

**Case Name:** Dennis Cunningham v. UTI Integrated Logistics, Incorporated, Inc.

**Date Decided:** April 19th, 2010

**Originally Filed in:** (Federal)

**Decided by:** (State)

**Court:** U.S.D.C. Southern District of Illinois

**Judge:** Judge Murphy

**Citation:** 2010 WL 1558718(S.D.Ill.)

**Background:**

Before this Court was defendant's, UTI, motion to Dismiss plaintiff's, Dennis Cunningham, complaint against UTI for breach of contract, [retaliatory discharge](#), and defamation. Cunningham was terminated by UTI for allegedly using abusive language and for inappropriate conduct. Cunningham contended he was terminated wrongfully, without any disciplinary procedures and in retaliation for his [union](#) affiliation. Cunningham filed this action in state court, Circuit Court of Madison County, and UTI properly removed this action to this Court based on complete diversity. UTI then moved to dismiss Cunningham's Complaint for failure to state a claim for which relief may be granted.

**Issue:**

Did this Court grant defendant's motion and find that plaintiff had failed to state a claim for which relief could be granted?

**Overall Issues Discussed or Touched Upon in this Case:**

- *Applicability of FELA at Issue*
- *Procedural Issues - State*
- *Procedural Issues - Federal*

**Held:**

This Court recognized that it is the plaintiff's (Cunningham's) burden to plead sufficient factual matter to state a claim to relief that is plausible on its face. Breach of Contract Claim First, this Court found that Cunningham's breach of contract claim was extinguished by Illinois' at-will employment doctrine and UTI's administration manual. In support of the breach of contract claim, Cunningham referenced employment policies set forth in the manual. The manual expressly, and repeatedly, stated that the employment *remains at will and may be terminated by either party at any time, with or without notice or reason*. Cunningham cited outdated case law to support his argument that the disclaimers were insufficient to prevent the policies from being binding upon UTI. Accordingly this Court found that Cunningham failed to plead sufficient factual matter to establish a plausible breach of contract claim. Retaliatory Discharge Claim Second, this Court considered Cunningham's retaliatory discharge claim. Under Illinois law, there are two narrow exceptions to the at-will employment doctrine. (1) Discharge for

exercising rights pursuant to the Illinois Workers' Compensation Act or (2) Discharge for "whistleblowing" activities such as reporting illegal activities. Cunningham failed to allege either of these and did not cite *any* cases recognizing a valid common law retaliatory discharge claim based on union activities. Therefore, this Court found that Cunningham failed to state a cognizable claim for retaliatory discharge. Defamation

Cunningham alleged that UTI made false statements to third parties concerning his use of profanity and racial slurs, and as a result, his business reputation was injured. Cunningham alleged that UTI's conduct constituted *per se* defamation. However, under Illinois law, the *per se* category Cunningham is attempting to invoke, the defamation must involve accusations that the plaintiff lacked ability in his trade or did something bad in the course of carrying out his job. Attacks related to personal integrity and character are not labeled defamatory *per se*. Because the statements attacked Cunningham's personal integrity, not skills as a warehouse employee, this Court found that Cunningham failed to state a claim for Defamation. This Court granted UTI's motion to dismiss but allowed Cunningham to amend his complaint.

**Comments:**

**This case did not involve a FELA cause of action but did involve claims for improper termination. Specifically the plaintiff unsuccessfully alleged, breach of employment contract, retaliatory discharge, and defamation. This Court found all claims were not supported by the facts alleged and applicable law so, plaintiff's complaint was dismissed for failure to state a claim for which relief could be granted under Federal Rule of Civil Procedure, 12(b)(6). Steve Gordon**