



Florida EMPLOYMENT

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Law Letter

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RETALIATORY DISCHARGE

No punitive damages under Florida's private-sector whistleblower law

In addressing the issue for the first time, a federal court in Tampa has ruled that an employee who files a claim under Florida's private-sector whistleblower law can't collect punitive damages. Florida has two whistleblower laws: one for public-sector employees and another for those in the private sector. Florida's private-sector whistleblower law makes it unlawful to terminate or retaliate against an employee because he has complained about or reported to a governmental authority some improper conduct. Recently, an individual whistleblower lawsuit in New England led to one of the nation's largest class-action settlements for securities fraud! Here's what happened in our Florida case.

Facts

Michael Branche worked for AirTran Airways as an aircraft inspector at Tampa International Airport. He conducted safety inspections on the company's aircraft after they had been serviced by its maintenance department. Branche was the only aircraft inspector for AirTran at Tampa.

Federal Aviation Administration (FAA) regulations provide that aircraft inspections are to be free from the oversight of the maintenance department. Branche's job was to review the work of AirTran's maintenance department.

On June 30, 2001, an AirTran DC-9 airplane landed at Tampa with one of its two engines running at a temperature that exceeded FAA safety guidelines. Branche claimed that the high-temperature operation could have resulted in engine failure. He recommended to his supervisor, Guy Lewis, that the engine receive a detailed physical

inspection. Instead, Lewis and two other maintenance workers climbed into the aircraft's cockpit and conducted a "high-powered run." In other words, Lewis throttled the engines wide open to determine if there was a problem.

Branche claimed that neither Lewis nor the two maintenance workers were qualified to perform the high-powered run. According to him, a qualified AirTran employee was present at the Tampa airport that day and that person should have been asked to conduct the test.

Branche claimed that the plane in question left Tampa the same day and that the engine overheated during its flight to Atlanta. The plane was later taken out of service. The next day, Branche investigated the particular engine in question and learned that it had overheated on two separate occasions during the preceding two weeks.

On July 2, 2001, Branche informed the FAA of AirTran's regulatory violations, and the agency contacted both Branche and AirTran. The airline learned that Branche was the source of the complaint. Branche also filed a grievance with his union claiming that neither Lewis nor the mechanics were authorized to perform the high-power engine run. On July 13, 2001, less than two weeks later, AirTran accused Branche of falsifying his

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timecard and stealing approximately two hours of pay. He denied that claim, but he was fired on July 23 for the time-card violation. He then sued AirTran, claiming it fired him in retaliation for making the FAA complaint.

The trial court in Tampa dismissed Branche's claims under the theory that Florida's whistleblower law was preempted by a federal law that covered airline safety violations. But the Eleventh U.S. Circuit Court of Appeals in Atlanta (which covers Florida) reversed and sent the case back to the court in Tampa. Branche then asked the court for punitive damages under the Florida whistleblower law.

Background on the whistleblower law

Florida has two whistleblower laws: one for public-sector employees and the other for private-sector employees. The private-sector law, which was at issue in this case, prohibits private employers from taking any retaliatory personnel action against an employee because he has "disclosed . . . to any appropriate governmental agency, under oath, in writing, an activity, policy or practice of the employer that is in violation of a law, rule or regulation." The private-sector whistleblower law lists the following available relief to an employee who has been the victim of retaliation, discipline, or termination or in some way has been punished for blowing the whistle:

- (1) an injunction restraining violation of the law;
- (2) reinstatement to the same position the employee held before the retaliatory personnel action or to an equivalent position;
- (3) reinstatement of full fringe benefits and other remuneration;
- (4) compensation for lost wages, benefits, and other remuneration; and
- (5) compensatory damages.

When the Florida Legislature passed the private-sector whistleblower law, nothing was said about the availability of punitive damages. Punitive damages are damages that a jury can award to punish a company and send a message that the jury disagreed with its conduct. Often, the amount of punitive damages is unrestricted and left to the jury to decide. In employment cases, punitive damages are awarded to punish a company for its conduct, and the amount of damages is based on the net worth of the company. In certain types of cases, the amount of punitive damages is unrestricted. Some employment statutes have "caps" or limits on the amount of punitive damages, and that reduction is applied by the court *after* the jury returns its verdict.

Court's decision

In the case against AirTran, Branche argued that previous decisions by the Florida Supreme Court had found that a whistleblower claim is similar to a tort (personal injury) claim, thus allowing punitive damages as a remedy.

The court, however, didn't buy Branche's argument and instead held that punitive damages *weren't available*. This case was the first time a Florida court had addressed the issue, and the court acknowledged that there were no other reported decisions on this point. In reaching its decision, the court noted a number of other decisions in Florida that had found that punitive damages aren't available for administrative claims under the Florida Human Rights Act.

Although the court agreed with Branche that the nature of a whistleblower case is a tort-type claim, it noted that a claim doesn't exist for the tort of retaliatory discharge in Florida. Since the Florida Legislature created the whistleblower law, it was free to determine what remedies were available. The fact that the Legislature didn't include punitive damages in the law was clear, and the court wasn't willing to add that remedy when the Legislature didn't. The court concluded that punitive damages *weren't available* under Florida's private-sector whistleblower law. *Michael F. Branche v. AirTran Airways, Inc.*, Case No. 8:01-CV-1747-T-30MSS (M. D. Fla., April 19, 2004).

Comment

The damages available to an employee are still significant. Reinstatement of employment, full back pay, and payment for lost benefits are included. Compensatory damages are available based on pain and suffering from the employee's termination. You also will have to pay attorneys' fees if the employee prevails. There's no limit to the amount of compensatory damages a jury can award an employee — but there must be facts to support the award or the judge could set it aside. Still, removal of the possibility of an unlimited punitive damage award should make these cases easier for you to resolve. ♦