BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

RODNEY BERGERON Petitioner,	)	
	)	SEAC No. 04-18-028
vs.	)	
INDIANA DEPARTMENT OF TRANSPORTATION Respondent.	)	

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

On June 18, 2018, Respondent, Indiana Department of Transportation, ("Respondent"), by counsel, filed a Motion for Summary Judgment under Indiana Trial Rule 56 ("T.R. 56") ("Motion") seeking to dismiss Petitioner Rodney Bergeron's ("Petitioner") Complaint. Petitioner pro se, submitted materials in advance of Respondent's motion on May 21, 2018, that Petitioner confirmed on August 17, 2018 was to constitute his reply. The ALJ did not request a surreply from Respondent.

This case considers Petitioner's written reprimand for failing to complete a pre-trip inspection of Petitioner's plow tuck in violation of Respondent's policies. Under Ind. Code § 4-15-2.2-42(f), an unclassified employee's complaint must demonstrate a violation of a law, rule or public policy to oppose the challenged employment decision. The controlling pleadings for purposes of this decision are the Complaint originally received on April 24, 2018, Respondent's Motion and Petitioner's reply to the Motion. In order to survive a T.R. 56 Motion, material issues of fact must exist such that judgment as a matter of law for the moving party would be inappropriate.

The ALJ finds that no material issue of fact exists with regard to Petitioner's claims. Therefore, Respondent's Motion for Summary Judgment is hereby GRANTED. The following additional findings of fact, conclusions of law, and order are entered.

I. Summary Judgment Standard

Summary Judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Simon Prop. Grp., L.P. v. Acton Enterprises, Inc.*, 827 N.E.2d 1235, 1238 (Ind. Ct. App. 2005). A party seeking summary judgment bears the burden to make a prima facie case showing that there are no genuine issues of material fact and that the party is entitled to judgment as a matter of law. *Id. See also Am. Mgmt., Inc. v. MIF Realty L.P.*, 666 N.E.2d 424, 428 (Ind. Ct. App. 1996). Once the moving party satisfies this burden through evidence designated to the trial court pursuant to T.R. 56, the nonmoving party may not rest on its pleadings, but must designate specific facts demonstrating the existence of a genuine issue for trial. *Simon Prop. Grp., L.P.*, 827 N.E.2d at 1238; *Am. Mgmt., Inc*, 666 N.E.2d at 428.

The court must accept as true those facts alleged by the nonmoving party, construe the evidence in favor of the nonmovant, and resolve all doubts against the moving party. *Simon Prop. Grp., L.P.* at 1238; *Shambaugh & Son, Inc. v. Carlisle,* 763 N.E.2d 459, 461 (Ind. 2002). A fact is 'material' if its resolution would affect the outcome of the case, and an issue is 'genuine' if a trier of fact is required to resolve the parties' differing accounts of the truth ... or if the undisputed material facts support conflicting reasonable inferences. *Celebration Worship Ctr., Inc. v. Tucker*, 35 N.E.3d 251, 253 (Ind. 2015).

II. Findings of Fact

The following facts are taken from the filings by both parties, as construed in the light most favorable to Petitioner.

1. On January 4, 2018, Petitioner was assigned to plow snow in northern Indiana. (Pet'r Compl).
2. Before doing so, Petitioner performed a physical inspection of his vehicle. (Pet'r Compl).
3. Just before 10:00 P.M. on January 4, 2018, Petitioner felt a small imbalance in the rear wheels of his vehicle. (Pet'r Compl).
4. Petitioner was still on his assigned route when he felt the imbalance. (Pet'r Compl).
5. Since Petitioner was near a concrete retaining wall at the time, he felt that for safety's sake, he should try to leave the highway. (Pet'r Compl).
6. Petitioner managed to leave the highway and pull into a nearby church parking lot, where he noticed six (6) missing lug nuts on the rear wheel in question (Pet'r Compl).
7. Petitioner then called his supervisors to report the incident (Pet'r Compl).

8. Petitioner's vehicle was eventually towed to Respondent's facility, where it was discovered that the vehicle suffered approximately $2,000 in damage, including a loose spinner chute with a missing holding rod, a missing retaining pin on the front plow lift ram and the missing lug nuts. (Pet'r Compl).

9. In addition, Petitioner's vehicle took Respondent 21.5 man hours to fix, which caused it to be out of service for two (2) days during a snow event (Pet'r Compl).

10. After an investigation, Respondent issued Petitioner a Written Reprimand on January 9, 2018, for failure to complete a written pre-trip inspection (Pet'r Compl).[1]

III. Conclusions of Law

1. SEAC is a creature of statute, charged with fairly and impartially administering Civil Service System appeals. Ind. Code § 4-15-2.2 et seq. SEAC's jurisdiction over such appeals is divided into classified (just cause claims) and unclassified (at-will claims). Ind. Code § 4-15-2.2-23, 24. Petitioner was an unclassified employee at all relevant times.

2. The general at-will employment law is well settled: "An employee in the unclassified service is an employee at will and serves at the pleasure of the employee's appointing authority." Ind. Code § 4-15-2.2-24(a). "An employee in the unclassified service may be dismissed, demoted, disciplined, or transferred for any reason that does not contravene public policy." I.C. § 4-15-2.2.-24(b).

3. Recognized exceptions to the at-will doctrine based on public policy have traditionally only been found where an employee was terminated or disciplined for exercising a statutory right or refusing illegal conduct that would lead to personal criminal liability. Put another way, the courts ask whether the termination in question was illegal in light of applicable statutory law. A merely foolish or arbitrary choice by an employer to terminate or discipline does not invoke an exception. *See Baker v. Tremco Inc.*, 917 N.E.2d 650, 653-655 (Ind. 2009); *Meyers v. Meyers Construction*, 861 N.E.2d 704, 706-707 (Ind. 2007); *Orr v. Westminster Village North, Inc.,* 689 N.E.2d 712 (Ind. 1997); *Frampton v. Cent. Ind. Gas Co.,* 297 N.E.2d 425 (Ind. 1973); *Tony v. Elkhart County*, 851 N.E.2d 1032 (Ind. Ct. App. 2006).

[1] Petitioner also made mention of an incident prior to the one at issue involving a flat tire with the same vehicle; however, since Petitioner's reprimand did not mention this incident, the ALJ declines to address it.

4. "Indiana generally follows the employment at will doctrine, which permits the employer to discipline the employment at any time for a 'good reason, bad reason, or no reason at all.'" *See Meyers*, 861 N.E.2d at 706 (Ind. 2007) (quoting *Montgomery v. Bd. of Trustees of Purdue Univ.*, 849 N.E.2d 1120, 1128 (Ind. 2006); *Cantrell v. Morris*, 849 N.E.2d 488, 494 (Ind. 2006); *Sample v. Kinser Ins. Agency*, 700 N.E.2d 802, 805 (Ind. Ct. App. 1998), *trans. not sought*. Correspondingly, a claim that the discipline was arbitrary or unfair does not state an at-will exception allowing SEAC jurisdiction. A viable public policy exception must be present for the Controlling Complaint to survive.

5. Petitioner's main contention is that because he conducted a visual pre-trip inspection, he should not have been reprimanded (Pet'r Compl; Pet'r Reply).

6. In support of its Motion, Respondent proffered the affidavit of James Rotzien ("Rotzien"), who is Respondent's Safety Director for the LaPorte District, in which Petitioner worked.[2]

7. According to Rotzien, every employee of Respondent's who is assigned to drive a plow truck must complete both a visual inspection, as well as a written inspection (Resp't Ex. B).

8. Rotzien further testified that Respondent has a form (State Form 9396) ("Form") entitled the "Operator's Daily Checklist" on which to memorialize the results of the visual inspection. (Resp't Exs. A, B).

9. Among the categories the Form lists as inspection items are things like engine oil level, tires, wheels and lugs. (Resp't Ex. A).

10. Rotzien stated that while Petitioner partially completed the Form, he did not complete it in its entirety (Resp't Exs. A, B).

11. Indeed, Respondent submitted the written checklist which Petitioner performed on the day in question as evidence. The ALJ notes that the checklist is not on the Form, nor does it contain all of the items listed on it. (Resp't Exs. A, B).

12. The checklist submitted by Petitioner merely states such perfunctory information such as name, date, hours on the job, start and end mileage, route information and the amount of salt or other liquid material used on the road, presumably during a snow or ice event (Resp't Ex. A).

13. Since Respondent's policy is clear that an official written inspection on the Form is a requirement of the job, Respondent was justified in issuing a reprimand to Petitioner for his failure to do so.

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[2] Respondent's agency is divided into various districts, each covering a certain portion of the state.

14. Petitioner finally argues that the vehicle in question was missing lug nut indicators, which, in Petitioner's opinion, were required for each vehicle and which would have alerted Petitioner to potential issues with the lug nuts during his inspection (Pet'r Reply).

15. However, Rotzien testified that while some vehicles do have such indicators, there is no policy requiring that all of Respondent's vehicles have such indicators. They are simply an extra resource for drivers. (Resp't Ex. B).

16. Therefore, the fact that Petitioner's vehicle was missing such indicators is immaterial, and cannot be used to support Petitioner's argument.

17. Petitioner did not advance any other arguments in support of his contention that the reprimand should not have been issued.

18. The ALJ finds that Respondent has successfully shown that no material issues of fact exist which would warrant further proceedings. Petitioner failed to complete a written vehicle inspection on the Form prescribed by Respondent. Therefore, Respondent's issuance of a written reprimand to Petitioner did not violate public policy and is hereby UPHELD.

Prior sections are hereby incorporated by reference, as needed. To the extent a given finding of fact is deemed a conclusion of law, or a conclusion of law is deemed to be a finding of fact it shall be given such effect.

Order

Respondent's Motion for Summary Judgment is hereby GRANTED and Petitioner's Complaint is hereby DISMISSED. This is the final order of the Commission. A person who wishes to seek judicial review must file a petitioner in an appropriate court within thirty (30) days of this order and must otherwise comply with I.C. § 4-21.5-5. So Ordered.

DATED: August 24, 2018

Hon. Gabriel Paul
Chief Administrative Law Judge
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