

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

JOSEPH MYERS,

Plaintiff,

VS.

AK STEEL CORPORATION and
BUTLER ARMCO INDEPENDENT
UNION, U.A.W.,

Defendants.

AD 04-10477

NO. OF 2003, CA

COMPLAINT

JURY TRIAL DEMANDED

PROTHONOTARY

2004 APR 22 A 8:31

PROTHONOTARY'S
OFFICE-BUTLER CO.
ENTERED & FILED

NOW COMES the Plaintiff, Joseph Myers, by his attorney, Angelo A. Papa, Esquire and files this Complaint stating as follows:

1. Plaintiff is Joseph Myers, an adult individual, who resides at 147 Heather Drive, Butler, PA 16001, Butler County who began working for Armco Steel Corporation (later AK Steel Corporation) and subsequently became a member of Butler Armco Independent Union (known as BAIU) on or about July of 1984. (BAIU joined United Auto Workers (UAW) in 2003.)"

2. Defendant is AK Steel Corporation, and Butler Armco Independent Union, U.A.W. Any references to ARMCO are hereinafter to also be referring to A K STEEL Corporation successor company.

3. Defendant AK Steel Corporation breached its contractual obligation to Plaintiff by disciplining and discharging Plaintiff without just cause and due consideration, but discharging him instead for not driving an overloaded, unsecured hazardous truck which is a violation of Pennsylvania law.

4. Defendant Butler Armco Independent Union breached its contractual obligation to Plaintiff by negligently representing Plaintiff, failing to represent Plaintiff's best interest in his grievance arbitration with AK Steel Corporation and omitting affirmative defenses of Plaintiff in the grievance arbitration with AK Steel Corporation.

5. Defendant company's fraudulent activity in having an unwritten operating procedure which violated its own written procedures was the direct and proximate cause of Plaintiff's termination.

FACTUAL HISTORY

6. Plaintiff entered into a contract with the Defendant, AK Steel in April of 1984 as part of the collective bargaining unit after having been a probationary employee.

7. Plaintiff was a laborer at that time. (1984) The Plaintiff became a member of the Union Local Butler-Armco Independent Union on or about July of 1984.

8. Plaintiff was first hired in the reserve pool starting out at approximately \$12.00 per hour in the mill.

9. Plaintiff was then laid off for nine months.

10. Plaintiff put a bid in for a crane position with a starting wage of approximately \$14.00-15.00 per hour and was put on as a trainee.

11. Plaintiff signed a bid into the Hot Mill crane section and for the next nine years was under the supervision of Mr. Dick Fowler.

12. Plaintiff then entered into a different job Hot Mill production in 1993.

13. Plaintiff then bid into the Labor Department because of daylight hours for a one year period in 1996.

14. At all times Plaintiff was an employee of the Defendant AK Steel/Armco and part of

the collective bargaining unit.

15. Plaintiff next entered into the truck section (including heavy equipment operation 1997-2001). By the second month at that latest position Plaintiff was driving trucks in and out of the plant because he received a CDL license, as required by Armco Steel/AK Steel, he passed the Penn Dot Test, and obeyed the vehicle code, etc. as required by his contract and other rules, regulations, policies, and reasonable standards of care.

16. Specifically the authority that requires the Plaintiff to obey and follow weight and load securing rules can be found in the following sources:

- A. The Collective Bargaining Contract.
- B. SHSP0035 -28 (Safety and Health Standard Procedure) page 4 of 10. Item 2.9. This document governed the Plaintiff's conduct from the time he worked with Defendant until discharge.
- C. Safety and Security handbook provided by the Defendant AK Steel Company.
- D. Pennsylvania Vehicle Code.
- E. ARMCO safety and security handbook which also later required the Plaintiff to apply and at all times obey the Pennsylvania vehicle code.
- F. OSHA occupational Safety and Health Administrator.
- G. CDL License requirements.
- H. A duty of care a reasonable person would follow.

17. In 1998 Plaintiff, was involved in an accident (hauling a gear) caused by the fact that the load was not properly secured during an in-plant haul, in violation of the above required standards.

18. Plaintiff was given a breath test and urine test, and passed both.

19. Although the accident was partially his fault for not securing the load as required by above regulations, policies, and reasonable standards of care, after being disciplined, he had a good relationship for the next 2 years with the Defendant Company who disciplined him (for not securing the load.)

20. It must be noted that despite the fact that Defendant company disciplined the Plaintiff for not securing the load they were inconsistent with such discipline. Plaintiff's misconduct occurred because Defendant Company did not require or permit securing of the coils on trucks as required by the above regulations, policies, reasonable standards of care and their own written policies which will later be the basis of the suit.

21. During the year 2000, Plaintiff had numerous contacts with OSHA official Jim Cannell, questioning the operation of defective and dis-repaired heavy equipment like cranes used on state and local highways and overloaded and unsecured tractor-trailers like the unsecured coils in the trucks in question.

22. In June of 2000, there was another incident in which it was alleged that Plaintiff failed to comply with general safety orders involving coning and derailing while working on a railroad track. Nine other employees were involved, but only Plaintiff was given a 3-day suspension. When Plaintiff questioned his boss Ed Tasse, Tasse stated he was told by his supervisor, Tom Ayres, to mind his own business. It is believed that the Plaintiff was being singled out because of his well known opposition to the required safety breaches of the Defendant company.

23. Plaintiff asked the Union to file a grievance on the "discrimination" i.e. being singled out for discipline because he was the only person to receive discipline. The Union did file a grievance on that discipline and the suspension itself, but not on the discrimination.

24. Meanwhile the Plaintiff continued in the Truck/Heavy Equipment Section, operating mainly heavy equipment, not tractor-trailers for the next 6 months.

25. An investigation meeting was held on the grievance in which Robert Newcombe, Supervision of Industrial Relations; Jack Lewis, Union Vice President; Greg Loverick, Union Representative; Don Monteleone, Union Representative; and Plaintiff were in attendance. This meeting ended with the Plaintiff being persuaded to abandon the discrimination issue which was never addressed on the merits. Plaintiff questioned why he was singled out and was told they could not rule on that aspect but could rule only on the discipline itself. Plaintiff made no attempt to argue the discipline itself-because, admittedly, he had erred in the incident. Plaintiff was only questioning why the other workers didn't receive the same discipline.

26. In December 2000, Plaintiff was assigned on an overtime position to operate a tractor-trailer coil truck in question. Plaintiff hauled according to the legal load limits, as set out in the sources previously mentioned hauling 3 coils per load. In a disciplinary meeting on December 15, 2000, Tassej reprimanded Plaintiff for taking too many trips and hauling too few coils. Plaintiff could only make fewer trips if the truck was overloaded. Tassej ordered Plaintiff to haul 6 coils at a time instead of 3 at a time that would have been the legal load limit of 73,280 lbs. During the meeting Plaintiff questioned Tassej, asking that if he doesn't haul overloaded will it result in his termination? Tassej replied no, but that Plaintiff should do as instructed.

27. Plaintiff protested to all concerned being required to haul overloaded and unsecured at all times in violation of the law.

28. Plaintiff's lawyer at that time Attorney Dennis Moskal, at Plaintiff's direction sent a protest letter on March 1, 2001 requesting indemnification in the overloaded and unsecured truck issue. In addition on March 21, 2001 Plaintiff sent certified letters to the AK Steel CEO

and all AK Steel high officials regarding operation of defective mobile cranes and the use of overloaded and unsecured tractor-trailers. Plaintiff was attempting to alert those in power of the safety hazard that existed by operating in such a manner.

29. March 22, 2001 a reminder was sent to departmental employees, (given just 1 day prior to Plaintiff being ordered out of the plant) which stated: "#1 Do not overload trucks=haul within legal load limits, #2 Secure all loads on all vehicles." These reminders are in accordance with all other official company materials. This is in direct conflict with the supervisor's (Ed Tassev) verbal orders to overload trucks and not chain the loads."

It is obvious that the Defendant company uses these writings as a C Y A gesture for cosmetic purposes to give the appearance that they are a model company in compliance with the law while intending to break the law through its agents like Mr. Tassev in order to increase production and profit.

30. Next, March 23, 2001 Plaintiff was hauling coils and was attempting to chain and secure such coils. Plaintiff was then told by Ed Tassev, agent of the Defendant Company, to get the truck on the road immediately and that they'd "been over this before" in reference to Plaintiff's prior protest. Plaintiff offered to put chains on and secure the truck himself, and plant security was called. Plaintiff was directed to get into the truck and drive the unsecured truck in violation of the law. Plaintiff, refusing to violate the law and regulations which would compromise the safety of himself and fellow workers, refused to drive the truck in that condition. Upon such refusal, Plaintiff was escorted out of the plant.

31. Defendants then had an investigation meeting, on this last issue.

32. Company reviewed the investigation and Plaintiff within a week received a letter suspending him from his work and livelihood.

33. Next, Plaintiff had a meeting with 2 members of management (Mike Seyler, Ed Tassey and at least 3 or 4 Union representatives).

34. Finally, on April 10, 2001 Plaintiff received a letter stating that he was terminated.

35. On April 9, 2001, Plaintiff left a voice mail message with Brenda Harmon, Vice-President of Human Resources at the AK Steel Corporate Office, in order to file a complaint with her. She returned the call and left a message, instructing Plaintiff to contact Rick Winter in the Human Resources office at the Butler plant, regarding Plaintiff's discharge and harassment by Company.

36. On April 12, 2001, Plaintiff contacted Rick Winter to file a complaint with Human Resources. On April 19, Winter returned the call and told Plaintiff that he had no issue with AK Steel.

37. Plaintiff retained Joseph H. Chivers to represent him sometime in April 2001.

38. On June 1, 2001, the Union while under a duty to diligently represent Plaintiff and his best interests, supplied in the Grievance Record the clause of insubordination in the Safety and Security Handbook which supported AK Steel's position. The Union, however, did not supply the clauses on Page 68 and 71, which clearly were the Plaintiff's best defense and which clearly establish that Plaintiff was not insubordinate in the operation of the tractor-trailers and mobile cranes but instead was attempting to act in compliance with official company policy and the applicable law. Page 68 of such handbook details the operation of tractor-trailers according to federal, state, and local law. Page 71 of such handbook states that mobile cranes must have deficiencies corrected prior to usage.

39. Around October 1, 2001, AK Steel's legal counsel, Mr. John P. O'Connor, called Plaintiff's then-attorney Joe Chivers and requested a demand letter from Plaintiff, and stated that

reinstatement of Plaintiff was absolutely out of the question. O'Connor made this statement prior to the Arbitration ruling.

40. On October 4, 2001, Plaintiff sent a demand letter, at Chivers' request, requesting a lump sum compensation for all facets of his injury, among others.

41. On October 19, 2001 Chivers sent a demand letter to AK Steel on Plaintiff's behalf, for a grossly reduced settlement - to which Plaintiff never agreed. In this act, Chivers misrepresented Plaintiff in violation of their contract. Chivers then consented to sending a revised demand letter to AK, with Plaintiff's original demands.

42. Plaintiff next filed a grievance seeking to keep his job and had a hearing on August 20, 2001.

43. On September 18, 2001, Plaintiff had a personal phone conversation with Bonnie Hill, a member of the AK Steel Board of Directors, informing her that AK Steel management verbally required the Plaintiff to violate written company policy. Her comment to Plaintiff was that she did not want to be involved.

44. On November 29, 2001, the arbitrator upheld the decision not to give Plaintiff his job back.

45. The Union refused to file an appeal on behalf of plaintiff as they were required to do so, claiming that they (the union), do not appeal individual cases.

46. Plaintiff believes an exception should have been made because of the working conditions issue in this case implicated in this matter.

COUNT I - BREACH OF CONTRACT
BY DEFENDANT COMPANY

47. Plaintiff hereby incorporates by reference all prior paragraphs as though fully referenced herein.

48. The obligation of the Defendant Company to the Plaintiff employee is stated in Article 9 Discharges and Disciplinary Suspensions Section A "The company agrees that no employee shall be discharged or disciplined without just cause and due consideration." The Defendant discharged Plaintiff not for just cause and due consideration as required by contract but instead for not violating the law and company procedures in an attempt of Defendant Company to quiet his whistle blowing activity which would lessen Defendant Company profits and results in sanctions to company.

49. The Defendant lost his job and for the next period of years despite best efforts to obtain employment has only been able to earn \$22,034.00 in 2001 (including three months working with Defendant company), \$9,834.00 in 2002 and \$10,343.00 in 2003 doing odd jobs and living off of savings and investment.

50. If the Plaintiff had not been damaged by the Defendant company breach of contract, he would have earned \$95,472.00 in 2001, \$98,336.00 in 2002, and \$101,286.00 in 2003. Additionally, Plaintiff received health care, dental, eye, orthodontic insurance with 100% coverage with Defendant company which he has lost because of Defendant's breach of contract. Defendant has also lost his pension plan with the company and retirement package and his expectation of future earning if the contract had been fulfilled.

51. As a direct and proximate cause of Defendant's breach of contract the Plaintiff has suffered substantial loss.

WHEREFORE the Plaintiff respectfully requests this Honorable Court grant him judgment in the excess of \$100,000.00 with interest at legal rate.

COUNT II

BREACH OF CONTRACT DEFENDANT UNION

52. Plaintiff hereby incorporates by reference all prior paragraphs as though fully referred herein.

53. Defendant Union undertook a contractual obligation to the Plaintiff employee to represent his best interests at all times and keep an adverse posture to Defendant Company in litigation with said company. Defendant Union also had an obligation to appeal at Plaintiff's employee's request any arbitrator decisions with a judgement adverse to Plaintiff employee.

54. Defendant Union breached their duty to Plaintiff by failing to provide the arbitrator the official company policy and state regulations which clearly spelled out that Plaintiff was merely attempting to comply with the law and official company rules. Additionally, Defendant Union breached their duty to Plaintiff by refusing to file an appeal to the arbitrators decision as requested by Plaintiff.

55. As a direct & proximate cause of the breach the Defendants Union has suffered loss of his employment and income and benefits as stated in Count I.

WHEREFORE the Plaintiff respectfully requests this Honorable Court grant him judgment in excess of \$50,000.00 with interest.

COUNT III

FRAUD OF DEFENDANT COMPANY AND IT'S AGENTS

56. Plaintiff hereby incorporates by reference all paragraphs as though fully referred herein.

57. Defendant company's official rules, regulations and other sources of information as outlined in this complaint require equipment to be in a certain high level of maintenance and repair, require drivers to secure loads in their trucks and limit the weight in which can be carried in every truck to promote the health, safety and welfare of drivers, factory workers and the

public at large. Additionally, their requirements are in place to be in compliance with Pennsylvania State Law. These regulations are also in place to improve Defendant Companies image to the general public.

58. Agents of Defendant Company required, as a course of dealings and standard operation on threat of job termination, Plaintiff to operate in a manner inconsistent with the Defendant companies own policy and regulations in an effort to increase profits. Agents of Defendant company knew such unwritten operation procedure was in violation of company policy and state law.

59. As a direct and proximate cause of the fraudulent activity and criminal violation of Defendant company Plaintiff was terminated from his job for attempting to expose such fraud has suffered the losses stated in Count I.

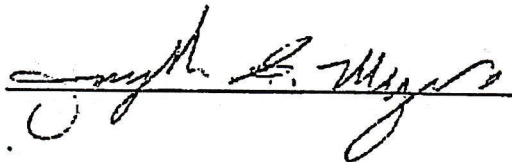
WHEREFORE the Plaintiff respectfully requests this Honorable Court grant him judgment in excess of \$50,000.00 with interest.

Respectfully submitted,


Angelo A. Papa, Esquire

VERIFICATION

I verify that the statements made in the foregoing documents are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



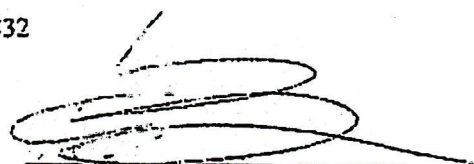
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of April, 2004, true and correct copies of the foregoing were served on the following individual by U.S. Certified Mail, postage prepaid:

Butler Armco Independent Union, U.A.W.
P.O. Box 2128
Butler, PA 16003

AK Steel Corporation
703 Curtis Street
Middletown, OH 45043-0001

AK Steel Corporation
Butler Works
P.O. Box 832
Butler, PA 16003-0832



Angelo A. Papa, Esquire