
LLR No. 9312129.FL
IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

MICHAEL WALSH, Appellant,

vs.

ARROW AIR, INC., Appellee.

CASE NO. 90-1846

Opinion filed December 7, 1993.
An Appeal from the Circuit Court for Dade County,

Jon I. Gordon, Judge.

Krupnick, Campbell, Malone and Roselli, and Walter G. Campbell, Jr., and Kelley B. Gelb, for Appellant.

Thornton, David, Murray, Richard & Davis, and Barry L. Davis and Andrew L. Ellenberg, for Appellee.

Before FERGUSON, JORGENSON and GERSTEN, JJ.
ON MOTION FOR REHEARING

PER CURIAM.

Arrow Air's principal contention in the motion for rehearing is that application of the new statute to give the plaintiff a cause of action for wrongful termination violates the rule against the retroactive application of new statutes. Stated otherwise, it seems the employer's argument is that before the enactment of section 448.102, *Arrow Air* had a right to fire its employees for complying with the law against its wishes, without fear of civil liability, and in that sense the new statute impairs a substantive right while imposing a new duty on the employer.

First, the underlying obligation of a common carrier to use care in the conduct and management of its conveyances, which might include maintenance, is not new, but is codified in a twenty-two year old criminal statute, section 860.02 Florida Statutes. See original opinion, n.4 (May 11, 1993). Second, the power of an employer to terminate an employee for doing that which the law requires, or for any reason clearly contrary to a strong public policy, which may have existed prior to the enactment of section 448.102, is not a substantive right based on any concept of justice, ethical correctness, or principles of morals. See Black's Law Dictionary 1223 (6th ed. 1992). In the words of Justice Holmes: All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on

which the particular right is founded, and which become strong enough to hold their own when a certain point is reached.

Hudson County Water Co. v. McCarter, 209 U.S. 349, 355, 28 S.Ct. 529, 52 L.Ed. 828 (1908); see also State Dep't of Transp. v. Knowles, 402 So. 2d 1155, 1158 (Fla. 1981)(the rule against retroactive application of statutes is not absolute; the test requires a balancing of the public interest to be advanced by the legislation against the importance of any private right abrogated). We are not persuaded that there is a constitutional impediment to giving the remedial statute retroactive application.

Rehearing is denied.