

No. 17-8555

IN THE
Supreme Court of the United States

Harvey Anderson
Petitioner

v.

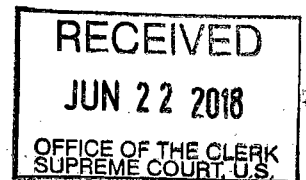
Venture Express
Respondent

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit**

**RESPONSE TO OPPOSITION
PETITION FOR A WRIT OF CERTIORARI**

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June 18, 2018



CORPORATE DISCLOSURE STATEMENT REQUIRED BY RULE

Petitioner, Harvey Anderson, has no parent corporation and/or publicly held corporation owning 10% or more of its stock.

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STATUTES AND RULES

U.S. Constitution. Amendment 14

49 C.F.R

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Section 395.1

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INTRODUCTION

The conspiracy forming the basis of this lawsuit is based on facts and the law. The petitioner is asking that the court will hear an explanation of the laws, rules, and regulations that will shed light upon the evidence if presented at trial. Therefore, the petitioner respectfully seeks a reversal of the summary judgment based on upon the application of the facts in this case to the law. It is an understanding of the nuances in the facts of this matter that an oral argument is highly beneficial. The petitioners entire case goes through 49 CFR. The court must honor the full faith under the law. Under 49 CFR, this is a triable issue for a jury trial. The court can't circumvent the law and then turn a blind eye to the law under 49 CFR when the same law incriminates the respondent's illegal action. Under 49 CFR, the respondent's entire case is discredited (examples 14-hour rule & out of service violation). The law is crystal clear here under 49 CFR and the law demands proof of charges. The court should reverse the respondent's motion for summary judgement or dismiss the respondent's case on technical defects in this pleading. The law under 49 CFR and evidence strongly support the petitioner's claim he would prevail in a jury trial.

STATEMENT OF THE CASE

A. Factual Background

You must review the exhibits to follow the law and the judge's decision. The law submitted by the petitioner under 49 C.F.R by both courts refused to follow the law and review the law. The appellant court alleged

that the petitioner failed to produce any evidence to support his claim under 49 C.F.R. The petitioner submitted the law on every alleged charge filed by the respondent in this action. The law under 49 C.F.R addresses every charge filed by the petitioner in this action against the respondent. There are court documents filed by the petitioner under the law of 49 C.F.R and supporting documentation. The law demands proof and the respondent's word is not the law nor is it proof. The petitioner must be found guilty by law.

B. Procedural History

The district judge didn't follow the law under 49 C.F.R. He stated in his decision that the petitioner was guilty of violating the law under 49 C.F.R. based on what the respondent alleged. The district judge didn't observe a log or the law. The respondent didn't submit the law. Exhibit KK is the back of the log book issued by the respondent with the law under 49 C.F.R. The driver is legally able to drive after eight hours in the sleeper berth. The judge is not following the law but simply repeating the respondent's words. Exhibit 500 – Exhibit 505 are all split logs based on the law.

The district judge ruled that the petitioner was in violation of the law based on Exhibit 504, Exhibit 505, and the respondent's company policy. However, the district judge has not seen a company policy because the respondent has not submitted a policy. The district judge is simply repeating the respondent's word. If the petitioner was in violation of the law, why wasn't the petitioner terminated based on Exhibits 500-503 for the months of April and May (see company letter dated 11/22/2010 – Exhibit 1600).

The respondent and the district judge stated the petitioner was in violation of the law based on Exhibits 501 and 505. The petitioner has stated that the respondent ordered these alleged violations. Exhibit 510 is the petitioner's cell log (See block section calls on 07/25/2011 and 07/26/2011). The exhibits show the 1-800 service number (See exhibit 29). 1-800-444-5509). This is a trap to set to single out the petitioner with an alleged violation of the law (See Exhibit 505 & 505) and match the time with the logs. The respondent's order is a violation of the law.

The respondent claims are pretextual and disparate based on compliance policy (Exhibit 6). The respondent claimed to have a policy but can not produce one. Also, at the same time, the claim of insubordination is all because the petitioner is following the law. The petitioner submitted an interrogatory question to the respondent during discovery. How many drivers have been suspended for placed out of service in Canton, MS? The respondent failed to answer the interrogatory question (See Exhibit 511).

The respondent's compliance policy states in paragraph 2(Exhibit 6) in the underlined section clearly what action the respondent would take for any driver being placed out of service. This means the driver can not drive during this three-day suspension (See exhibit 511 and 512 which is the respondent's record dated 08/01/2012). The respondent's record shows 47 drivers were placed out of service. The respondent can't produce a single disciplinary action report on any driver. The respondent is in violation of the law under 49 C.F.R and the Civil Rights law of 1964.

Under 49 C.F.R and the law, the respondent is required on Section 395.8K to maintain these records for at least six months. This also proves that the respondent's actions are pretextual. Pretextual refers to a reason for an action which is false and offensive or to cover an untrue motive or intentions. Pretextual can be based on statistics, comparators similarly situated, written or oral statements indicating bias or just plain false reason. In St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993), the U.S. Supreme Court rejected the "pretext plus" and "pretext only" approaches in favor of the "permissive pretext only" standard and held that it was permissible, but not mandatory, for the trier of fact to make an ultimate finding of intentional discrimination once the plaintiff has established pretext.

The respondent suspended the petitioner on 01/04/2011 for an inspection report and later terminated the petitioner in 2011 on a false report which was wrongful termination, discrimination, and retaliation. The district judge charged the petitioner with violating the law in 2010 based on the respondent's word (Exhibit 46). Court document 16-60582-134 was an illegal document issued by the respondent in 2010 for the petitioner to violate the law under 49 C.F.R. This is fraud. The district judge decided to charge the petitioner with violation of the law. The respondent asked the district judge to throw out the names on document 16-60582-134. The respondent answered all the questions regarding the names on the document except for the telephone number (615-793-0162).

The respondent entered a dati-report from Hire-Right regarding the petitioner. The dati-report has the respondent's same telephone number on it which is 615-793-0162. This proves the document 16-60582-134 was issued by the respondent which is fraud under 49 C.F.R.

The district judge cannot remove the respondent from the law or the documentation. Exhibit GG and HH are logs of the court document and they match 16-60582-134. The respondent alleged that the tracking does not match however under the law of 49 C.F.R. tracking doesn't have to match (See Exhibit 17 and the law). Tracking can be off as much as ten minutes by law (See 395.1V). The respondent's claim is false. This was a trap to single out the petitioner. The logs are in violation of the law based on the 11th hour rule (See Exhibit KK). Tracking was made up by Wendy Wingert after she received the logs from the petitioner in which Sgt. Daniel reviewed and approved the logs. The petitioner stated to the appellate court that Sgt. Daniel signed off on the logs that the petitioner brought to him. (See name and badge number MS D.O.T – Exhibit JJ). Sgt. Daniel's initials are in the right corner of the logs.

C. Anderson's Claim

The respondent stated if the petitioner had any more log violations, this would be automatic grounds for termination (See Exhibit MM-901, a violation of the law). All logs are drawn from 6/2011 through 11/2011 and are all marked the same. (See every log have the same mileage on it). Under the law of 49 C.F.R, no driver can log 842 in 11 hours on 12 hours no where in this country. The law will not allow it.

This can be proven by sending all logs to FMCSA for review and they can rule on it. There was not a single person in safety that looked at these logs. They all made the decision to terminate the petitioner (See Exhibit KK – violations under the 11th hour rule for driving / Exhibits HH, HH1, HH2, HH3, HH4 – fraud under 49 C.F.R.).

The break cited by the district judge, which is a split log, 8th hour rule for the sleeping berth under 49 C.F.R (See Exhibit KK & the law). Split log exhibits 500-505, are logs for different months in 2011. The district judge ruled that the petitioner was in violation of the law. The district judge had not seen a log or the law to make a decision regarding the law. For example, the two white males mentioned by the fifth circuit on the ADEA charge. The respondent didn't submit one document to support this claim. This is fraud upon the court (See petitioner's discovery exhibits 535 & 535A).

The district judge stated that the petitioner only filed one page of the manifesto of law which is false. The petitioner submitted 16-60582-942 through 16-60582-962, which is 20 pages under manifesto of law (See Exhibit 7) and 16-60582-136 through 16-60582-155 which is also 20 pages under 49 C.F.R.

Section 2104 paragraph 1 states that the Civil Rights Act of 1990 provides compensatory and punitive damages in cases of intentional discrimination as well as providing for a jury trial. Attorney fees are also included in employment cases. Paragraph three which is the main provision included in the Civil Rights Act of 1991 increased the employee rights in discriminatory work situations. The act formally recognizes disparate impact, i.e., practices that are fair in form

but discriminatory in operation (Exhibit 2 – Once an unlawful employment practice is demonstrated the entire process becomes unlawful even if there is a legitimate factor motivation the practice. The respondent used an illegal document under 49 C.F.R to discriminate and retaliate against the petitioner. The district judge and the appellate court have removed the respondent from under the law of 49 C.F.R and the 1964 Civil Rights Act. They are not following the law.

REASONS FOR GRANTING THE PETITION

The court normally proceeds with caution before granting a motion for summary judgement. The respondent filed a motion on 09/27/2013 for summary judgement claiming missing logs (Dates 04/01/2011 – 11-21/2011 – Exhibit 516). The district judge moved to support this motion solely on the respondent's word which violated the petitioner's constitutional rights under the 14th amendment of equal protection. The district judge did not see one piece of documentation by the respondent to prove such a claim. The district judge's action here is biased and prejudice. This was fraud under the law to obtain a motion for summary judgment.

The petitioner was terminated on 09/13/2011. This was a red herring entered by the respondent for fraudulent purpose (See respondent's motion for summary judgment Exhibit 516). Why would the petitioner have to turn in logs after his termination for the months of September, October, and November? Which law was submitted by the respondent to prove this claim? Exhibits 500 – 503 prove that there are no logs missing. The district judge stated that the case fell through the crack.

The district judge should have proceeded with caution before granting a motion for summary judgment. This was an admission that he had not kept up with the case. The respondent could not prove their case by law or documentation. When the respondent couldn't prove their claim for summary judgment (See Exhibit 516) the district judge moved to support another false claim not supported by documentation or law!

The district judge made another move and made the decision to grant the respondent another motion for twelve missing logs. These twelve logs are part of the original motion for summary judgment. Exhibit 17A – 17I are exhibits that show a confirmation fax that the respondent did receive the logs. 17A is the trip sheet and 17 B is the bill of lading for the trip. The logs for 17C – 17I are part of the false claim. This was a scam put in place by the respondent and it is just plain fraud. The missing logs for summary judgment filed on 09/27/2013 on exhibit 516. The logs are part of the twelve missing logs that the district judge claimed were missing. The district judge nor the appellate is following the documentation or the law. The respondent submitted court documents 16-60582-106 – 16-60582 -108 which shows all types of violation of the law whereas the respondent took no action against these drivers. This is intentional discrimination and retaliation (See Exhibit 16 – Manifesto of Law).

A. The Questions Presented are Proper Before the Court

To the extent that a civil rights plaintiff seeks legal relief in such compensatory and punitive damages, there is a right to jury trial as long as the pleading indicates that there is an issue triable by a jury.

Was the petitioner in violation of the law in 2010 including issues of compensatory and punitive damages? The plaintiff is entitled to a jury trial and need not any specific facts or evidence in support of the claim for relief to obtain a jury trial. Based on the timeline, the district judge had time to review the manifesto of law submitted by the petitioner and not make an excuse that he is not required to look through the record and see what the petitioner had filed. The district judge had to look through the record to find those alleged allegations submitted by the respondent. The petitioner rights are protected under the 14th amendment of the constitution and due process of the law for a jury trial. These rights have been violated by this motion for summary judgement. The jury should decide whether the employer discharged the appellant on a fraudulent log report that has not been proven by law. The 14th amendment of the Constitution guarantees right of all citizens for a jury trial. To the extent that a civil rights plaintiff seeks legal relief, such as compensatory and punitive damages, there is a right to jury trial.

As long as the pleadings indicate that there is an issue triable of right by a jury, including issues of compensatory and punitive damages, the plaintiff is entitled to a jury trial and need not aver specific facts or evidence in support of the claims for relief to obtain a jury trial¹.

¹ City of Monterey v Del Monte Dunes at Monterey Ltd.,
526 U.A. 687 (1999)

Where both legal and equitable relief are sought, the right to a jury trial on the legal claim, including all issues common to both claims, remain intact². The court should provide the plaintiff with a reasonable opportunity to cure the defect of nonspecific factual allegations³.

B. There is a Compelling Reason to Review the Fifth Circuit Decision

The respondent posted the law under 49 C.F.R/395.8K. A motor carrier is required by law to retain and maintain all records of duty status, violations of law, and supporting documents for at least six months. During the case management order, the respondent should have been able to prove their case on bench trial based on the law. The district judge stated in his decision that the petitioner is speculating the alleged driver cited by the district judge who the respondent claimed they terminated for the years of 2012 and 2013.

The petitioner's discovery wasn't honored by the respondent, district judge, or fifth circuit. This is a violation under federal rules and procedures for discovery on all names cited by the district judge and fifth circuit regarding the alleged termination. The law defeats this motion for summary judgment and also defeats the district judge decision under 49 C.F.R/395.8K. The summary judgment should have been denied based on all documentation submitted by the respondent.

² Laskaris v. Thornburgh, 733 F. 2d 260 (1984)

³ Perez-Serrano v. De Leon-Velez, 868 F. 2d (1989)

This is a civil action and it requires proof by law and not the respondent's unproven word.

C. The Fifth Circuit did not Correctly Hold Anderson's Establishment of a Prima Facie Case of Race and Age Discrimination

The petitioner filed an amended claim with the EEOC on the charge of retaliation against the respondent. The petitioner had the right to amend his complaint on the charge of retaliation. The appellate court denied the petitioners claim on the charge. The petitioners claim, however, falls under federal law and the Constitution. Under federal law and the 1964 Civil Rights Law under Section 706 states that pleadings or charges cannot be dismissed on a mere technical defect in the pleading. The petitioner has the right to correct the filing. This also violates the petitioner rights under the 14th amendment and due process of law.

ADEA

Driver signature 395.8 under 49 C.F.R (Exhibits 600-601) is part of the respondent's company policy, policy on logging, and disciplinary policy. The driver must sign for all violations of the law. The appellate stated that the petitioner's claim on the ADEA was defeated by the respondent with the two younger white males. Based on policy and the law submitted by the respondent, where is the proof that the two younger white males were terminated for log violations. Can the appellate court prove this? They are not following the law or policy to validate this claim by law. The respondent did not post a written warning or a policy.

The petitioner is asking the court to resubmit the charge on retaliation against the respondent under the manifesto of law (See Exhibits 10, 11, 12, 31).

Under the ADEA, a plaintiff must prove that age was a determinative factor in the defendant employer's decision to dismiss the employee⁴. In addition, in establishing a prima facie case by indirect proof, an ADEA plaintiff can prevail by means of indirect proof that the employer reasons are pretextual for the same violations of law because no action was taken by the appellee to prove their claim on the violation of the law⁵. The appellant can prevail without presenting evidence specifically relating to age when all legitimate reason for rejecting an employee have been eliminated as possible reasons for the employer's action⁶. It is more likely than not the employer who generally assumes acts only with some reason based their decision on an impermissible consideration such age⁷.

The appellate court failed to recognize and honor the law under 49 C.F.R. presented by the petitioner that proved the respondent is required by law to present documentation to prove their alleged claim that they terminated two younger white males to defeat the petitioners claim.

⁴ District Council 47, American Federation of State, County and Mun.

Employees, AFL-CIO by Cronin v Bradley 795 F. 2d (1989)

⁵ Duffy v. Wheeling Pittsburgh Steel Corp., 738 F.2d

⁶ Chipollini, 814 F2d at 898

⁷ Furnco Construction Corp v Waters 438 U.S. 567.577 – 17 (1978)

Under Title VII requires proof that the respondent recognize they produce any documentation for proof of claim. The respondent submitted the law under 49CFR section 395.8.K to cover themselves. The law states they are required by law to maintain all records for six months.

Federal Motor Carrier Regulations

The petitioner asked for all documentation during discovery. Where is the proof of claim? The petitioner is asking the court to grant the petitioner a waiver to fax all documents to the FMCSA regarding the law to bring this action to an end. Exhibit 23 was filed by the respondent in this action. Both courts responded to the Alabama inspection report on 01/04/2011 on the petitioner. However, neither court is following the law under 49 C.F.R. The district judge made a ruling that the petitioner received a citation which is totally fabricated by the district judge. There is not one single letter on the Alabama inspection report that the petitioner received a citation. The district judge is not following the law but only what the respondent is saying. The petitioner did not receive a written warning or summon. The respondent also stated the petitioner logs were not current.

The district judge is simply stating and repeating what the respondent is saying. This is simply fraud by the respondent. The district judge has not seen a citation or summon to grant a motion of summary judgment. This is simply fabricated. The law does not allow or give any D.O.T. officer the authority to write a citation or written warning on any driver from a previous day on a 14th hour rule violation after the driver has taken

a 10-hour break (See Exhibit AA, BB, & log dated 01/04/2011). There is no violation here. The violation must be a recordable violation for a citation or written warning to be issued on that day. The driver must be engaged in that violation for a 11th or 14th hour rule violation for the officer to write a violation upon his or her inspection of the driver log. The driver is legal under the law after the 10-hour break (See Exhibit AA, BB, & KK). The alleged violation cited by the officer during his inspection was a 14-hour rule violation that happened on 01/03/2011 at 9:30P.M. This violation is gone and not recordable. If this inspection was a recordable violation, it would have shown up on the petitioner's PSP report (Exhibit 519). There is no violation to be found. The PSP report is a three-year review of the petitioner's driving record (See Exhibit NN & violations and crash data). There are violations that appear on roadside inspection reports that do affect CSA scores, but they do not rise to the level of a written warning or citation. They do not appear on your driving record unless a citation was also issued. The respondent entered the petitioner's dati-report which is court document 16-60582-437.

Fraud

The petitioner is asking the court to honor the charge of fraud and coercion by the respondent under 49 C.F.R to obtain a motion of summary judgment. The respondent posted the law in their company policy under 49 C.F.R Section 395 and 396 of the law. A know and understanding of the hour of service is a requirement. Furthermore, no motor carrier, its agents, officers, representatives, or employees shall make, cause, or attempt to coerce a court official by false statement

or claim under section 390.35 of the hour of service and under 49 C.F.R. Also included under Section 390.35 is fraudulent or intentional false statement on any application, certificate, or report (missing logs, citations, etc.). The respondent sought out to coerce the court by alleging that the petitioner received a citation on 01/04/2011 in order to obtain a motion of summary judgment by fraudulent means (See Exhibit 23).

The respondent set out to deceive and coerce by misrepresenting the law under 49 C.F.R in order to obtain a summary judgment. This is fraud upon the court and it has no statute of limitations. Fraud upon the court has been defined by the 7th circuit court of appeals, "Fraud upon the court should, we believe, embrace only that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication" ⁸.

Continuing, the respondent is guilty under the law in having been found guilty by the FMCSA for violating all sections of 395.8. The respondent's fine was \$57,512.00. (See Exhibit 1500). The petitioner's case is 395.8.

CONCLUSION

The Petition for a Writ of Certiorari should be granted to resolve the numerous conflicts, fraudulent claims, and disregards for the law and 49 C.F.R. highlighted above.

⁸ Kenner v. C. I. R. (7TH Cir. 1963), 318 F.2d.632.

This 18th day of June, 2018.

Respectfully submitted,

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