

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ANDERSON DIVISION

Wilbert Finley,)	C/A No.:
)	
Plaintiffs,)	
)	
-vs-)	COMPLAINT
)	
Kraft Heinz, Inc.,)	
)	
Defendant.)	
)	

I. INTRODUCTION

This is an action arising under the employee protection provisions of the Food Safety Modernization Act (FSMA), 21 U.S.C. § 399d, and the South Carolina tort of wrongful discharge by Plaintiff Wilbert Finley (hereafter “Plaintiff,” or “Finley”) against his former employer, Kraft Heinz Foods Co. (hereafter “Kraft Heinz” or “Defendant” or “KHC”). Defendant employed Plaintiff as a Production Manager on October 29, 2018. Plaintiff remained in this position until Defendant discharged him from employment on March 26, 2020.

II. JURISDICTION

1. Jurisdiction of this action is established under 28 U.S.C. §1331 on the basis that this complaint arises and presents federal questions under the Food Safety Modernization Act, 21 U.S.C. § 399d. Jurisdiction over the wrongful discharge is established pursuant to 28 U.S.C. §1367 because the wrongful discharge claim is so related to the Food Safety Modernization Act claim that it forms part of the same case or controversy under Article III of the Constitution.

2. Plaintiff administratively exhausted his claims under the Food Safety Modernization Act in the United States Department of Labor, Occupational Safety and Health Administration (OSHA). Plaintiff filed a timely complaint with OSHA on September 18, 2020. The Secretary has not issued a final decision within 210 days after the filing of the complaint, and thus under Sec. 402 of the FSMA, Plaintiff may bring a claim for *de novo* review in this court.

III. PARTIES

1. Plaintiff was an "employee" of Defendant, including within the meaning of 21 U.S.C. § 399d. Defendant employed Plaintiff as a Production Manager on October 29, 2018. Plaintiff remained in this position until Defendant discharged him from employment on March 26, 2020.

2. Defendant is one of the world's largest food and beverage companies with \$24.98B in sales and revenue 2019. Defendant is an entity engaged in the manufacture, processing, packing, transporting, and distribution of food within the meaning of 21 U.S.C. § 399d(a) as it has a plant at 3704 Louis Rich Rd., Newberry, South Carolina 29108, telephone number (803) 276-5015, which manufactures and distributes meat products. Approximately 2,500 employees work at the Newberry Plant. Plaintiff was an employee of Defendant's Newberry Plant.

IV. BACKGROUND FACTS

3. Plaintiff Finley has 35 years of manufacturing experience, including 27 in food and beverage. He worked for 18 years for Proctor and Gamble, Co., including as a Project Manager, and for the Kellogg Company for 3 years, including as a Line Team Manager. Plaintiff was recruited by Kraft Heinz to its Newberry Plant. He has never been terminated before. He had no prior discipline at Kraft Heinz.

4. Defendant's Newberry Plant produces a variety of meat products, including in the forms of raw products and ready-to-eat products such as bacon and deli meat. Defendant distributes its

products throughout the United States or to other Kraft facilities for further processing.

5. In the past, KHC relied on visual inspection and metal detectors to try to ensure there was no foreign material in its food products. Over the past couple of decades, food processors increasingly have come to rely upon X-ray inspection to better detect physical contaminants during production, especially those of a size and material that visual and metal detection will not detect. X-ray machines can identify glass, bones, stones, and metal.

6. Consumption of hard or sharp foreign material like bone could cause injury to teeth, mouth, throat, stomach, or intestine tissues if swallowed. Fragments can also present a choking hazard.

7. Kraft Heinz has had a number of recalls due to extraneous material in its product. In March 2015, Kraft had a recall of 242,000 boxes of macaroni and cheese when customer complaints revealed there was contamination of the product with metal. In November 2019, Kraft Heinz had to recall 9,500 cases of Breakstone's cottage cheese due to "bits of plastic and metal" in the product. In January 2020, Kraft at Newberry began installing X-ray machines to detect contaminants. The goals of X-ray machine installation included to keep customers safe and to comply with federal regulations regarding adulteration.

8. In order for the X-ray machines to work correctly, the machines must be calibrated. The machines are also to be validated, including testing with a card that contains particular material fragments to run through the machine, to ensure that material is detected by the X-ray.

9. Processes governing Kraft Heinz production also include specifications for meat flow and inventory. These processes are designed to ensure that consumers do not receive unsafe meat.

10. The FDC Act contains a definition of adulteration, at 21 U.S.C. § 342(a)(1), that encompasses material like bone and issues like spoilation. That definition provides in pertinent part: "A food shall be deemed to be adulterated--(1) [i]f it bears or contains any poisonous or deleterious substance which may render it injurious to health..." 21 U.S.C. § 342(a)(1).

V. PROTECTED DISCLOSURES

11. Plaintiff engaged in protected activities and disclosures, including the following:

12. In the Summer of 2019, Plaintiff reported to HR's Lawanna Wilson, direct manager Josh Harp, and Plant Manager Randy Puckett severe staffing shortfalls that had the potential to impact food safety. Plaintiff had lost three direct reports and did not have staff that were properly trained to fill the missing roles. Plaintiff had staff two levels underneath him reporting directly to him due to the shortfalls. Plaintiff noted the non-salaried staff two levels beneath him who KHC left to fill the gaps were not qualified to fill these roles, and did not know how to schedule production, and were not aware of the meat flow and inventory process with over-aged meat. Because Quality and Warehouse audits at Kraft Heinz were only random, Plaintiff had reasonable concerns that the short-staffing and lack of qualifications at his lines could lead to food safety issues for downstream consumers.

13. During this time, Defendant had lots of rework and issues with improper sealing and defects in the packaging. Harp did not offer much of a response to Plaintiff's concerns, Puckett told Plaintiff to develop people himself, and Wilson offered only that Defendant was interviewing. However, after raising his concern about staff lacking understanding of the meat flow and inventory process, Plaintiff's manager forced Plaintiff to sign a document claiming that Plaintiff did not understand the meat flow and inventory process. On information and belief, this was designed to undermine Plaintiff's protected disclosures.

14. Beginning around mid-February 2020, Plaintiff reported to his direct manager Josh Harp, project manager John Klein, and Quality Supervisor Wanda Wright that the X-rays that had been installed on the bacon lines were not being utilized properly. Specifically, the X-ray machines used to detect bone in Defendant's products had not been properly calibrated. Finley reported further that the Production Department did not have the necessary cards to test the X-ray machines to ensure they could detect dangerous foreign material in the bacon.

15. Throughout February and March 2020, Plaintiff continued to object to the improper X-ray use because the Quality Department continued to have the Production Department run meat through with bone in the meat over these objections. The Quality Department was supposed to validate the machines, insure everyone was trained, calibrate the cards, and remove the key to the machine to ensure the machine could not be bypassed. Plaintiff reported the Quality Department had not done so. He sent photos he took of the bone in the meat to the Quality and Production Department.

VI. ADVERSE ACTIONS

16. On March 24, 2020, Defendant placed Plaintiff on leave to “investigate” him for an incident in which an employee, who reported to Finley’s subordinate Bobby Clark, reported to work past the date on which she was supposed to have been terminated. Plaintiff met with his manager Harp and HR’s Wilson multiple times to explain what had happened to the best of his knowledge and denied involvement in or responsibility for the incident. Defendant claimed Plaintiff provided evasive and inconsistent answers to the charges that he missed terminating the individual. Defendant lacked any good faith basis for said claims.

17. On March 26, 2020, Kraft Heinz discharged Plaintiff claiming he had committed a Code of Conduct violation for “dishonesty” but the actual grounds in whole or in part were retaliation for his protected disclosures and because he refused to violate the laws, rules and/or regulations governing Kraft Heinz operations. Defendant lacked any good faith basis for said claim.

CLAIMS FOR RELIEF

VII. VIOLATION OF THE FOOD SAFETY MODERNIZATION ACT

18. Plaintiff realleges all Paragraphs above.

19. The foregoing facts demonstrate that Defendant is and was during relevant times an entity engaged in the manufacture, processing, packing, transporting, distribution, reception,

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