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September 10, 2013

**VIA DELIVERY BY DEFENDANTS**

Clerk, United States District Court  
M.L. King, Jr. Federal Building and  
U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07101

**Re: Bill Balram v. Pacific Rail Services, et al.**  
**Civil Action No.:03-CV-6054 (JAG)**  
**Our File No.: 1279**

Dear Sir or Madam:

Please be advised that we represent the plaintiff, Bill Balram (“plaintiff”) in the above referenced matter. Please be so kind as to accept plaintiff’s letter reply brief in lieu of a more formal motion in opposition to defendants, Pacific Rail Services and Tim Byrne’s (“defendants”) motion for summary judgment *and* in support of plaintiff’s affirmative cross motion for summary judgment.

**OPPOSITION TO SUMMARY JUDGMENT**

Defendants’ summary judgment motion is premised upon a legal theory that not only lacks any basis in law but is inapposite to case law in New Jersey. Due to the fact that defendants’ motion is frivolous, plaintiff’s counsel sent defendants Rule 11 Notification. Since the time of service, defendants have not withdrawn their motion or otherwise responded to the notification other than to say that they needed more time to look into it and would respond.

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Plaintiff's opposition to defendants' summary judgment motion is found in the Rule 11 Notification a copy of which is attached hereto and incorporated herein. (Exhibit "1").

However, not only is defendants' motion frivolous in that it lacks any legal support. But defendants' motion is factually incorrect and fatally defective as noted in plaintiff's certification, a copy of which is attached hereto. (Exhibit "2"). The issue of discrimination never arose and thus was never litigated before the Unemployment Appeals Tribunal. (Ex. "2"; Pl's Cert. ¶4) Further, the Unemployment Appeals Tribunal ruled that plaintiff did not commit misconduct as noted below. Thus, plaintiff requests that defendants' motion for summary judgment should be denied and counsel fees and costs awarded to plaintiff's counsel based upon the Rule 11 Notification.

### **CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendants argue that (1) all claims of a violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.* ("LAD") (racial discrimination) except that pertaining to hostile work environment; (2) all claims of a violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.* ("LAD") (national origin discrimination) except that pertaining to hostile work environment; (3) the entirety of the claim of a violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.* ("LAD") (retaliation); and (4) the entirety of the claim of a violation of the New Jersey Worker's Compensation Statute, N.J.S.A. 34:15-1 *et seq.* should be dismissed due to a first level determination of an unemployment hearing officer that plaintiff committed misconduct at work. (Def's Br. Ex. "C").

However, this decision of the hearing officer was appealed to the Unemployment Appeals Tribunal. (Def's Br. Ex. "E"). The appellate hearing officer saw through the pretextual nature of defendants' arguments and reversed the denial opinion. Further, the Unemployment Appeals Tribunal decreed that "Claimant was *not* discharged for misconduct with the work." (Def's Br. Ex. "E") (emphasis added). This is restated in the decision wherein the Appeals' officer clearly states that "the claimant was *not* discharged for misconduct connected with the work. *Id.* Obviously the Appeal officer's Finding of Fact is simply alluding to the employer's

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purported reason for plaintiff's discharge as the Opinion and Decision makes clear. The Appeal Officer determined after hearing evidence on this subject that the employer's allegation/affirmative defense for terminating plaintiff was not valid and should be disregarded. Subsequently, plaintiff received unemployment benefits. (Ex. "2"; Pl's Cert. ¶6). The company failed to appeal this decision or the opinion section of same as well as the fact that plaintiff received unemployment benefits. (Ex. "2"; Pl's Cert. ¶5).

Thus, defendants' argument is premised on the decision of the first level hearing officer that was reversed on appeal.

Therefore, the only reason for the termination had to be discrimination and or retaliation if one follows defendants' argument in their brief. See def's Br. at 5-6. At the very least, the finding of the Appeal Tribunal should result in a ruling that defendants' assertion of a valid nondiscriminatory reason for termination is mere pretext. It would certainly reflect bad faith for defendants to oppose this partial cross motion as it is premised on the very same argument defendants made in their motion for summary judgment.

Thus, as the Unemployment Appeals Tribunal was quite clear in its Decision and Opinion that plaintiff did not commit misconduct, we respectfully request that the Court grant summary judgment in favor of the plaintiff as to Counts I-IV or, in the alternative, grant summary judgment as to the Affirmative Defense pertaining to defendants' possessing a valid non-discriminatory reason for the termination. A proposed form of Order is attached hereto. (Exhibit "3").

Plaintiff also attaches a Statement of Material and Disputed Facts and would specifically note paragraph 11 and 12 which reflects conduct by defendants that should be brought to the Court's attention. (Exhibit "4").

We thus respectfully request that the Court deny defendants' motion for summary judgment with costs and fees awarded to plaintiff's counsel and further grant plaintiff's cross motion for Summary Judgment.

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**Respectfully submitted,**

**LAW OFFICES OF TY HYDERALLY, PC**  
**Ty Hyderally, Esq. (TH 6035)**  
*Attorneys for Plaintiff*

Encls.

cc: Paul Castronovo, Esq. (via facsimile and regular mail w/ encls.)  
The Honorable G. Donald Haneke, U.S.M.J. (for service by defendants w/ encls.)