to be examine by CA. DMV for authentication.

According to the district court judge thought process, without respondent driving license claim, there were a better than average chance, for the court to remand petitioner's FEHA, IIED and NIED elements back to Los Angeles superior

court for trial.

NIED

Respondent selected supervisor Vagatai to conduct petitioner traffic citation investigation. Supervisor Vagatai never created an original traffic citation report, after being informed by the traffic officer, within respondent specified time period, led the corporate office to believe petitioner hid his traffic citation from supervisor Vagatai. Supervisor Vagatai lied to the corporate office when asked about his knowledge of petitioner December 15, 2014 traffic citation. Supervisor Vagatai claim of no knowledge about petitioner traffic citation, led respondent to their first 'for cause' termination reason. The rightful action after the traffic officer sworn testomony statement durning step II grievance meeting, should have been employee reinstatement, then discipline supervisor Vagatai for lying and directly causing petitioner financial and emotional distress. Respondent decided to ignore supervisor Vagatai behavior by creating two more 'for cause' termination reasons, extending petitioner emotional pain and suffering.

FEHA Pleadings:

Petitioner has consisently pleaded against his labor union representative behavior in his lower court records, the district court memorandum of point No. 13, " **the court agrees with defedants' assessment that the sum total of plaint's motion is a conjured conspiracy theory, summarized in the following statement: 'corruption, collusion and conspiracy between local 9504 president Rick Kennedy and AT&T managers Lee Vagatai and Jorge Moreno.** ", proves plaintiff pleaded a **long and consistent breach of fair representative duty**, concerning his 2015 grievance process.

The Cal. App. Cleary v. American Airlines 1980 decision, states " **If the pleading has been truthful (a proposition we are compelled to accept here), plaintiff has pleaded one of the recognized public policy exceptions to the rule of Labor Code section 2922 and thus has stated a cause of action sounding both in contract and in tort. (See Tameny, supra.) But even if the trial court grants the motion to strike the allegation concerning plaintiff's union activities as the motivation for his assertedly wrongful discharge, plaintiff, nevertheless, is still entitled to his day in court.** ", *Cleary v. American Airlines, Inc.*, 111 Cal. App. 3d 443, 455 (Cal. App. 1980).

Plaintiff lower court pleadings has pleaded a breach of fair representative duty against his labor union.

Respondent Owed Petitioner An Employment Protection Duty:

Petitioner point this court to the district court memarandum of point No. 12. The district court noted plaintiff non preempted claim will fail, mainly because

of the undisputed driving licence suspension claims made by respondent, that plaintiff confirmed in his deposition.

Petitioner deposition statements are used out of context to support a false narrative.

Plaintiff could not afford a deposition copy and the district court offer plaintiff a free deposition copy, but failed to provide a free copy, after plaintiff completed a district court form to receive the court free deposition copy. A deposition copy would have allowed plaintiff an opportunity to dispute respondent out of context deposition statements, concerning his license status and the 30 day employment protection grace period.

Plaintiff clearly testified, he was unawared of his driving license suspended status, due to respondent 2012 driving license protection program, referred to as CA. DMV Employer Pull Notice.

Plaintiff agreed the DMV record indicated a license suspension and clearly noted in his deposition, that plaintiff was unawared of his license suspended status. Plaintiff was never notify in 2014 by his suspervisor, Lee Vagatai, Compared to two previous 2013 driving license suspensions. In 2013, supervisor Vagatai notified petitioner, that AT&T Los Angeles headquater, had received a DMV notice, about his license suspension status. Supervisor Vagatai placed petitioner on driving license suspension for suspended license, then reinstated petitioner employment when petitioner presented a valid license within the 30 days time limit.

In 2012, respondent encouraged every employee to sign their California DMV consent forms received from their supervisor, that allows respondent to monitor their employees driving licenses status, to protect employees employment, from driving licenses violations termination.

In 2014, respondent claimed in their 9TH Cir. Ct. answer brief, page 20 (APPENDIX P), that Respondent's 30 days, driving license grace period, relied upon Lee or California DMV Employer Pull Notice program, notifying Pacific Bell before suspension effective date occurred. Also on page 20, respondent claims, California DMV Employer Pull Notice program, never contacted respondent about petitioner pending 2014 license suspension, before petitioner license suspension effective date occurred.

Respondent claim of notice BEFORE suspension, was NEVER verbally related to petitioner work group or enforced against petitioner previous two license suspensions in 2013. On both occasions, when petitioner was notified by supervisor Vagatai, petitioner license had a suspended status. Once petitioner cure his license status, his employment was reinstated by supervisor Vagatai .

On September 5, 2015, supervisor Vagatai placed petitioner back on driving license suspension, for his December 15, 2014 traffic citation. According to Lee Vagatai verbally explaining respondent driving license protection program. A employee will receive a 30 days driving license suspension grace period, once the company place an employee on driving license suspension. Both times petitioner was placed on driving license suspsion program in 2013, his license status was suspended, by the time petitioner was notified by supervisor Vagatai and was never informed about a "**BEFORE EFFECTIVE DATE RULE**".

On September 11, 2015, petitioner visited Van Nuys, CA. traffic court to request his drivind license hold be removed. On September 13, 2015, petitioner was eligible for a valid CA. driving license.

Petitioner used 8 days, out of a 30 days grace period to cured his driving license. Petitioner two previous 2013 suspended license status used less time to cured license status.

Respondent terminated petitioner on September 24, 2015. Nineteen days after placing petitioner on driving license suspension for a second time involving his December 15, 2014 traffic citation. Well within respondent 30 days grace period to cure driving license violation. The first license suspension occurred on December 15, 2014 and petitioner employment was reinstated by supervisor Vagatai on December 16, 2014.

After this court review the facts from CA. DMV Employer Pull Notice program or petitioner's authehicated hearsay evidence, then petitioner is confident the CA. DMV record will indicate the DMV notified Pacific Bell BEFORE petitioner driving license suspension effective date or respondent designed a flawed employees driving license protection agreement.

Petitioner is requesting this court to remand his FEHA, IIED, NIED and Punitive claims back to Los Angeles superior court for trial.

Petitioner future attorney will admend all district court deficiencies before trial.

CONCLUSION

The petition for a Rehearing should be granted.

Respectfully submitted,

Byron Lee

Date: 2-2-2021

APPENDIX O

untimely materials. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 895-98 (1990); *see Preminger v. Peake*, 552 F.3d 757, 769 n.11 (9th Cir. 2008) (litigation management decisions reviewed for abuse of discretion). Central District of California Local Rule 7-12 empowers the court to decline to consider late documents, and the court's enforcement of its local rules receives broad deference. *Bias v. Moynihan*, 508 F.3d 1212, 1223 (9th Cir. 2007).[2]

STATEMENT OF FACTS

A. Lee's work for Pacific Bell as a technician required him to drive to customers' sites to provide services.

Lee started working at Pacific Bell Telephone Company as a Service Technician in 1998. (2-SER-31, 206, 235.)

Pacific Bell provides telephone and other services in California under the trade name "AT&T." (2-SER-120.) Pacific Bell uses the "AT&T" brand and logo under a licensing agreement with an AT&T Inc. subsidiary. (2-SER-120.) AT&T Inc. is a holding company that conducts no business

[2] To the extent that Lee's request could be construed as one seeking additional discovery to oppose summary judgment, the standard is also for abuse of discretion. *Panatronic USA v. AT&T Corp.*, 287 F.3d 840, 846 (9th Cir. 2002) (abuse of discretion arises only if the movant diligently pursued discovery and can show how allowing additional discovery would have precluded summary judgment).

APPENDIX P

Here, Lee had a full and fair opportunity to file opposition papers, and he did so. His desire to file further opposition papers would have prejudiced the Defendants and would have required them to file further papers as well. The district court was well within its inherent power to control its docket by refusing additional briefing. *Atchison, Topeka & Santa Fe Ry. Co. v. Hercules Inc.*, 146 F.3d 1071, 1074 (9th Cir. 1998).

Ultimately, of course, Lee cannot articulate how or why allowing him time to obtain "information and guidance" from the clinic would have made any difference. (At most, he claims it merely had a "negative impact" on his ability to file "competitive" opposition papers. (AOB-8.)) While it may be unfortunate that Lee was unable to obtain the pro bono help he desired, that was no reason to allow supplemental briefing.

CONCLUSION

The district court properly granted summary judgment and properly exercised its discretion in denying Lee additional time to oppose the summary judgment motion. This Court should affirm.