LOS ANGELES
Daily Journal
THURSDAY
JUNE 4, 1998

OFFICIAL NEWSPAPER OF THE CITY OF LOS ANGELES

Justices May Give Fired Worker Only Sympathy

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The California Supreme Court appeared divided Wednesday over whether an employee may sue for wrongful discharge in violation of public policy when he can't point to a specific statute or constitutional provision to prove a public policy.

While several of the justices appeared sympathetic to the plight of a quality control inspector who says he was fired for objecting to his company's sale of defective airplane parts, they also were insistent that he cite something more than a set of regulations to support his position.

Depending on the outcome, the court could either stand by a 1992 decision restricting wrongful discharge suits in violation of public policy, or loosen or even overrule its earlier decision and open the door to more such suits by fired employees.

The case is a spinoff from the state Supreme Court's decision in *Gantt v. Sentry Ins.*, 1 Cal.4th 1083, in which the court said employees could not bring suits for wrongful discharge in violation of public policy unless the public interest asserted by the employee was "based in" or "tethered to" some statutory or constitutional provision.

The court heard argument Wednesday in Los Angeles in *Green v. Ralee Engineering Co.*, S060370, in which quality control inspector Richard Green says he was fired by Ralee Engineering Company in 1991 in retaliation for his repeated complaints that the aircraft parts company was altering inspection records and was shipping defective parts for use in military and civilian aircraft. Ralee, on the other hand, says Green was simply laid off when a downturn in orders for parts led to the company shutting down its night shift.

While working at his next job, Green saw a representative for Boeing Aircraft and mentioned Ralee's practice of shipping parts that had not passed inspection. After Boeing officials asked to meet with him, Green produced photocopies of deficient inspection reports.

A short time later, in February 1992, Boeing visited Ralee unannounced and audited its inspection operation. After confirming Green's charges, Boeing canceled its contract with Ralee and removed the company from its list of approved suppliers.

In February 1994, Green sued Ralee for wrongful discharge, claiming retaliation for his complaints and that he was fired in violation of the public policy in favor of aviation safety.

But as evidence of public policy, Green could only point to administrative regulations issued by the Federal Aviation Administration calling for quality control inspection systems. Los Angeles Superior Court Judge Burton Bach granted summary judgment to Ralee.

Last year, however, a panel of the Court of Appeal in Los Angeles revived Green's suit, saying "the public interest in safe air travel and properly manufactured passenger aircraft finds a firm basis in statutory and regulatory provisions." The court acknowledged that no statute or constitutional provision specifically prohibits aircraft parts makers from supplying defective parts or falsifying inspection reports.

But, said Justice Earl Johnson for the appeal court said, the comprehensive administrative regulations "represent a sufficient embodiment of the public interest to satisfy the Supreme Court's concerns" in *Gantt*. And even if the regulations were not enough, the public interest in airline safety is "so profound" that "no aircraft parts manufacturer could possibly believe it was free to do what this one is alleged to have done or expect to discharge without liability an employee for objecting to these ongoing practices so dangerous to public safety."

The state Supreme Court quickly agreed to review the case.

During a hour of arguments Wednesday, attorneys for Ralee harshly attacked Johnson's opinion. Jonathan B. Cole of Nemecek & Cole charged that the appeal court "lost its focus" on the evidence, "ignored" applicable law and "got lost in inflammatory rhetoric about aircraft safety."

The justices quickly moved Cole away from that attack, redirecting his attention to the court's own decision in *Gantt*. He complained that even three years into the case, Green's attorneys could not cite a single statute that was violated by Ralee's alleged conduct so, under *Gantt*, his suit should be barred.

But three justices indicated some measure of sympathy for Green's case. Chief Justice Ronald M. George and Justice Ming W. Chin seemed to try to get Cole to concede that regulations backed by a federal statutory scheme may provide a source of public policy, although perhaps not in this case. But Cole disagreed, saying the regulations apply only to "certificated" manufacturers, not parts suppliers like Ralee. In any event, regulations alone are not enough to show public policy so no employer can be sued on that basis, he added.

Justice Stanley Mosk, who dissented in *Gantt*, also showed some support for Green, asking why his complaints about defective parts should "merit his discharge" when his very job was quality control. Cole replied that Green's complaints were not the reason he was discharged.

Chin also wondered it if was possible to rule in Green's favor without overruling Gantt. Cole said no, but Green's attorney, William C. Quackenbush of San Mateo said yes because the high court indicated in a case that came after Gantt that regulations can be sufficient. In General Dynamics Corp. v. Superior Court, 7 Cal.4th 1164 (1994), the court said public policy could be based on the attorney code of ethics, which is analogous to government regulations, Quackenbush said.

Meanwhile, Justice Marvin Baxter clearly indicated his view that if Green had complained to government authorities, he could have based his suit on statutes protecting whistle-blowers from retaliation. Instead, Baxter said, Green kept copies of the inspection reports and then sued. "That action, it seems to me, was consistently only with filing suit," not protecting the public interest, Baxter told attorneys for Green. Baxter also indicated that due process requires that employers have proper notice of the laws they are alleged to have violated in order to defend themselves in litigation.

And Justice Kathryn Mickle Werdegar wondered how an employer could defend itself if the court expanded the possible base of public policy to include all governments regulations.

But the most intriguing and frequent questions came from Justice Joyce L. Kennard, who may hold the decisive vote in the case. She made a point of noting that she dissented in *Gantt*, saying regulations and not just statutes or constitutional provisions should be a source of public policy. And she challenged attorneys to say whether the court should overrule *Gantt* or say that it did mean what she thought it meant with her dissent.

Yet it was not entirely clear whether Kennard now feels bound by what the majority said in *Gantt* or whether she was making the point that she was right in her dissent and *Gantt* should now be overruled or reinterpreted. As she often does during oral arguments, Kennard played devil's advocate against both sides. Perhaps her most telling came as Quackenbush began his argument.

"It's very easy to find sympathy for your client," Kennard told Quackenbush. "But I don't think the law is on your side."