



Mr. Thrasher was 'uncalled for, loud, and rude, made even more so by (his) emphatic finger pointing.'

{¶6} "Steve's referral to one of his employees (Ashley Goode) in a derogatory fashion in the presence of other employees is also documented. Steve and I have discussed his communications problems and agreed that he will work on his manner of interacting with them."

{¶7} With regard to "Customer Relations," Heishman commented:

{¶8} "\*\*\*\*

{¶9} "I was particularly concerned with Steve's reluctance to actively deal with the numerous behavioral problems with James Strozier that occurred during the rating period. Mr. Strozier was reprimanded two times about his behavior when interacting with our customers. Prior to the most recent reprimand, I had to ask Steve on two different occasions before he took appropriate disciplinary action.

{¶10} "In the next rating period, Steve needs to follow up on any concerns in a more timely fashion. When we have indication that there are problems with an employee—as we had in Mr. Strozier's case-I expect Steve to actively monitor the employee's behavior once the complaint is resolved."

{¶11} Heishman made the following comments under the category of "Employee Relations":

{¶12} "This the most significant area of concern that I have for Steve in this rating period. Because of the Thrasher, Goode, and Strozier incidents, and their corresponding affect on the Mailroom environment and morale, Steve needs to improve his performance in this area. I plan to work actively with Steve to see that he is successful in this area."

{¶13} Under the heading "Job Knowledge," Heishman wrote:

{¶14} "Steve's knowledge of United States Postal Service regulations is impressive. He keeps the university community abreast of changes in this regard. However, he has not shared this information with all mailroom employees. Specifically, as I have discussed

with him, Steve needs to include Gloria White, another mailroom manager, when sharing this information.”

{¶15} Under the heading “Commitment to Teamwork/Peer Relations,” Heishman wrote:

{¶16} “Again, Steve needs to develop appropriate ways of dealing with his peers when there is a problem. The Thrasher, Goode, and Strozier incidents have had a demoralizing affect on the Mailroom’s working environment.”

{¶17} Despite the comments noted above, plaintiff received praise from Heishman in areas such as budget management, work habits, written communications, analytical skills and organization. Heishman gave plaintiff an overall rating of “Meritorious - .”

{¶18} Plaintiff signed the review but he placed an “x” by the statement, “Generally, I disagree with this appraisal.” Plaintiff also attached a written response wherein he attributed Heishman’s negative comments to inaccurate information placed in his file by his former supervisor, Ms. Mackey.

{¶19} On July 11, 1996, Heishman sent plaintiff a “letter of warning,” wherein Heishman related numerous “incidents” of “inappropriate behavior” on plaintiff’s part. Heishman noted plaintiff’s use of profanity, racially insensitive remarks and derogatory comments directed at female employees as examples of inappropriate behavior. Heishman also discussed complaints she had received that plaintiff had allowed mail room employees to act in a racially hostile manner toward Caucasian students.

{¶20} In her letter, Heishman informed plaintiff that he exhibited what she considered to be insubordinate behavior toward her when he spoke to her with a raised voice and a hostile demeanor during meetings regarding mail room management. Heishman was also critical of plaintiff’s failure to utilize the university’s progressive discipline policy in dealing with employees who had exhibited inappropriate behavior.

{¶21} Heishman ended her letter with the following statement:

{¶22} “This written warning will serve to document the fact that you have exhibited neglect of duty, insubordination, and have failed to use good behavior in these matters. It is imperative that you immediately correct all inappropriate behavior so that a final written warning does not become necessary.”

{¶23} Thereafter, on September 20, 1996, a second “letter of warning - unsatisfactory performance” was drafted by Heishman. In this letter, Heishman criticized plaintiff for changing a mail room procedure without consulting her, for failing to timely inform his supervisor that student time-cards had been mistakenly sent to the U.S. Post Office and for excluding Gloria White and Traci Wheeler from a staff meeting in direct contravention of her order that these two employees “\*\*\* share in the management function.” This letter ended with the same statement of warning as was contained in the July 11, 1996, letter, but it also contained the following additional language:

{¶24} “I would like to remind you of resources available to you to assist you in improving your performance. The Employee Assistance Program is provided at no cost to you, and can assist you with problems you may be having maintaining a healthy working environment. Wright State University offers numerous classes which could help you improve your management skills.

{¶25} “To further assist you, I am scheduling you for *The Supervisor’s Workshop*, on November 6, 1996 in an effort to improve your supervisory skills. I want you to be a successful Mailroom manager.”

{¶26} Approximately two months later, on November 26, 1996, Heishman sent plaintiff a “final letter of warning - unsatisfactory performance,” wherein Heishman informed plaintiff that she had learned of plaintiff’s disclosure of confidential information to a former mail room employee in violation of her specific verbal order. The letter concluded with the following statement:

{¶27} “This final written warning will serve to document the fact that your behavior is unsatisfactory in these matters. It is imperative that you immediately correct all unsatisfactory behavior so that further disciplinary action, which may include termination, does not become necessary.”

{¶28} Thereafter, in her January 23, 1997, letter of concern, Heishman referenced several mistakes in the processing of mail that had occurred in the preceding months, including the failure to process and deliver a piece of mail addressed to the Department of Music that contained a check for \$35,856.50. In the letter Heishman concluded: “I have lost faith in your ability to manage the mail flow between the U.S.P.S. and Wright State University.”

{¶29} The parties agree that the terms and conditions of plaintiff’s employment are governed by the Wright State Policies and Procedures Manual. Policy Number 4004 entitled “Conditions of Employment for Professional/Administrative Staff,” provides in relevant part:

{¶30} “\*\*\*

{¶31} “b) Employees can be terminated for documented just cause as provided in applicable laws, rules, and regulations or because of financial exigency, without notice. All professional/administrative staff members can appeal a just cause termination in compliance with the grievance procedure for the professional/administrative staff.

{¶32} “Notice of termination shall be as follows:

{¶33} Term of Employment                      Notification

{¶34} “\*\*\*

{¶35} “At least 6 years but                      9 months  
less than 15 years.”

{¶36} Plaintiff contends that defendant’s problems with his performance were a mere pretext designed to avoid paying plaintiff the nine months of severance pay he was

entitled to under Policy No. 4004. Upon review, the court finds that plaintiff's contention is without merit.

{¶37} Initially, plaintiff argues that his termination was a result of defendant's planned reduction in force rather than a termination for cause. However, plaintiff did not produce any persuasive evidence of an alleged reduction in force. To the contrary, the evidence establishes that plaintiff's position was immediately filled by Gloria White. The court does not believe that Heishman told another employee in 1996 that "Mr. Figgins won't be around much longer."

{¶38} Plaintiff argues in the alternative that his termination for cause was wrongful in that defendant's stated reasons for his termination were false. As a general rule, this court will not second guess the business judgments of an employer making personnel decisions. *Manofsky v. Goodyear Tire & Rubber Co.* (1990), 69 Ohio App.3d 663. In this case, the extensive documentation outlining Heishman's problems with plaintiff's performance as mail room manager, the numerous written warnings and the repeated unsuccessful attempts to provide plaintiff with training, have convinced the court that plaintiff's termination was for cause. Based upon the evidence, the court finds that plaintiff's inability or unwillingness to overcome his management shortcomings was the true reason for his discharge. Consequently, other than plaintiff's assertion that his termination was wrongful, there is an absence of evidentiary support for plaintiff's claim of pretext.

Indeed, plaintiff's own trial testimony did little to bolster his claim of an unjustified termination. At trial, plaintiff acknowledged that many of Heishman's criticisms were partially justified. For example, plaintiff admitted that his employees had complained about his behavior; that he could have used better judgment in dealing with a student employee who accused him of calling her a name; that he should have told his supervisors about the mistake with the time-cards; that he disagreed with Heishman on the value of the "Early Express" program and chose to discontinue it; that his disclosure of confidential information

had undermined Heishman's authority; and that he had made derogatory comments to a mail room employee about Heishman's conduct at the University Christmas party. Plaintiff also acknowledged that Heishman's numerous written warnings alerted him to the fact that he was in trouble and might be fired and that Heishman had made an effort to develop short-term goals to help him with his performance.

{¶39} The record also reveals that plaintiff had faced criticisms from his former supervisor similar to those expressed by Heishman. In fact, plaintiff's past performance reviews establish that the generally poor morale in the mail room and plaintiff's lack of skill in dealing with other employees had been problematic throughout his tenure in the mail room.

{¶40} In short, the court finds that plaintiff failed to prove that his discharge for cause was pretextual. Thus, plaintiff's claim for breach of contract must fail. Judgment is recommended in favor of defendant.

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Magistrate

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