

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

RON THOMAS, TERRY LIGAS,  
GEORGE ACKERSON, STEVE BOYD,  
STEVE FOSTER, KURT HUDSON,  
WILLIAM JOHNSON, BOBBY  
HAWWORTH, and VERN ZIETLOW,

Plaintiffs,

vs.

UNION PACIFIC RAILROAD  
COMPANY,

Defendant.

No. 4-99-CV-20188

**ORDER ON PLAINTIFFS' MOTION  
TO AMEND JUDGMENT**

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The court has before it Plaintiffs' Motion to Amend Judgment, (Clerk's No. 58), filed March 16, 2001. In their Motion, Plaintiffs ask the court to alter or amend, under Fed. R. Civ. P. 59(e), its judgment filed March 9, 2001, granting summary judgment to Defendant. On May 1, 2001, Defendant filed a Resistance and Memorandum (Clerk's Nos. 60 and 61). This matter is fully submitted.

**I. Background**

Plaintiffs alleged in their Amended Complaint that Defendant refused to rehire them in retaliation for Plaintiffs' complaints to the Federal Railway Administration (FRA) regarding Defendant's alleged failure to comply with FRA guidelines and regulations pertaining to maintenance and safety of railroad cars and equipment. Plaintiffs brought their claim under Iowa's public-policy exception to the general rule that an employee at will may

be terminated for any reason or for no reason at all. *See Graham v. Contract Transp., Inc.*, 220 F.3d 910, 912 (8th Cir. 2000) (citing Iowa cases).

Iowa courts recognize a cause of action for discharge of an employee in violation of public policy, when the discharge is in retaliation for performing an important and socially desirable act, exercising a statutory right, or refusing to commit an unlawful act. *Borschel v. City of Perry*, 512 N.W.2d 565, 567 (Iowa 1994). To be actionable, the discharge must have been in violation of a clearly expressed public policy. *Id.* Plaintiffs claimed the failure to rehire them because of their whistleblowing violated the public policy expressed in Iowa Code §§ 70A.28 and 70.29, and 49 U.S.C. § 20109(a) (transferred from 45 U.S.C. § 441(a) in 1994).

The court determined that even if Iowa courts would provide a cause of action for wrongful failure to rehire<sup>1</sup>, Plaintiffs' claims were not within reach of Iowa Code §§ 70A.28 and 70.29, which protect public employees from retaliatory discharge when they report violations of law to public officials, because Plaintiffs were not public employees. *See Smuck v. National Management Corp.*, 540 N.W.2d 669, 672 (Iowa Ct. App. 1995). The court further held that 49 U.S.C. § 20109(a)(1)'s remedy did not apply to Plaintiffs. The statute prohibits a railroad carrier from discharging or discriminating against an employee because the employee has filed a complaint, or caused to be brought a proceeding, related to railroad safety. *See* 49 U.S.C. § 20109(a)(1). Because the statute itself provides a remedy, and because Plaintiffs were not “employees” as defined by the statute when their claims arose, the court held that the statute could not serve as an appropriate source for the state public policy underlying Plaintiffs' claims. *See Thompto v. Coborn's Inc.*, 871 F. Supp. 1097, 1121 (N.D. Iowa 1994); *Smuck*, 540 N.W.2d at 672; 49 U.S.C. § 20109(c); 45 U.S.C.

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<sup>1</sup> Because of its ruling, the court found it unnecessary to decide whether Iowa courts would provide such a cause of action. *See McMahon v. Mid-America Constr. Co. of Iowa*, No. 99-1741, 2000 WL 1587952 (Iowa Ct. App. Oct. 25, 2000).

§ 151 (Fifth). The court held that no genuine issue existed as to any material fact, and that Defendant was entitled to summary judgment on Plaintiffs' claims of refusal to rehire based on a violation of public policy.

In their present Motion, Plaintiffs ask the court to find that Iowa Code § 730.2 provides a public policy basis for their claims, and to amend the March 9, 2001, Order to deny Defendant's Motion for Summary Judgment.

In resistance, Defendant argues that (1) Plaintiffs' argument is untimely, because a Rule 59(e) motion cannot be used to raise a new legal theory; and (2) § 730.2 is inapplicable, because it prohibits a former employer from blacklisting an employee with a potential future employer, not with the former employer.

## **II. Discussion**

### **A. Raising new Legal Theory in Motion to Amend Judgment**

A party cannot use a Rule 59(e) motion to alter or amend judgment "to raise arguments which could have been raised prior to the issuance of judgment." *Concordia College Corp. v. W.R. Grace & Co.*, 999 F.2d 326, 330 (8th Cir. 1993) (quoting *Hagerman v. Yukon Energy Corp.*, 839 F.2d 407, 413 (8th Cir. 1988)); *In re General Motors Corp. Anti-Lock Brake Prods. Liab. Litig.*, 174 F.R.D. 444, 446 (E.D. Mo. 1997); see *Davidson & Schaaff, Inc. v. Liberty Nat'l Fire Ins. Co.*, 69 F.3d 868, 871 (8th Cir. 1995). Nor can a Rule 59(e) motion be used to introduce new evidence or new legal theories that could have been adduced during the pendency of the motion for summary judgment. *Concordia*, 999 F.2d at 330.

Here, Plaintiffs could have advanced their legal theory and argument concerning Iowa Code § 730.2 before the judgment. They were on notice that the statute would be relevant in response to the motion for summary judgment. *See id.* Because Plaintiffs have failed to advance any argument or legal theory that could not have been made before the judgment,

the court denies their Rule 59(e) motion.

**B. Applicability of Section 730.2**

Alternatively, the court holds that § 730.2 does not provide a basis for a public-policy exception in this case.

Iowa's blacklisting law is codified in Iowa Code § 730.1 *et seq.* *Glenn v. Diabetes Treatment Centers of America, Inc.*, 116 F. Supp. 2d 1098, 1100, 1103-04 (S.D. Iowa 2000) (analyzing §§ 730.1 and 730.2); *see French v. Foods, Inc.*, 495 N.W.2d 768, 772 (Iowa 1993) (analyzing § 730.3); 48 Am.Jur.2d *Labor and Labor Relations* § 669 at 422 (listing state statutory provisions). Section 730.1 is a criminal statute, and § 730.2 provides a civil remedy for damages. *Glenn*, 116 F. Supp. 2d at 1104. The law was enacted in 1888, codified in McClain's Code 1888 at §§ 5429-30, and has been amended little since. *Glenn*, 116 F. Supp. 2d at 1103. The statutory provisions must be considered together. *Id.*; *see Somers v. City of Minneapolis*, 245 F.3d 782, 787 (8th Cir. 2001) (stating that two provisions were part of same recodification and should be read, if possible, as in harmony with each other); *Ragsdale v. Wolverine Worldwide, Inc.*, 218 F.3d 933, 936 (8th Cir. 2000) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.") (quoting *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988)), *petition for cert. filed* (U.S. Sept. 5, 2000) (No. 00-6029).

Iowa Code § 730.2, on which Plaintiffs rely, states as follows:

730.2 Blacklisting employees--treble damages.

If any railway company or other company, partnership, or corporation shall authorize or allow any of its or their agents to blacklist any discharged employee, or attempt by word or writing or any other means whatever to prevent such discharged employee, or any employee who may have voluntarily left said company's service, from obtaining employment with any other person or company, except as provided for in section 730.1, such company or copartnership shall be liable in treble damages to such employee so prevented

from obtaining employment.

Iowa Code § 730.2. Section 730.2 refers to § 730.1, which provides as follows:

730.1 Punishment.

If any person, agent, company, or corporation, after having discharged any employee from service, shall prevent or attempt to prevent, by word or writing of any kind, such discharged employee from obtaining employment with any other person, company, or corporation, except by furnishing in writing on request a truthful statement as to the cause of the person's discharge, such person, agent, company, or corporation shall be guilty of a serious misdemeanor and shall be liable for all damages sustained by any such person.

Iowa Code § 730.1.

Both provisions deal with preventing, or attempting to prevent, a former employee from getting employment with “any other” employer. Iowa Code §§ 730.1-.2. Section 730.2's reference to “except as provided for in section 730.1,” concerns § 730.1's exception for “furnishing in writing on request a truthful statement as to the cause of the person’s discharge.” Iowa Code §§ 730.1-.2. If, as Plaintiffs argue, § 730.2 applies to a former employer’s preventing a former employee from getting a job either with another employer or with the former employer, then § 730.1's exception for furnishing on request a written statement about the cause of discharge means a former employer could request from itself a statement as to the cause of its former employee’s discharge. This construction, however, makes no sense. *See Johnson v. United States*, 529 U.S. 694, 707 (2000) (“[N]othing is better settled, than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and if possible, so as to avoid an unjust or an absurd conclusion”) (quoting *In re Chapman*, 166 U.S. 661, 667 (1897)); *United States v. Armstrong*, 186 F.3d 1055, 1063 (8th Cir. 1999) (stating a statute should be construed to make sense) (quoting *Griffin v. Oceanic Contractors*, 458 U.S. 564, 575 (1982)), *cert. denied*, 529 U.S. 1018 (2000), *and cert. denied*, 529 U.S. 1033 (2000).

In analyzing a related provision in chapter 730, the Iowa Supreme Court stated: “It

appears . . . [§ 730.3] involves blacklisting an employee with a potential future employer, and that is not the case here.” *French*, 495 N.W.2d at 772 (Iowa 1993) (holding discharge of grocery store employee for violating rule against eating food without paying did not violate blacklisting statute, § 730.3, when all communication regarding pilferage were limited to grocery store and its private investigator).

Sections 730.1 and 730.2 focus on the former employer’s interference with the former employee’s attempts to get a job with another employer. In this context, and reading §§ 730.1 and 730.2 in harmony with each other, the court holds that the statutory term “blacklist” refers to the former employer’s actions with regard to future prospective employers and not the former employer itself. *Cf. Glen*, 116 F. Supp. 2d at 1103-04 (stating elements a plaintiff must prove in civil action for blacklisting in Iowa; second element is “thereafter, by word, writing or other means the defendant prevented or attempted to prevent the plaintiff from obtaining *other* employment”) (emphasis added); 48 Am.Jur.2d *Labor and Labor Relations* § 669 at 422 (“Blacklisting occurs when the name of any discharged employee or any employee who has voluntarily left the service of an employer is placed on a list which is then published with the intent of preventing the employee from securing employment *elsewhere*.”) (emphasis added); *see generally Ahmed v. United States*, 147 F.3d 791, 797 (8th Cir. 1998) (holding statutory term “taxpayer” referred only to employers and not employees, when statute’s focus was on taxpayer’s treatment of the taxpayer’s employees).<sup>2</sup>

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<sup>2</sup> The court notes that § 730.2 consists of a single sentence comprising several elements separated by commas and coordinating conjunctions. The elements are not parallel in form, and therefore the relationship the legislature intended between the elements is hard to see. *See* ANDREA LUNSFORD & ROBERT CONNORS, *THE ST. MARTIN’S HANDBOOK* 319 (1989). The term “blacklist” appears in a clause (“If any railway company or other company . . . shall authorize . . . agents to blacklist any discharged employee”) separated by a comma (continued...)

The court holds, therefore, that § 730.2 cannot serve as an appropriate source for the state public policy supporting Plaintiffs' claim of wrongful refusal to rehire.

#### IV. CONCLUSION

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<sup>2</sup>(...continued)

and the coordinating conjunction “or” from the following phrases and clauses: “attempt by word or writing . . . to prevent such discharged employee, or any employee who may have voluntarily left said company’s service, from obtaining employment with any other person or company . . . .” Iowa Code § 730.2. As a verb, “blacklist” is defined as follows: “Blacklist, vb. To put the name of (a person) on a list of those who are to be boycotted or punished <the firm blacklisted the former employee>.” BLACK’S LAW DICTIONARY 163 (7th ed. 1999). Black’s Law Dictionary, 7th edition, does not define the term as a noun. The dictionary’s 6th edition contains the following definition of “blacklist”:

A list of persons marked out for special avoidance, antagonism, or enmity *on the part of those who prepare the list* or those among whom it is intended to circulate; as where a trades-union "blacklists" workmen who refuse to conform to its rules, or where a list of insolvent or untrustworthy persons is published by a commercial agency or mercantile association. Such practices are prohibited by statute in most states.

BLACK’S LAW DICTIONARY 170 (6th ed. 1990) (emphasis added). Under these definitions and § 730.2's sentence structure, an inference might be drawn that the term “blacklist” as used in the section could include a former employer’s attempts to prevent a discharged employee from getting a job with the former employer, in contrast to the phrases, “or attempt by word or writing . . . to prevent . . . from obtaining employment with any other person or company,” which seem to apply only to former employers trying to prevent employees from getting a job with another company. *See* Iowa Code § 730.2.

This analysis, however, even if the court were to find it persuasive, would not win the day for Plaintiffs. The phrase, “or any employee who may have voluntarily left said company’s service,” which applies to Plaintiffs’ status, appears in the middle of, and thus seems to modify, the element, “or attempt by word or writing . . . to prevent such discharged employee . . . from obtaining employment with any other person or company,” rather than the element containing the term “blacklist.” *See id.* Thus, even if the term “blacklist” included a former employer trying to prevent discharged employees from getting jobs with the former employer, Plaintiffs, who were not discharged but voluntarily resigned, would not be included in the scope of the blacklist prohibition.

Plaintiffs cannot use a Rule 59(e) motion to raise their new legal theory and argument, which they could have raised prior to the issuance of judgment, and Iowa Code § 730.2 cannot serve as a source for the state public policy underlying Plaintiffs' claim, because the statute prohibits a former employer from preventing an employee who voluntarily quit from getting a job with a future employer, not with the former employer, which is the claim here.

For these reasons, the court **denies** Plaintiffs' Motion to Amend Judgment (Clerk's No. 58).

IT IS SO ORDERED.

Dated this 23rd day of May, 2001.



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CELESTE F. BREMER  
UNITED STATES MAGISTRATE JUDGE