

2000

Jeffrey M. Mitchell v. Department of Workforce Services, Workforce Appeals Board, and Link Trucking, Inc. : Brief of Appellant

Utah Court of Appeals

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Lorin Blauer; attorney for respondent.

Jeff Mitchell; pro se.

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IN THE UTAH COURT OF APPEALS

JEFFREY M. MITCHELL,
Petitioner,
v.

DEPARTMENT OF WORKFORCE
SERVICES, WORKFORCE APPEALS
BOARD, and LINK TRUCKING, INC.,

Respondent

: Case No.: 20000723-CA
:
: **BRIEF OF THE APPELLANT**
:
:
: **Priority No. 15**
:
:
:
:

BRIEF OF THE APPELLANT

Petitioner seeks review of a decision by the Workforce Appeals Board, Utah Department of Workforce Services, affirming a previous decision by Administrative Law Judge Layne L. Hynek that Jeffrey Mitchell was not entitled to unemployment insurance benefits because he was terminated for just cause.

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FILED
Utah Court of Appeals

JAN 09 2001

Paulette Stagg
Clerk of the Court

IN THE UTAH COURT OF APPEALS

JEFFREY M. MITCHELL,	:	Case No.: 20000723-CA
Petitioner,	:	
v.	:	BRIEF OF THE APPELLANT
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SERVICES, WORKFORCE APPEALS	:	
BOARD, and LINK TRUCKING, INC.,	:	
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Respondent	:	
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DEPARTMENT OF WORKFORCE	:	
SERVICES, WORKFORCE APPEALS	:	
BOARD, and LINK TRUCKING, INC.,	:	
	:	
	:	
Respondent	:	

TO THE UTAH COURT OF APPEALS AND THE HONORABLE JUDGES THEREOF:

I am not sure I can add anything to what has already been addressed in the **PETITION FOR WRIT OF REVIEW** and the **DOCKETING STATEMENT**. I object to Judge Hynek's handling of my hearing and I plea for a new hearing at the Department of Workforce Services in this matter. Even based on the evidence submitted by Link Trucking it is apparent that I was NOT fired because I lost my temper and swore. If that were the only issue then they would

not have been concerned with any other thing at the hearing, but Judge Hynek repeatedly cut them off when they attempted to elaborate. Every document and statement they have submitted in this matter has involved details of other things that they accuse me of doing to them. Why would any of these things matter if they weren't trying to cover for their own unlawful actions?

The Surface Transportation Assistance Act, 49 U.S.C. § 31105
Office of Administrative Law Judges United States Department of
Labor states:

Congress passed the Surface Transportation Assistance Act in December 1982 and it was signed by the President and became effective on January 6, 1983. (Pub. L. 97-424, Title IV, 49 U.S.C. § 2301 et seq.)

Among other things, the Act provides for grants to the states for the development or implementation of programs for the enforcement of Federal safety standards for commercial motor vehicles and compatible state standards.

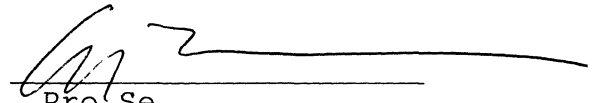
The Act protects all employees from discharge, discipline, or discrimination for filing a complaint about commercial motor vehicle safety, testifying in a proceeding on such safety, or refusing to operate a commercial motor vehicle when operation would violate a Federal safety rule or when the employee reasonably believes it would result in serious injury to himself or others.

The Secretary of Labor is charged with receiving and investigating complaints of violations of this employee protection or "whistleblower" provision. Either the complainant or the employer is entitled to request a hearing on the record. The Secretary is directed to issue a final order within 120 days of the completion of the hearing, and may, if a violation is found, order reinstatement, back pay, compensatory damages, costs, expenses, and attorney's fees. 49 U.S.C. § 2305.

I plea for justice and a fair hearing in which all of the discriminatory, retaliatory treatment to which I was subjected

(and Judge Hynek would not allow) is discussed. There is so much more going on with this case than Judge Hynek would allow. I plea for a new hearing with a new Judge at the Department of Workforce Services.

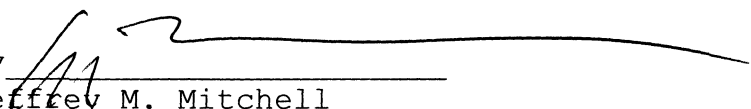
Dated this 5th day of January,
2001



Pro Se
4961 Huntington Rd.
Taylorsville, Utah
84118
Jeff Mitchell

I, Jeffrey M. Mitchell, certify that on January 8, 2001 I served a copy of the attached BRIEF OF APPELLANT upon Lorin Blauer, the counsel for the Respondent in this matter, by personally hand delivering it to her at the following address:

LORIN BLAUER
DEPARTMENT OF WORKFORCE SERVICES
140 E 300 S 2nd floor
PO BOX 45244
SALT LAKE CITY, UTAH 84145-0244

By 
Jeffrey M. Mitchell

Case No. 20000723-CA

JEFFREY M. MITCHELL

LUTHER S. PALMER

STEVE LINDSEY JR.

On 02/08/00 at about 3:00 PM Jeff was told that he would be going on a Boise run the following morning. He told Don that he was not happy about going, but said he would go. He told Don to make sure the container and chassis was checked out so that it would make the run to Boise. As there was no card in the dispatch board for the container, Don thought the container was still at the rail. He had Dave Wooton check it out of the rail and look it over. Dave said everything was ok with the load and parked it in the yard at about 6:00 PM. I found out latter that the container that Dave pulled out of the rail was one that was going to Wyoming. The Boise container that Jeff was to take was pulled out of the rail on 02/07/00 by Larry Jackson, and it was already in the yard. I also found out latter that Jeff had gone to the shop at about 3:30 PM and told Tom that he had a write up on a load that he had to take the next day at 3:00 AM and that the load had a flat tire and some lights were out. Tom said he was waving the write up around. Tom told him to back it up to the shop and they would fix it. That was the last Tom heard of the load. It was never backed up to the shop. Some how Jeff had found out the container number of the load he was to take. The bills had not been printed at that time, so the only way Jeff could have found out the container number was to get it off the card that was missing in the dispatch board. Don told Jeff that the container was still at the rail, but Jeff made no attempt to let Don know that the container was in the yard.

Tuesday, February 8, 2000 17:30:I went to the dispatch window to turn in my paperwork for

Jeff finished his dispatch on 2/08/00 at 17.15 according to his manifest, but did not clock out

JEFFREY M. MITCHELL

the day and get my assignment for the next morning. Don Allen, the evening dispatcher, told me that he had just received my dispatch a few minutes earlier. I had an appointment to deliver a loaded container to Boise at 7:30 a.m. He told me the load was still at Union Pacific's Intermodal Terminal; he had a driver bringing it in who would also be taking it to Sapp Brother's Truck Stop to weigh it. Link would have to weigh all the loads that we delivered to a neighboring state to make sure they were not too heavy to send. I asked him to have the driver drop the load at our shop so our mechanics could repair any defects. He assured me he would. I went to the shop and talked to Tom Gates, the shop supervisor, and Chuck Hurst, his assistant, about the load coming in from U.P. I told them I was coming in about 1:30 in the morning to take the load and asked them to inspect the chassis for defects. They told me they would take care of it.

19:30: Don called me at home and told me the load had come in; he told me that despite being slightly overweight on the tandem axle, it was OK to make the run. He read off each of the individual axle weights from the Sapp Brothers scale ticket and reported that the driver who brought it in told him that there were no problems with the chassis. I asked where the driver had parked the load in our yard, and he told me that he did not know.

Wednesday, February 9, 2000 1:35: I arrived at Link to take my assigned run; I inspected my tractor, then drove into the yard to look for the load; I found it on the load ready line and

LUTHER S. PALMER

until 18:09. We don't know what he did during this time.

At about 7:30 PM Don placed the correct bill in Jeff's slot for his run, but still thought the container that Dave had just brought in from the rail was the one Jeff was to take.

STEVE LINDSEY JR.

JEFFREY M. MITCHELL

performed a pre-trip chassis inspection. I noted the following safety defects on the chassis numbered: KSCC 004332

- A front marker lens was missing. It showed white light.
- A red marker light was out.
- The LOR tire was flat, the valve stem partially drawn into the tube.
- The LR corner locking pin (locks the container to the chassis) was missing its handle.
- The FHWA inspection had expired.

The lights, flat tire, and the expired inspection were items that I needed to refer to the shop supervisor. I pulled the load over to our shop. I attempted to contact Steve Lindsay, Vice President of Link Trucking, on the company radio, but he did not have his radio on. Our mechanics would not be in until 6:00 a.m. I filled out a pre-trip Driver Vehicle Inspection Report on the chassis and attached a red tag to it; I dropped the load; I knew our shop would have to repair the chassis before it could leave our yard. I parked my tractor and went in the office; I used the time clock to punch my time card and to time stamp my Driver Vehicle Inspection Report. (I had to punch my time card whenever there was a delay getting out of the yard on an early run.) I posted my Driver Vehicle Inspection Report, along with my delivery receipt, on the door of the dispatch office.

3:00: I telephoned Steve at his home; I asked him if he could send one of our mechanics to the yard to fix the flat tire on my load to Boise.

LUTHER S. PALMER

On 02/09/00 at about 3:00 AM Jeff called Steve at home from his home and told him that he could not take his container because there

STEVE LINDSEY JR.

Early in the morning on Wednesday, February 9, 2000 I received a phone call from Jeff Mitchell. It took me a minute to orient myself as

JEFFREY M. MITCHELL

He told me he did not know how to contact Tom because he had a new home telephone number. He thought about it for a few seconds and made a decision; he told me to take the load over to Sapp Brothers and have the flat tire changed out for my spare. (This would have left me without a spare for my trip.) I told him the tire was not the only problem with the chassis; I suggested, because the run was already late, we might want to wait until 6:00 a.m. to have our shop repair the defects. Steve got himself into a huff at my suggestion; he told me he was not going to allow me to tell him what to do; he asked me if I was refusing to take the run. I told him the load was not ready to go.

He told me that for my refusal I was to take the day off without pay; he told me to call in for a dispatch on Thursday morning. The shop hours at Sapp Brothers are 7:00 a.m. to 11:00 p.m.; they will change out tires, but they do not

LUTHER S. PALMER

was a flat tire and some lights were out, and that the FHWA inspection had expired. Steve told him to go to Sapp Bro. To get the tire and lights fixed. Jeff asked about the inspection and Steve said to go get the tire and lights fixed and that we could take care of the inspection latter. Jeff said he did not want to go to Sapp Bro., but wanted Steve to call a mechanic to come down to the shop and fix the tire and lights. Steve said he did not know their home phone numbers so Jeff said to get a driver down there and have him take the container to Sapp Bro. and get the problems fixed and he would wait on the clock until it was done. Steve told him to do it and he said he would not do it. Jeff said by the time he got it all done it would be 6:00 AM and he could not do it because he had a dentist appointment at 4:00 PM that day. Steve asked him if he had it scheduled and he said he did not. Jeff said he would not go to Boise, and that he would be in at 6:00 AM to do local work.

Steve told him he would not be needed, and that if he could not take the Boise run then he could not work that day.

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to what time it was and realize who was on the phone, but I soon realized that it was Jeff Mitchell and it was about 3AM. Jeff told me that the load for which he had been dispatched to Boise, Idaho had a flat tire and a couple of lights were out, and that he would need a mechanic to come down and fix those problems. I told him that I would be happy to do that, except that I did not have any of our mechanics phone numbers. I instructed him that it would be best if we sent him to Sapp Brothers truck stop which is about a mile from our yard (standard procedure for our company when one of our own mechanics is not on duty). They could repair the flat tire and lights there. Jeff told me he did not want to do that, and asked me why I didn't get one of our other drivers to come in and take it to Sapp Brothers and he would wait on the clock while our other driver had the repairs made. I told him that it would be silly for another driver to come in and do that if he was going to be on the clock. He then told me that he really didn't want to take the load anyway because it would be late at that point anyway and that he had a dental appointment at 4PM that day he would miss if he took the run. I asked him if he had scheduled his dental appointment, he said he had not. He was correct in the statement that the run would be late as the appointment time on the load was 7:30AM in Boise.

I told him that if he was going to be like that I would get somebody else to take the run to Boise and he could have the day off. He then asked me why he couldn't work local and I told him that at 3AM from my bed I had no idea

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perform FHWA inspections on trailers.

LUTHER S. PALMER

Latter that morning Dave Rogers was dispatched on the Boise run. All he needed to do

STEVE LINDSEY JR.

what we had for local dispatches and for him to take the day off. I admit that I was upset for the way in which Jeff was talking to me (he can be very smug and smart allecky) and that is partly the reason he was given the day off. The biggest reason for the day off was because I did not know at 3AM who I was going to get to take the run and whether or not his Link assigned tractor would be used for the run by another driver.

A couple of items have been discovered since that day. First, through interviewing Jeff after his day off, we discovered that Jeff was calling me that morning from his home, not from our yard as I had naturally assumed. Usually if a driver is intent on making a run and complying with his dispatch, he calls from our yard with any problems. Second, when Jeff came down to talk to us later on February 9th, we discovered that he was also concerned about the out dated FHWA inspection tag on the chassis under the load. At that time I indicated that we would have taken care of that if it were a problem. Sapp Bros. would have taken care of that also. We have several advertisements from Sapp Bros. truck stop indicating their ability to do FHWA inspections, tire repair and electrical repair. I only add this to my account to show my intentions were not to require Jeff to take a run which he terms was in violation of Federal Motor Carrier Safety Regulations. I simply wanted Jeff to take his load to Sapp Bros. for repair.

Later that morning, around 6AM a driver, Dave Rogers, hooked to the load in question and was

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8:30: I called Mike Caimi, the daytime dispatcher; I asked if Steve had said anything about me today. He replied that Steve had called him from home and told him that I was not to work today. He recommended I call back when Steve got in.

10:15: Steve called to tell me I had a dispatch to Los Angeles and I was to leave in three hours. In over two years at Link Trucking, I had never had a dispatch to Los Angeles. I had been a Link driver longer than most of the others; I thought he could have asked many others before me. Making a trip to Los Angeles in my day cab would mean I would have to get

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was air up a tire and change two bulbs. The run went fine. I found out about this around 8:30 AM.

We had a lot of coast moves that had come up, and I suggested that we send Jeff to California. The run needed to leave around 3:00 or 4:00 that afternoon.

STEVE LINDSEY JR.

able to air up the tire, fix the lights with the aid of a Link mechanic (by that time we had a mechanic on duty) and make the run to Boise without incident.

Later on that morning (still 2/09/00) Jeff called and spoke with Mike Caimi, Link's dispatcher, about the possibility of working that day. Mike and I had already worked together that morning on finding a driver to take Jeff's Boise run and since Mike was aware of my conversation with Jeff earlier on that morning, he told Jeff he would need to speak to me about working.

Between 3AM and 8AM I could not sleep very well, thinking about this conversation with Jeff and trying to find a driver for his run and further trying to find something that Jeff could do since I knew he wanted to work. In that time frame I realized that later on that day I would need to send a couple of trucks on some planned runs to California and one of these runs would fit into Jeff's schedule very nicely. So when Jeff called Mike that morning and Mike subsequently gave me the message that Jeff had called him looking for work I thought it would be nice to have Jeff make one of these runs to California.

Jeff called me about 8:30AM that morning and I instructed him that I had a dispatch for him to California later that afternoon. He asked me what would happen if he didn't want to take it. I told him that refusal to follow two dispatch instructions within the same day probably could be viewed as a voluntary quit. He told me that he wanted to talk about the run and would be

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a motel on the way down and back, making it a three-day journey. I was used to making one-day trips to southern Idaho, which made it possible for me to be home at night. I asked if I could think about it for a few minutes and call him back. He told me that if I did not tell him right then that he would consider me to have quit. I asked him if I could at least come down to talk to him about it.

11:00: I arrived at Link and went over to the shop to ask Tom if he knew where the Driver Vehicle Inspection Report for my load to Boise was. He told me that he never saw the write up but Dave Rogers had left a couple of hours ago with the load. I went to the dispatch window and asked Mike if he knew what had happened to the Driver Vehicle Inspection Report for my load to Boise. He told me he had given it to Dave because he now had the dispatch, and he needed to know what to fix on the chassis so he could take it.

I went to Steve's office and told him he should not be giving me a dispatch to Los Angeles because at 3:00 a.m. he told me that I had the day off without pay. He told me that he now considered me to have quit because I was refusing my dispatch.

I told him I wanted to discuss the matter with Luther S. Palmer, owner of Link. I had had very little interaction with Luther in my time of employment at Link, although, I had recently talked to him about resetting the governor on my truck. (This was with me standing in the doorway to his office with one foot outside the

LUTHER S. PALMER

Jeff wanted to talk to me so he came in. I asked him to go on the run. He said he couldn't because Steve told him he could not work that day. I told Jeff that I can over rule Steve and told him it was ok to go to California. He told me he did not want to go because he had a dentist appointment the following day at 4:30. I

STEVE LINDSEY JR.

into our office in a few minutes, I told him that would be fine.

When Jeff came in he continued with his constant questioning about what if he refused to take the load to California what would happen? I continued with my line of thinking that refusal to follow dispatch instructions would result in a voluntary quit.

At this point, one of the owners of Link Trucking, Scott Palmer, came into my office and asked Jeff what was going on, at that point Jeff asked Scott if he could speak to him in private, which Scott acknowledged. I do not know what was said, other than at one point I was brought into the office and questioned about my giving

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door.) I went over to Luther's office to ask him why Steve was dispatching me to Los Angeles when I was not supposed to have a dispatch until Thursday morning. He agreed with me on this and he told me he thought I should continue to have the day off without pay as a penalty for not going to Boise. He told me to call in later that day for a Thursday morning dispatch.

15:30: I went to the office of Special Agent James E. Vaughn, U. S. Department of Transportation Federal Highway Administration. I asked him if my employer could force me to take the day off without pay for refusing to pull a chassis that had safety defects. He informed me that it was against the law for my employer to punish me for complying with Federal Law.

17:30: Steve called and told me to come in Thursday at 6:30 a.m. to work local. He informed me that he was taking me out of truck #80 and putting me in truck #98. This was a

LUTHER S. PALMER

asked him if he had scheduled it with dispatch and he said he had not. I asked him if he was aware of the policy in our manual that stated that an employee needed to give a weeks notice of time off. Jeff just laughed at me. He insisted that I honor Steve's discussion to not let him work that day. So I told him I would, but I would need to send his truck to the coast that afternoon. He did not respond, he just left.

STEVE LINDSEY JR.

him the day off, to which I responded that if Jeff would not take the equipment to Sapp Bros. to get it repaired then there was no sense in arguing about it at 3AM and I had given him the day off, and then I responded further that if Jeff wanted to talk his way out of the run to California by saying I had given him the day off then why had he called up Mike Caimi behind my back to look for work. He blew up and said that I was a liar and why didn't I stick to my word. Scott Palmer asked me to leave the office, and I don't know what else was said. Jeff left and Scott came in and told me that he had stuck by what Jeff wanted which was to have the day off. He then told me that we could dispatch Jeff on whatever runs we wanted to the following day. I figured that if Jeff would not go to California that day, he wouldn't on any other day, so needing his Link assigned truck for California, I put a driver in it to go to California, and had our dispatchers put him in another truck for the following day and dispatch him locally around Salt Lake City.

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real surprise because I had driven truck #80 every day for over two years; I alone had put over two hundred thousand miles on it. This meant that I would have to go to Link that evening to turn in the key to #80 and remove my belongings from it.

22:20: I arrived at Link and went to my truck. I removed my tools and gloves; I would have to use the shop tools to remove my CB and antennas. I went in to turn in my key and punch my time card; I wanted to verify to Steve that I had gone back down there that night. Don was in the driver's room and saw me punch my timecard; he asked me why I was punching out. I told him I had come down to turn in my key, so someone else could use my truck, and to remove my belongings from it. I pulled my truck over to the shop and removed my CB and antennas.

Thursday, February 10, 2000 5:50: I came in early to discuss my punishment with Bill Palmer, joint owner of Link. Bill is someone with whom I had had virtually no contact. I went in his office and told him that I felt that Luther and Steve were punishing me for refusing to take the unsafe chassis to Boise. He told me that he thought that Don had "screwed up"; but he agreed with Luther and Steve to punish me for what I had done. He told me I should do whatever it takes to keep our customers happy; even if that means pulling a chassis that does not have a current safety inspection. He thought it was rare for us to get a ticket for an expired FHWA inspection; he assured me he would pay any fine for violations discovered at

LUTHER S. PALMER

Don saw him come back latter that night (2/09/00) and witnessed him clocking out around 10:00 PM. Don asked him why he was punching out. Jeff did not respond. Don then said "I thought you were not supposed to be in today. Don said Jeff just smiled and walked off. He then saw Jeff taking the antennas off his truck.

On 2/10/00 Jeff clocked in around 6:00 AM to do local work. He was upset that he had to drive another truck and went in to talk to Bill. Bill indicated that although Steve may have lost his temper a bit, he agreed with Steve's actions. Jeff indicated that he had talked to the Federal DOT and they said that he should not be punished for refusing to take a chassis that did not have a current inspection. Dad told him he was not being punished and said he was done talking with him. (I'm not sure what else was said).

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a Port of Entry. I told Bill that on my day off I had talked to Special Agent James E. Waugh, U. S. Department of Transportation Federal Highway Administration. I reported Mr. Waugh had informed me that if my employer were to punish me for complying with Federal Law that my employer would be subject to an investigation. Bill told me no one at Link would punish me. He asked me to leave his office.

6:45: I took an empty container to Huish Detergents for a 7:00 a.m. dray. I was there approximately two½ hours while they loaded the container.

9:40: I drove to U.P. with the Huish load; I arrived there at 10:10 a.m. I called in for a dispatch and Steve told me to bring a bare 40' chassis back to Link.

He also informed me that Bill wanted to see me.

11:10: When I arrived back at our yard, I saw Dave Rogers. (It had taken him about 24 hours to go up to Boise and back.) I asked him about the Driver Vehicle Inspection Report that was missing. He told me he had it in his truck. I walked with him to his truck and I watched him pull the crumpled up Driver Vehicle Inspection Report out of a plastic garbage bag in his cab. He gave me the form and I asked him if our mechanics had done an FHWA inspection on the chassis before he left. He told me they had not.

LUTHER S. PALMER

Bill then indicated that he wanted to talk to Jeff again to resolve the issue and put it to bed.

Jeff was told twice that he needed to talk to Bill.

STEVE LINDSEY JR.

On the following day February 10, 2000, when I arrived at Link I was asked to go see Bill Palmer, the other owner of Link Trucking. Bill and I discussed the previous days events with regards to Jeff Mitchell. Bill informed me that Jeff had been in to see him that day and had complained about the way in which I handled the situation. After some instructions from Bill on how to handle future incidents or problems with employees I left Bill's office.

Bill had told me that he wanted to see Jeff again in his office to conclude the matter.

Around 11 AM Don Allen, another of Link's

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He said he had already talked to him and didn't need to talk with him again.

dispatchers came into my office with Jeff Mitchell's time card and said he thought I should know something. He showed me Jeff's time card from the previous day (February 9th) it had a punch in at 2:39AM and a punch out time at 22:00PM (10PM). Don told me that he had been in the driver's room where the time clock is located at 10PM the night before when Jeff had come in and clocked out. Don asked Jeff what he was doing punching in and out on a day on which he was off. Don said that Jeff just smiled and shrugged his shoulders and walked outside to clean out his Link assigned tractor. When Don brought the events of the previous night to my attention, I let Bill and Scott Palmer know, and they stated that they still needed to talk to Jeff and to have him go up to Bill's office when I saw him.

I went in to talk to Bill and saw that my time-card was on his desk.

Steve insisted that he talk to Bill so Jeff finally went up to talk to Bill.

I saw him just a few minutes after that, he reluctantly agreed to go up. It took several reminders over the next few minutes to finally get him up to Bill's office.

By that time Don had come in for the day and was curious about Jeff's time card from the night before. He pointed out to Steve that Jeff had punched in at 2.39 on 02/09/00 and punched out at 22.00 on 2/09/00. Don told Steve of the exchange he had the night before with Jeff at the time clock. The time card was brought to Bill's attention shortly before Jeff came in for his second visit.

He asked me how many hours I had actually worked on Wednesday February 9. I told him I was there for about an hour in the morning, and

Bill asked Jeff about the time card and Jeff said he had not had time to talk to Steve. He said he forgot to punch in when he came in to

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about a half-hour around 10:30 p.m. He told me he would pay me 1 hour for the day. I told him that (since we were on the subject) I thought he should pay me for the Boise trip I had refused to take. He was amused at the thought of this and told me he would never pay me for refusing to go on the run. I showed him the crumpled up Driver Vehicle Inspection Report I had retrieved from Dave's truck. I explained that it had made the trip to Boise and back in a plastic garbage bag. I asked him why he thought our mechanics had not signed it. He did not respond.

Luther came into Bill's office; Bill explained to him what we were discussing, then, after considering the issue for a few minutes, they both agreed to pay me for the Boise trip.

LUTHER S. PALMER

go to Boise. He said it was a mistake on his part, both when he punched in and when he punched out. It was confusing for Bill so he asked Jeff what he wanted to be paid for and they agreed on one hour. Then Jeff changed his mind and said he wanted to be paid for the whole day.

That is where I came into the meeting. Bill told me to pay him for eight hours that day. Jeff then said he wanted to be paid for the Boise run he did not take. He said Link owed him that. I said I could not pay him for a Boise run. Bill said that he did not want anyone feeling that we owed them money and he insisted that I pay him for a Boise run. I said I would. Bill asked Jeff if he was sure he wanted to go down this road and Jeff laughed. There was some more discussion about a write up that Jeff had prepared for the chassis that was to go to Boise. He said he found the write up in Dave Rogers truck. Jeff showed us the write up and made a point that he had punched it on the time clock the same time he punched in/out that morning. He told us we were in violation of DOT regulations. Jeff said that he had gone to the Federal DOT office and he flashed a card around and said that this guy from the DOT office said we were in violation, and that Jeff had a Jerk for a boss. Jeff then said that the guy from the DOT offered him a job. I told him

STEVE LINDSEY JR.

JEFFREY M. MITCHELL

Luther told me to give him the Driver Vehicle Inspection Report I was holding. I told him I did not want him to have it. He approached me aggressively and ripped it from my hand. I asked him to give it back. He told me it was his property; he ordered me to get back to work.

12:00: I received a dispatch to take a loaded container to Emery Worldwide; but first I had to drop the bare 40' chassis I had brought back from U.P. I called Gordon, who was in his forklift, and asked him where he wanted it dropped. He told me to take it to the unpaved back lot and wait for him. Bill Lloyd, of the Mobile Storage Group, was doing some work with his Mobile Storage containers in this area

LUTHER S. PALMER

to take it. Jeff said the truck he was asked to drive (98) was a piece of sh--. He said he was being punished because we took "his truck" away from him. I told him that it was my truck, and that I had paid for it.

I grabbed the write up (the one on the chassis going to Boise) out of his hand to look at it. He demanded that I give it back. I told him that I would not. (Shortly after I gave it back to him after I made a copy of it). I then told Jeff to give me a write up on unit 98. Jeff was then asked to get on with his work. Jeff then threw a payment sheet at Bill and demanded that he sign it to approve his payment for the trip to Boise. I signed it.

He then left Bill's office and found Steve. He yelled in Steve's face and laughed and said that he had got paid for the Boise run.

STEVE LINDSEY JR.

I don't know what was said in Bill's office but Jeff was in the office for some time and when he exited he came down stairs got right in my face about 3 inches from it and said that he had gotten paid for the run to Boise and asked in an cocky manner what I was going to do about it? I told him that if Bill and Scott had done it, that was their business and told him to get on with his days work. Scott also told him to get out of the office and do his work.

JEFFREY M. MITCHELL

at the time. I dropped my chassis and watched Gordon put my chassis on top of a couple others with his forklift. I followed him out of the back lot. I found my load for Emery Worldwide on our load ready line.

12:30: I arrived at Emery Worldwide and noticed that Luther was pulling in behind me in his pick-up. He proceeded to scold me for abusing his equipment when I was in the back lot with Gordon a few minutes earlier; he warned me that he would be watching me from now on.

I went in and talked to Scott Sorensen, the dock supervisor. He assigned me a door to back the load up to and told me he would unload it while I waited. I went out and parked the container while Luther watched me from his pick-up.

I went back inside, and then Luther entered the dock area. He approached Scott and pointed to me and I overheard him tell Scott that I had just had a conflict with a dispatcher over at Link; he asked Scott if he would keep his eye on me. Luther handed him his business card and asked him to give him a call if he had any trouble. Luther then left the dock and went

LUTHER S. PALMER

Soon after this Gordon came in and said that Jeff was spinning gravel with his truck fifteen feet in the air, slamming hard into the container, and speeding in the yard. I asked where he was and I was informed that he had left the yard to deliver a container to Emery Air. I was afraid that he was going to do something dangerous so I drove over to Emery Air.

I found Jeff in the parking lot and told him that he was seen driving reckless in the yard. He yelled at me and told me to stop harassing him. I told him he was going to get a warning letter.

I went in to Emery and gave my card to the dock foreman and told him that our driver was upset and that if he had any problems to give me a call, and then I left.

STEVE LINDSEY JR.

Shortly after that incident, Gordon Roberts, Link's yard manager came in and said that Jeff was driving in a reckless manner in the yard and that gravel was shooting from his tires up into the air.

Scott followed him to where he was dispatched and I guess there was a confrontation,

JEFFREY M. MITCHELL

back out to sit in his pick-up. Scott inquired of me as to what I thought my bosses' problem was. I explained about the unsafe chassis that I had refused to take the day before. I helped the employees unload the container and Scott signed my delivery receipt. He told me he did not want to keep Luther's business card so I asked him if I could have it. He wrote his name on the back and gave it to me.

13:05: I took the empty container to John Brumback Trucking to complete the dispatch. I arrived there at 1:25 p.m. and was there for about a half-hour. Steve called me on the company radio and asked me how soon I could get back to Link because he needed to see me.

14:15: I arrived back at Link and, after parking my tractor and finishing my paperwork for the day, went in Steve's office.

He issued me an Employee Warning Letter and asked me to sign it. I had never received one before. The warning letter was for reckless driving in the back lot a couple of hours earlier. I signed it and asked for a copy. Luther came in Steve's office to cavil me about something that I can not remember now.

LUTHER S. PALMER

When I got back I told Steve to make a warning letter up on Jeff for speeding and reckless driving in the yard, as well as falsifying his time card.

When Jeff returned from his dispatch Steve had him come back to his office and presented Jeff with the warning letter. Jeff signed it and then came into my office and asked if he could write a reply to his Warning letter. I told him he could. Jeff said that he had a witness that he did not speed in the yard. I asked him who it was and he said it was Bill at Mobile Storage. (Steve talked to Bill and he said Jeff did come into the Mobile Storage office and asked Bill if he saw him speeding in the yard. Bill said he

STEVE LINDSEY JR.

I don't know what exactly was said, but Scott asked that I prepare a formal write-up regarding the reckless driving and the fraudulent manner in which his time card was kept.

I did this and Jeff signed it and with a whole lot of fanfare flashed a business card at Scott and I and said that he had been offered a job by the guy and the guy had asked him what the "hell was wrong with his boss". I assume this was the manager of Emery Air Freight where Jeff and Scott had the confrontation. Scott asked Jeff if he was giving his notice. Jeff just continued to smirk at us and yell out his complaints about us doing him wrong.

JEFFREY M. MITCHELL

I left Steve's office and punched out for the day with Luther and Steve following me. I exited the building, out the east door, and down the back steps to where I had pulled my pick-up. I attempted to open the door and, while scolding me, Luther stepped forward aggressively to prevent me. As he scolded me he would lean in, toward me, and would step closer, attempting to provoke some retaliation from me. Steve watched from the top of the stairs. I told Luther I would really like to leave; he reluctantly moved back, allowing me to get in.

18:00: I called Don and asked him to check my dispatch for Friday morning; he told me I was scheduled to come in at 8:00 a.m. to run back and forth to U.P. all day. In over two years of working at Link, I had never had a weekday dispatch as late as 8:00 a.m. It was typical for them to dispatch me to do local work before 6:00 a.m., to do an out of state run I would typically come in much earlier in the morning.

LUTHER S. PALMER

told Jeff that he did not see anything and that he was not going to get involved into our "office politics".) Jeff then told me that the guy at Emery Air thought I was a jerk and Jeff said that this man had offered him a job. I asked Jeff if he was giving me notice that he was quitting. He said "not yet".

I followed him out to his truck because he was leaving to go to his dentist appointment. He said something to me that I could not understand but I thought he swore at me so I got close to him and said "why don't you quit". He laughed and said he did not have time to talk to me. I told him that I was not holding him back from leaving. He got into his truck (personal) screeched the tires and sped off.

On 02/11/00 Jeff came in about 8:00 AM. He came in after his first dispatch to the dispatch door. Steve was the dispatcher that day, and was in the office at the desk talking to Val. In a loud voice Jeff ask Steve if he was talking about him. Steve said he was not talking about

STEVE LINDSEY JR.

Jeff was done for the day and so we told him to leave the office, he continued with smart aleck remarks and wisecracks, talking in a very loud manner, Scott and I followed him out of the office and to his truck just to make sure he would not further disrupt the work of other employees.

The following day which was February 11, 2000 I was the dispatcher for the morning. Jeff came in at his appointed time and peeked around the corner of our dispatch window and asked if I was talking about him with a big smirk an his face. I had been having a conver-

JEFFREY M. MITCHELL

Friday, February 11, 2000 8:35: I took an empty container to U.P.; I arrived at 9:05 a.m. and I called for a dispatch. Steve told me to bobtail over to Bailey's Moving & Storage and pick up a loaded container that was numbered: SUDU 256041. I went to Bailey's and located the loaded container in their yard. I inspected its chassis, that was numbered: MAEC 262412; I noted that one of the tires was missing a large section of tread and the FHWA inspection had expired. I called Steve to report these defects; upon hearing my report, he abruptly changed my dispatch. He told me to leave the load there and bobtail back over to U.P. to find a bare 40' chassis to bring back to Link.

10:35: I returned to Link with the bare chassis and went to talk to Bill Lloyd of the Mobile Storage Group. I wanted to know if he remembered seeing me in the back lot the day before. He told me he did recall seeing me out there in a truck, and seeing Gordon stack up the chassis I had dropped, and that I had followed him out of the back lot. He recalled Gordon kicking up rocks and dust, with his forklift, and said that Gordon always drove like that; and he did not believe I had driven recklessly. I showed him my Employee Warning Letter and he read it while shaking his head; he seemed quite surprised at what he read; he told me that if he could help me in any way to let him know. He

LUTHER S. PALMER

him. Jeff asked who he was talking about and Steve told him that Val and him were talking about Lyle getting a container from the rail.

Steve dispatched Jeff to the rail again.

STEVE LINDSEY JR.

sation with Val Olsen, another dispatcher in the office about another driver and that driver's dispatch. I told him that I was not talking about him and related the conversation that Val and I were having back to him.

I dispatched Jeff to the railroad with a load and asked him to pick up a load at Bailey's Moving and Storage, he stated that he would not haul a chassis that did not have a current inspection which I guess this load did not have. I told him that was fine and we would get that taken care of. I sent him to the railroad for another chassis, he reminded me of his earlier claim and I told him to call me if he had problems. He did not have any further problems, the chassis had a current inspection and he brought it back without incident.

JEFFREY M. MITCHELL

offered me his business card.

10:50: I went to Steve's office and told him I thought the write up I had received the day before was unfair. I told him about Bill Lloyd being in the back lot at the time of the reckless driving accusation. I was additionally concerned about the way he had not given me a chance to reconcile my time card with him before Bill had supposed me to be dishonest. He ordered me out of his office and back to work.

11:00: My next dispatch was to take an empty container to U.P.; I arrived there at 11:20 a.m. I was looking for a place to drop the empty; I

LUTHER S. PALMER

When Jeff returned he wanted to talk to Steve in his office. Jeff called Steve a bull shi— and said the warning letter he received was bull sh—. Jeff wanted to reply to his warning and demanded that his reply be placed in his personnel file. Steve told him that we would not put it in his file.

Steve then dispatched him for another run to the rail.

STEVE LINDSEY JR.

When he arrived back in the office it must have about 10 AM. He asked if he could speak with me in private, I told him to follow me to my office. When we walked in my office, he said "Hey bull____er" I asked him to what he was referring and he told me the write up I had prepared the previous day was a bull____write up. He asked me what I would do with his written response to his write up if he prepared one, I stated that he could prepare a write up but we would not do much with his response as our write up spoke for itself and we had evidence and witnesses to back it up. He held up a business card about an inch from my face and yelled at me that he had witnesses to back him up (the business card was that of an associate of Link Trucking's that has an office at Link) and that he had intended to have me fix his time card so that the time did not show. I told him that his actions of that night with Don Allen and his attitude indicated that he probably did not have the best of intentions. (Coincidentally, the associate whose time card Jeff held in my face has been questioned and he stated that Jeff approached him and asked him if he had ever seen him speed in the yard. This associate (Bill Lloyd of Mobile Storage Group) indicated to Jeff that he did not want to get involved in our office politics but that he had not seen him speeding, but only because he had never paid attention to his driving.)

I told Jeff that he needed to proceed with his current dispatch and he left without incident.

JEFFREY M. MITCHELL

noticed a container that looked familiar; the Bailey's load was there with the blown cap and the expired inspection.

11:40: I called in and received a dispatch to bring a load back to Link. I arrived at 12:35 p.m.; after parking it, I went to the dispatch window for my next dispatch.

Luther noticed me in the hall, near the dispatch window, and called me to his office. He questioned me about the condition of truck #98. (I had indicated an oil leak and a sloppy fitting pigtail on my post-trip inspection I turned in the day before. I indicated these two repair items on the opposite side of my Driver Trip Report, and not on the individual, single sided, form that was available for us to use to record defects.) He told me he was mad at me for noting these post trip repair items on the back of my Driver Trip Report. The Driver Trip Report was used to record all of our stops throughout the day; it has a place to record our arrival and departure times at each stop. He told me to always indicate that the truck was OK on the back of the Trip Report form, even if it was not. He called me an idiot. I asked him if he was done and if I could go now. He told me no, he was not done, and continued to castigate me while warning me to do my paperwork right. He asked me how I liked driving truck #98. I told him I thought it was refuse com-

LUTHER S. PALMER

I had asked to see Jeff because I had not seen a write up on unit 98.

Jeff came into my office. I asked him if he had written up 98. He told me it was on the back of his manifest from the day before. I found his manifest and saw where he had written some things wrong with 98, but that he had checked "no defects". I reminded him of his comments about 98 and asked him if he remembered the company policy that if there are defects they need to be written up on a separate form and turned in. He laughed at me and said he wasn't aware of that. I told him he was an idiot if he had worked here two years and did not understand that policy. I told him I wanted him to write up everything that was wrong with that truck (98). He said there was nothing really wrong with it, that it was just a piece of sh-- compared to 80. I asked him if he would take 98 to Idaho, and he said he would. He then left my office.

STEVE LINDSEY JR.

Later that day Scott told me he wanted to see Jeff because Jeff had complained about the safety of the Link truck he had been driving since his Link assigned truck went to California.

The next time I saw Jeff, I asked him to go see Scott, he complied and I did not hear much of the conversation other than Jeff said that there wasn't much wrong with the truck other than it was a piece of sh__ compared to #80 (his assigned tractor). Scott then told him that if there was anything wrong with the truck he needed to write up the defects on a "Driver Daily Inspection Report" (company policy, which Jeff was very familiar with) and turn it in. Scott told him to proceed with his dispatches.

JEFFREY M. MITCHELL

pared to my truck. He asked me if I thought truck #98 could make it to California and back. I told him I thought it surely could. (I thought any of his trucks should be able to make it to California if they were able to make it around the block.) He told me I had better get used to truck #98.

12:45: I left from Link with a loaded container destined for U.P. Before I left I told Don (who was now dispatching) that I was going to take a lunch break on the way. I drove to K-mart in Woods Cross where I purchased a disposable camera to take some pictures of the Bailey's load sitting at the U.P. yard. I was in K-mart for about 15 minutes. When I returned to my truck, the company radio was beeping; Don asked me if I was done with my lunch; he told me that someone (he would not say who) had told him to check up on me. This was unusual; I had never before had the dispatchers ask me over the company radio if I was done with lunch. I was automatically deducted a half-hour each day for lunch and had always been trusted not to take more time than that.

13:35: I arrived at U.P. and I went straight to the Bailey's container to take some pictures of its blown cap and inspection sticker. I dropped the load I had been pulling around and called Don for a dispatch. He told me to bring a loaded container back to Link.

13:50: When I was gating out the load, I asked Vickie Ball, the secretary for Rail Terminal Services, which Link driver had brought the Bailey's load in. She told me Bill Nutt had

LUTHER S. PALMER

STEVE LINDSEY JR.

Jeff went down to dispatch and told Don Allen he was going to go to lunch. Jeff was seen in the yard talking to several drivers and several of those drivers approached us saying that he had complained to them about Link policies in general. Because of his complaining I told Don to give him a ½ hour for his lunch and then call him on the radio to make sure he was working. Don tried to reach Jeff at the appointed time and Jeff was not available, but Don did locate him on his radio about ten (10) minutes later and asked if he was done with his lunch. Jeff indicated that he was done with lunch and proceeding with his dispatch and asked Don if it was his idea to harass him or my idea. Don told him that I had asked him to call him.

JEFFREY M. MITCHELL

brought it in at 11:06 a.m. She went on to inform me that some of the other Link drivers had been talking bad about me lately. I asked what they were saying, but she did not want to tell me. She told me she thought the other drivers viewed me with contempt. I had been noticing that most of the Link drivers I had encountered since Thursday, who were previously friendly toward me, were now giving me cold looks.

14:20: I saw Bill Nutt back at Link and I asked him if he recalled the condition of the Bailey's load that he pulled to U.P. He told me he had, but he just ignored the safety defects. Steve had just dispatched a different driver to take the load to U.P. instead of sending a mechanic to repair the chassis. Link has a service van that is fully equipped to do road calls.

14:35: I dropped the load I had brought in from U.P.; I went to the dispatch window to get a new dispatch. Steve was back dispatching now and he told me to get with Gordon about taking an empty container to U.P. Gordon told me to meet him over where he had some chassis' stacked; I met him there and he lowered one down for me to take. I was out on the deck of the truck hooking up the connections when I noticed the word BUTTBOY written into the dirt on the back window of the truck. Someone in the yard had written the word with his finger while I was in getting a dispatch. I immediately disconnected the chassis and drove the tractor over to a parking stall in front of Luther's window.

LUTHER S. PALMER

STEVE LINDSEY JR.

JEFFREY M. MITCHELL

I went in and asked both Luther and Steve to come outside, as I had something I wanted to show them; they followed me out. I pointed at the message and told Luther I thought that this was harassment; I wanted him to find out who had done this. I told him it should not be very difficult to figure out who it was; it had just happened and if he acted now he could probably figure it out; whoever had done it was still in the yard.

He downplayed the gravity of the harassment and told me that what I had done to his father the day before, in suggesting he pay me for the Boise trip, was a worse form of harassment. As he scolded me he would lean in, toward me, and would step closer, attempting to provoke some retaliation from me; but this time Luther and Steve were doing it simultaneously. Luther got so close to me that our noses were no more than an inch apart; He just would not restrain his aggressive posture. We were in the driveway between the south side of the building and the shop, at the foot of a half flight of stairs. Other drivers were observing the commotion and coming over to get a better view. (They probably sensed an imminent brawl.)

Gary Mitchell, a driver, stepped up beside me,

LUTHER S. PALMER

He came into my office about two hours latter and demanded that Steve and I come out side to look at his truck. The back window of the truck was dirty and someone had written backwards "Butt Boy". Jeff got into my face and asked what I was going to do about it.

I told him that I would ask who did it, but that I did not feel I was going to find out. Jeff told me this was harassment and that I did not give a f— about him.

Steve told him to calm down. Jeff then put his middle figure in Steve's face and said f—you several times.

Mitch drove up at this time and I told him to

STEVE LINDSEY JR.

About an hour after his lunch was over Jeff came into my office and asked if I would come outside to look at the truck he was driving, he also asked the same of Scott. We went outside to look at his truck, the back window was dirty and someone had written in the dirt the word "Buttboy" backwards. Jeff told Scott that this was sexual harassment and demanded that we stop whatever we were doing and block any drivers from leaving the yard until we discovered who had written it. Scott said that we would not do that, and Jeff told him that it was sexual harassment and asked Scott if he was going to do anything about.

Scott told Jeff that he would ask the different drivers if they had done it but he indicated that no one would own up to it and that it was an unfortunate incident. Jeff continued with his claim that he was being harassed at Link. Scott countered that Jeff's attitude of the last few days was harassment to the company and that he had better cool it. Scott then cited some examples which I have written about in this account and others for which I was not present. Jeff told Scott that he was being harassed and he did not give a f— about him.

JEFFREY M. MITCHELL

and Luther then turned his attention toward him to calm him down and order him back to work. I turned to Gary and asked him if he saw the way that Luther was approaching me aggressively; I told him that this is how he had been attacking me for the past two days.

Luther returned to charging me with harassing his father the day before; He yelled something at me; I yelled something at him; and with that, Steve fired me.

Luther snapped and told him that he could not fire me.

I then yelled a debasement directly into Luther's, and then Steve's face. I turned my back on both of them and started walking toward truck #98.

Luther raced up next me and I was yelling that this treatment was ridiculous and asked him why he was pressuring me to quit. He exclaimed, "OK, OK, your fired! I want your stuff out of that truck!"

He ran up ahead of me and attempted to open the driver side door, but I had locked it when I parked it. He told me to give him the key; I told him I wanted to get my own stuff out; I did not trust him to do it.

LUTHER S. PALMER

leave, that this was none of his business. He said it was his business and stayed.

When Jeff told Steve f— you several times Steve told Jeff he was fired for insubordination.

I told Jeff he was not fired and that I over ruled Steve.

He then said to me f—you. At that point I fired him and told him to get his truck cleaned out and get out of here.

Jeff and I walked to his truck and he continued to say f— you and called me an idiot several time. Twice I had to wipe his spit out of my face as he continued to use foul language and yelling the whole time. At one point I feel he actually spit in my face, but my head was slightly turned, and I was looking away, but I had to wipe his spit off the side of my face.

STEVE LINDSEY JR.

I told Jeff to calm down. He then flipped me off (obscene hand gesture) and got about an inch from my face and screamed f___ you! At that point I told Jeff that he was fired for insubordination.

Scott said that he over ruled me and that Jeff was not fired and asked me and Jeff both to calm down.

Jeff screamed in Scott's face f___ you! Scott then told Jeff that he was fired for insubordination and to leave the property.

Jeff persisted to scream obscenities in Scott's face and spit in his face.

JEFFREY M. MITCHELL

Steve came up and reasoned with Luther to allow me to take my own stuff out of the truck. I placed my hand tools, seat cushion, tie down straps, and piece of carpet on top of the big electrical box on the grass park strip.

Steve told Luther that if I wanted my final paycheck that I would have to come inside and sign a checklist verifying I had returned all of Link's property.

Luther told me to come inside to sign the checklist.

I had in my hands my coat, sweatshirt, water mug, and gym bag (with my wallet, sunglasses, etc.).

15:25: We walked back to the south entrance of the building, up the steps and through the door. I went from this area, a foyer between Luther and Steve's office, through a fire door and into the driver's room; I pulled my timecard from its holder and brought it back to Steve's office. I laid it on the table where Steve was sitting with the checklist ready for me to sign. This part of the building, where Luther and Steve have their offices, is apart from the area where the other employees work. The heavy wooden fire door (which is open during the day, but locked in the evening) separates their area from the area of the building that the driver's, dispatcher, and other workers, have access. There were no other people in the part of the building we were to witness what was about to take place. The three of us were in Steve's office and they told me that I could pick up my

LUTHER S. PALMER

I told Steve to prepare an exit check list for Jeff.

STEVE LINDSEY JR.

Jeff went to the truck he had been driving and took his personal belongings out of the truck.

He told us that he was not leaving without his paycheck.

Scott told him that if he would calm down, I could prepare his exit checklist and we could pay him.

We proceeded inside the building.

JEFFREY M. MITCHELL

final paycheck in 72 hours. I told them that I thought it was more like 24 hours. I asked Steve if I could use his phone book to look up the telephone number for the Labor Commission to ask them which it be. Steve complied with my request; I started looking up the telephone number.

Luther stepped out of the room. I stopped looking up the telephone number;

I signed Steve's checklist and told Steve I was mad at him;

Luther charged into the room and grabbed me with both hands around my left arm biceps; he exclaimed "That's enough! Just get the hell out!" He squeezed as he tugged on my arm; I quickly reached down on the table and seized my timecard; he pulled me toward the building exit with Steve (pushing on me) helping him. They attempted to push me out the exit toward the half flight of stairs, but they released me after they realized I was not going to retaliate with like force. Luther, rushed in Steve's office, grabbed my coat, sweatshirt, and gym bag and rushed back to the exit door and tossed it all into the driveway below.

This kind of intense pressure and abuse from supervisors was new to me; these two people were ganging up on me. I wanted to put an end

LUTHER S. PALMER

Things had calmed down a bit, and Jeff and Steve were in Steve's office going over the check list.

I then heard Jeff from my office using foul language again.

I went in and told Jeff to leave. Jeff said f-- you. I grabbed him by his arms and forced him out the door. And pushed him down the stairs. He fought his way back and I grabbed his duffle bag and coat and threw them out the door. I asked him to leave and he would not.

STEVE LINDSEY JR.

I had to ask Jeff some questions, I can't recall which question I asked Jeff but at one point he responded "you can kiss my a__". I asked Jeff not to use that kind of language and then he proceeded to yell some obscenities in my direction.

Scott heard this and asked Jeff to leave the building. Jeff refused, Scott then grabbed him and physically forced him out the door and grabbed his belongings and threw them out after him.

JEFFREY M. MITCHELL

to Luther's rein of fury. I wanted to be done with this place and these people forever. I wanted to be where other people would see their behavior; I wanted witnesses.

I went toward the fire door to go into where the other employees were working. Luther and Steve attempted to block the way by swinging the heavy wooden fire door shut on me. I grasped the edge of the door with both hands and reopened the door, pushing both of them back. I went in to where Kent Cutler, Link accountant, was working. In this room, I could see where two secretaries were working, through a window into the dispatch room, and through another window, past the dispatch room into the warehouse.

I asked Kent to call the police for me.

When Kent saw that I was clutching my time-card he told me to hand it to him and he would take care of it for me. Luther and Steve were not pursuing me anymore; I followed Kent into the driver's room and watched as he punched my timecard out for the day; we went back in his office and he started working on my paycheck. Luther came into the room, with a persuasive leaning, to declare the police were on the way. I asked him to go out and pick up my stuff off the ground in the driveway. I followed him over and watched as he went out the door, down the steps, and picked up my scattered belongings. I hurried up and went back in to where Kent was before Luther got back up the stairs; he brought me my stuff and handed it to me.

LUTHER S. PALMER

Jeff then forced his way into Kent, Diane's, and Karen's office. Both Steve and I tried to keep him out. He kept yelling that he wanted witnesses for the abuse he was getting and he would not leave. I asked him several time to leave but he would not.

I told Steve to call the police.

STEVE LINDSEY JR.

Jeff pushed his way back in the building. Scott and I tried to tackle him to prevent him from getting into the inner office because we had no idea what he was up to. He forced his way into the office and said he was staying there until the police came.

During the scuffle the police had been called.

JEFFREY M. MITCHELL

During the time I waited in this room, Luther and Steve would take turns coming to me in an embarrassed attempt to persuade me to leave. I recall looking at the fresh bruise on my arm and telling Luther that I felt safer where the other people were. A couple of drivers peeked in during this time (I think they were looking for one or the other of them.) Of all the people who were in that building or out in the yard that day, there was not one driver, dispatcher, or other employee who offered to help Luther and Steve toss me out on my ear.

Shortly before the police did arrive, Luther started to challenge me again; he asked me to take my best shot at him, to hit him; he asked me if that is what I wanted to do. Kent and a secretary witnessed Luther issue me this challenge. I thought he was detestable.

15:55: Officer Hillam entered the room just as Kent was finishing my paycheck. The officer looked around at us as if he did not know who to speak to; Steve pointed at me. He asked me what the problem was and I told him, pointing at Luther, I wanted that person charged with an assault. He invited me to follow him outside to tell him about it. We went through the foyer between Luther and Steve's office and out the south door, where Luther had thrown my belongings into the driveway.

Two other officers, Officers Manning and Wind, pulled up in separate cars and when they came over I attempted to convince all three of them that Luther had assaulted me. I showed them my left arm where Luther had

LUTHER S. PALMER

The first officer arrived and got Jeff out of the building.

He would not talk to Jeff until he got back up. Jeff asked the officers to press charges against me for assault. The police officer told Jeff that I was within my rights to use force to remove him and they told him he could not press

STEVE LINDSEY JR.

We asked Jeff to leave several times over the next few minutes as Jeff's presence in the inner office upset many of the female employees of our company, they were not sure if he was stable or if he was going to try something such as physically assault someone in the office.

When the police came, they calmed the situation down,

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grabbed me and had left a bruise in the shape of his fingers; I explained that Luther had initiated the violence suddenly and before he told me to get out. They seemed intent on evicting me from the premises and did not want to record, or document, my complaint in any way. They told me that they were just there to restore peace and I would have to take my complaint to the city attorney's office. Officer Hiliam wrote down the officer's names and the case number: 00-27268. Officers Manning and Wind went inside.

16:25: Officer Wind came out of the office and down the steps with my final paycheck; he asked me if I would leave now; he and Officer Hiliam escorted me to my pick-up.

16:50: I arrived home and called the city attorney's office to report the incident. The man on the telephone told me to go immediately to the downtown police department and have my injuries documented with photographs.

On the way, I remembered I had left some of my belongings out on the grass park strip in front of Link when I had cleaned out #98 with Luther and Steve. I went by there to gather my belongings and was relieved to find that no one had disturbed anything I had forgotten.

17:55: I arrived at the Public Safety Building and Robert Stevens, Salt Lake City crime lab technician, documented my injuries with photographs.

19:00: I arrived at home and my wife informed

LUTHER S. PALMER

charges. The police officer then asked me if I wanted to press charges against Jeff for trespassing. I told them I did not at this time. I just wanted Jeff out of here and never to come back.

I had Kent prepare his final check that included two weeks vacation.

I gave the check to the officer to give to Jeff. The officers made sure Jeff left. They told me they would increase their patrol in this area.

Jeff did come back latter that night and was witnessed coming into the Link yard in his pick up truck. He spun around and slammed into the curb by our entrance, then he sped off and slammed into the curb in front of Roadway.

STEVE LINDSEY JR.

Jeff received his final paycheck and went home.

However, later that evening Jeff returned in his personal vehicle to spin donuts in the entrance to our driveway and slammed his truck into the curb and also the curb across the street from us.

JEFFREY M. MITCHELL

me that Luther had called earlier to speak with me. When she told him that I was not home, he asked her if she could do a better job of controlling me because he had heard that I returned to work that evening. My wife told him not to call again.

Monday, February 13, 2000 13:40: I arrived at the city attorney's office and met with Virginia Ward, Senior Assistant City Prosecutor. She told me that she had read the police report on the case and because there were no other witnesses, besides Steve, to support my claim that Luther initiated the violence that she would not file assault charges against Luther. She informed me, although, that she would have felt better about the whole thing if Luther had not been the one to initiate the violence. I asked her if I could read the police report, but she would not allow it; she told me I had to obtain my own copy.

14:15: I went to the Public Safety Building to request a copy of the police report for myself.

18:20: Luther called and told me I had known all along the load to Boise was in Link's yard before I went home on Tuesday evening. He told me it was my fault the load was not ready to go at 1:30 a.m. because I did not want to take the time to have the shop repair it before I went home that evening. This statement was idiocy; I told him not to ever call me at home again as long as he lived and I hung up on him.

Monday, February 28, 2000 Mary Ann Sperry, Salt Lake City crime lab technician, called to

LUTHER S. PALMER

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inform me the police report, with photographs, was finally ready for me to pick up.

Wednesday, March 1, 2000 I personally submitted written complaints against Link Trucking Inc. to the Labor Commission Utah Occupational Safety & Health Division, and to the U.S. Department of Transportation Federal Highway Administration.

Friday, March 3, 2000 13:45: I was in my garage when I observed Luther Palmer in his pick-up rolling very slowly by the front of my house. He was looking at the house when I made eye contact with him; but he did not stop. I felt worried at the sight of him; I went in to warn my wife what I had just seen. I decided not to tell her right then because our children were with in the room, instead I went in our bedroom to call the sheriff. While describing the situation to the sheriff's dispatcher, I observed Luther on the street behind my house; I could see him looking my direction. The dispatcher told me a deputy was on the way.

14:30: Deputy J. Timpson arrived; I described the uneasy feeling I had when I saw Luther driving by the house. He told me to call if I ever saw him do it again. He gave me case number: 00-27757.

Jeffrey M. Mitchell

LUTHER S. PALMER

I 'm sure I have left some things out, but nothing on purpose. I have tried to reconstruct the events as well as I could remember.

Luther S. Palmer

STEVE LINDSEY JR.

This account has been recollected to the best of my ability.

Steve Lindsey Jr.