

1979 WL 43122 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 22, 1979

***1 RE: State Employee Grievances**

Dr. Jack S. Mullins
Director
Budget and Control Board
Personnel Division
Post Office Box 12547
Columbia, South Carolina 29211

Dear Dr. Mullins:

You have asked this Office for its opinion as to whether a state employee who tendered a letter of resignation to his employer after the employer had given him official notice of his termination, may present a grievance concerning a wrongful dismissal to the State Employee Grievance Committee. It is the opinion of this Office that such an employee may go forward with his grievance.

The State Employee Grievance Act expressly states that an employee may grieve a dismissal.

[G]rievances may include, but are not necessarily limited to, dismissals, suspensions, involuntary transfers, lay-offs, reductions in pay and demotions. (Emphasis added). 1976, Code of Laws of South Carolina as amended, § 8-17-20.

Thus, once an employee is notified that he will be dismissed, he has a right to grieve, and a subsequent resignation does not void the appeal.

If an employee resigns after being notified that his employment will terminate but before the effective date of his termination, it can be said that the employee has been constructively discharged. A constructive discharge occurs when an employer deliberately makes an employee's working conditions so intolerable as to force the employee to resign. See [Alicia Rosado v. Garcia Santiago](#), 562 F.2d 114, 119 (1st Cir. 1977); [Muller v. United States Steel Corp.](#), 509 F.2d 923, 929 (10th Cir. 1975); [Young v. Southwestern Savings and Loan Ass'n](#), 509 F.2d 140, 144 (5th Cir. 1975); [J. P. Stevens & Co., Inc. v. N.L.R.B.](#), 461 F.2d 490, 494 (4th Cir. 1972) and [Slotkin v. Human Development Corp. of Metropolitan St. Louis](#), 454 F.Supp. 250, 255 (E.D.Mo. 1978).

In [Alicia](#) the plaintiff was a public employee who was transferred involuntarily after he exercised his First Amendment right to free speech. The plaintiff refused to accept the transfer and to work in the newly assigned location. The Court said: Before a 'constructive discharge' may be found, entitling the employee to quit working altogether rather than accepting a transfer which he thinks is violative of his constitutional rights, the trier of fact must be satisfied that the new working conditions would have been so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign. The standard to be applied is comparable to the doctrine of avoidable consequences which is applicable to situations where a public employee has been unlawfully discharged. (Cite omitted). According to this doctrine, damages are not recoverable for harm that a wrongfully discharged employee could have foreseen and avoided by reasonable effort. Restatement of Contracts § 336 (1932). The employee cannot recover damages for losses that he could have avoided without risk of substantial loss or injury. Where a large loss could have been avoided by the expenditure of a relatively small amount of time, effort, and money, damages for that loss are not recoverable. 5 Corbin

on Contracts § 1042 at 268 (1964). . . . [A] wrongfully discharged employee must use 'honest, earnest and intelligent efforts' to mitigate his losses . . .

*2 It is the opinion of this Office that an employee is constructively discharged if he tenders a resignation as the result of being informed that his employment will be terminated. Such an employee is entitled to present a grievance to the State Employee Grievance Committee.

Sincerely,

Barbara J. Hamilton
State Attorney

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