COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of	)	
Jose Juan C. Reyes,	)	L.C. No. 16-001(T)
Complainant,	)	ADMINISTRATIVE ORDER
v.	)	
Bridge Investment Group LLC,	)	
Respondent.	)	
	)	

This labor case came on for hearing on August 30 and October 19, 2016, in the Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. The parties testified via a Skype internet connection from Tinian to the Hearing Officer who was in the Administrative Hearing Office in Saipan.

Complainant Jose Juan C. Reyes appeared without counsel. Respondent Bridge Investment Group LLC appeared through its Human Resources Assistant, Wayne Sanchez, and its legal counsel, Joaquin Dlg. Torres. The Tinian Labor Office appeared through investigator Ramona Cabrera-Viches. The following individuals testified as witnesses: Ray Pangelinan, Romeo A. Diaz, Faruk Jahir, Vincent Cing and Steve Mendiola. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

INTRODUCTION

Beginning in July 2015, Complainant Jose Juan C. Reyes ("Employee") was hired by Respondent Bridge Investment Group LLC ("Employer") without a contract for an indefinite period. Employee worked for Employer as a heavy equipment operator from July 2015 until February 19, 2016. Employee's supervisor was Joe Villagomez; Mr. Villagomez reported to the Construction Site Supervisor, Romeo A. Diaz. During certain months of his employment, Employee worked with co-worker, Faruk Jahir, at a construction site in Tinian.

During his employment, Employee never received any written performance reviews, warnings or suspensions. Until his termination, Employee believed he was getting along well with his supervisor and co-workers. [Test. of Mr. Reyes.]

On February 19, 2016, Employer's Security Chief, Ray Pangelinan, approached Employee as he was ending his day shift and handed him a sealed envelope. The envelope contained a Memorandum from his supervisor, Joe Villagomez, notifying Employee that he was being terminated immediately from the company for violating numerous work rules and policies. The Memorandum stated no facts specifying how or when Employee had committed these alleged violations of company rules. Employee claimed that when Mr. Pangelinan gave him the letter, he told him that he was being terminated because of an incident resulting in a "dump truck tail light being broken." [Handwritten Complaint, entered into evidence as Hearing Exhibit A.]

On April 22, 2016, Employee filed a labor complaint against Employer for wrongful termination. In his Complaint, Employee alleged that he had been terminated without notice and for no valid reason, and that Employer had failed to follow its own internal grievance procedures in terminating him. *Id.*

The Employer's Investigation

In early February 2016, Construction Site Manager Romeo ("Rem") Diaz decided to review Employee's on-the-job conduct. Mr. Diaz testified that he had heard negative rumors about Employee and wanted to determine if the rumors were true. Diaz instructed Security Chief Ray Pangelinan to conduct an internal investigation of Employee's conduct. [Testimony of Mr. Diaz.]

Mr. Pangelinan conducted his investigation of Employee by gathering four of Employee's co-workers (Joe Villagomez, Vincent Cing, Rino Reyes and Faruk Jahir) into one room; Pangelinan then spent about ten minutes asking them questions regarding several incidents that had been reported to him regarding Employee. Pangelinan recorded his group interview with these four co-workers, and later had his staff transcribe the tape and prepare a written transcript of the interview. [A copy of the transcribed questions and answers was entered into evidence at Hearing Exhibit F.] [Note: the Hearing Officer rejects these transcripts as being inherently unreliable and having no probative value.[1]]

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[1] At Hearing, Employer offered into evidence transcripts of the investigator's interviews with Employee's co-workers as well as his post-termination interview with Employee (see Hearing Exhibits F and R, respectively). The Hearing Officer finds these transcripts to be incomplete and incoherent, in large part, due to gaps in the "testimony" in which the transcriber could not decipher what had been said. As a result of these deficiencies, the Hearing Officer concludes that this evidence has no probative value except to show that an interview occurred.

After conducting the interview with Employee's co-workers, Mr. Pangelinan concluded that Employee had violated numerous work rules and provisions of the Employee Handbook. At that point, Pangelinan drafted a Memorandum for Mr. Villagomez's signature, recommending that Employee be terminated. [A copy of the Memorandum (hereinafter, "Termination Memo"), dated February 19, 2016, was entered into evidence as Hearing Exhibit B.]

During his investigation, investigator Pangelinan never gave Employee notice of the allegations against him, nor an opportunity for Employee to give his own version of facts in his defense. [Note: Mr. Pangelinan did interview Employee by telephone, but that interview took place *after* Employee had been terminated.]

At Hearing, investigator Pangelinan filled in the gaps in the Termination Memo by explaining why he had concluded that Employee had violated company rules. Mr. Pangelinan cited two specific instances in which Employee engaged in misconduct. The **first incident** occurred on December 28, 2015. Faruk was operating a front-end loader when he brushed into a fence and bent some piping on the loader. The **second incident** occurred on January 8, 2016. Employee and Faruk were operating as a team with Faruk driving a dump truck and Employee working as a spotter. As Faruk backed up the truck, a branch hit the back tail-light and broke it. [Testimony of Mr. Pangelinan.]

Mr. Pangelinan testified that Faruk told him that he (Faruk) had wanted to make a report about these incidents, but Employee had not wanted to report it. Faruk claimed that Employee said, "You have to listen to me. I am the boss." Faruk told the investigator that he felt harassed by Employee on several occasions. *Id.*

Based on his interview with Faruk, Mr. Pangelinan concluded that Employee had violated several company rules: (1) Employee (and Faruk) had failed to protect company property; (2) Employee had failed to report damage to company property that occurred on 12/28/2015 and 1/08/2016; and (3) Employee had harassed and intimidated his co-worker. At that point, Pangelinan drafted the Termination Memo (Ex. B) that recommended termination of Employee for violating various company rules.[2]

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[2] The Employee Handbook in this case gives Employer a wide variety of options in disciplining employees. Similar conduct on the part of an employee may justify differing outcomes - from progressive discipline (verbal or written warnings and/or temporary suspension) to immediate dismissal. [See Handbook at Hearing Exhibit K; see discussion on pages 6-7.]

Petition: A Petition was produced by Employer during the case investigation, signed by 10 company employees, including Employee's supervisor, Joe Villagomez. [A copy of this petition was entered into evidence as Hearing Exhibit J.] The petition stated: "We the employees of Bridge Investment Group and Supervisors wants a cohesive and collegial work group. Therefore,... [w]e ask that this individual operator Joe John C. Reyes be transfer, release or terminated due to numerous misconduct." The Petition accused Employee of lacking any sense of teamwork, only thinking of himself rather than the group, threatening other employees, failing to attend morning briefings with his peers, refusing to follow orders most of the time, failing to conduct preventative maintenance on the vehicles he uses, lacking integrity or "personal courage" and having the attitude that he is "better than everyone." *Id.* The evidence did not establish who was the primary author of the Petition, when it was drafted or to whom it was distributed. Mr. Pangelinan testified that the Petition had been forwarded to company CEO Phillip Long after Employee was terminated. It is not clear whether Rem Diaz considered the Petition at the time he made his decision to terminate Employee.

Memorandum Re Employee's Inappropriate Conduct ("Memo"), dated 2/19/2016, from Supervisor Joe Villagomez to "Corporate Executive Officer." On February 19, 2016, the same day as Employee's termination, Employee's supervisor, Joe Villagomez, submitted a Memo to Construction Site Manager Rem Diaz regarding the subject of "Inappropriate Conduct of Mr. Joe John C. Reyes.". [A copy of the Memorandum (hereinafter, "Memo") was entered into evidence as Hearing Ex. E.] The Memo, which recommended "transfer or termination" of Employee, was clearly based on the Petition (Hearing Ex. J), as it gave nearly the identical reasons as were cited in the Petition, such as Employee's arrogance, his demanding attitude, his angry and defiant attitude, his lack of teamwork, his verbal threats to his co-workers, his failure to attend weekly briefings with other employees and his failure to assist company mechanics with preventative maintenance of the equipment. *Id.* Again, it is not clear to what extent this Memo influenced Rem Diaz's decision to terminate Employee.

Termination Memorandum: On February 19, 2016, the same date as the above-noted Memo, Mr. Pangelinan prepared a Termination Memo (Hearing Exhibit B) for Mr. Villagomez's signature. The Termination Memo stated that Employee was being terminated for committing multiple violations of the Handbook, including: (1) six violations of work rules subject to progressive discipline, (2) six violations of the BIG general work rules (3) three work rules subject to instant dismissal, and

six violations of the General Work Rules (Hearing Ex. L).[3] As noted earlier, the

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[3] **Six violations taken from "General Work Rules**," a one-page list of 18 (unnumbered) rules that pre-dated the Employee Handbook. The six rules cited (attached to Hearing Exhibit B and submitted in a slightly different form at Hearing Exhibit L) were highlighted on the page given to Employee. These included:
(6) Neglect of duty and in subordination will not be tolerated.
(7) Employees must take all practicable steps to perform the job in a way that is safe and healthy for themselves and their co-workers. Physical violence, verbal abuse, inappropriate or indecent conduct and behavior are prohibited.
(12) Employees shall not falsify or submit inaccurate or untruthful information on any client records, work reports, employee records, or other official documents.
(13) Not taking proper care of, neglecting or abusing company equipment and tools is prohibited.
(14) The removal or destruction of Company property, documents, and/or other equipment or material, including client property or records, from work sites without authorization is prohibited.
(18) Employees shall immediately report alleged violations of existing work rules, policies, procedures or regulations to a supervisor.

Six Violations of Work Rules subject to Progressive Discipline:

Rule no. 2:	Misuse, or unauthorized use, of employer's property;
Rule no. 14:	Displaying an attitude towards a...supervisor, or fellow employee... detrimental to the company's...work to be performed.
Rule no. 3:	Carelessness whereby work has not been performed to the required standard.
Rule no. 18:	Breakage...due to negligence.
Rule no. 37:	Swearing or the use of profane language in the presence of...guests or other staff.

Six Violations of BIG General Work Rules:

Bullet no. 6:	Neglect of duty and insubordination will not be tolerated.
Bullet no. 7:	Employees must take all practicable steps to perform the job in a way that is safe and healthy for themselves and their co-workers. Physical violence, verbal abuse, inappropriate or indecent conduct and behavior are prohibited.
Bullet no. 12:	Employees shall not falsify or submit inaccurate or untruthful information on any client records, work reports, employee records or other official documents.
Bullet no. 13:	Not taking proper care of, neglecting, or abusing company equipment and tools is prohibited.
Bullet no. 14:	The removal or destruction of company property, documents, and/or other equipment or material, including client property or records, from work sites without authorization is prohibited.
Bullet no. 18:	Employees shall immediately report alleged violations of existing work rules, policies, procedures or regulations to a supervisor.

Three Violations of BIG Employee Handbook Working Draft – Instant Dismissal:

Internal no. 6:	Intimidating or threatening other employees of the Company.
Internal no. 11:	Any willful or deliberate act which adversely affects the quality or productivity, or causes...damage or harm to...equipment or property.
Internal no. 14:	Falsification or being a party to the falsification of any company...record, (including) accidents.

Termination Memo did not set forth any *facts* describing Employee's conduct which led to Employer's finding that Employee had violated these work rules.

Upon receiving one or both of the above-noted memoranda from Security Chief Pangelinan, Construction Site Supervisor Rem Diaz concluded that Employee's conduct was unacceptable and that immediate termination of Employee was justified. [Testimony of Mr. Diaz.] Mr. Diaz then instructed Mr. Villagomez to sign the Termination Memo and told Mr. Pangelinan to deliver it to Employee. *Id.*

On February 19, 2016, Mr. Pangelinan approached Employee as he was ending his shift and handed him the envelope containing the Termination Memo that informed Employee he was being immediately terminated for violating Employer's work rules and policies. [Testimony of Messrs. Reyes and Pangelinan; Hearing Ex. B.]

About one week after he was terminated, Employee contacted Employer's CEO, Phillip Long, to complain about his sudden termination. In response, the CEO instructed Mr. Pangelinan to contact Employee and interview him about his conduct that led to the termination. Pangelinan then interviewed Employee by telephone, but did not change his mind about the decision to terminate. [Test. of Mr. Pangelinan.] As stated earlier, Employer submitted a purported transcript of the interview at Hearing Exhibit R, but the Hearing Officer finds that the transcript is incomplete and unreliable and thus, has no probative value. [See fn. 1 at p. 2.]

Employee Handbook: Given that the Termination Memo (Ex. B) cited portions of the Employee Handbook, it is worth reciting facts concerning this document. When Employee was hired in July 2015, Employer showed Employee only a one-page list, entitled "General Work Rules" (Hearing Ex. L) and instructed him that his employment would be subject to these rules. [Testimony of Mr. Sanchez.]

On about December 22, 2015, Employer's management team finalized a Draft Employee Handbook that outlined general work rules that all employees were expected to follow during their employment. [Testimony of Mr. Sanchez. A copy of the Draft Employee Handbook ("Handbook") was entered into evidence as Hearing Exhibit K.] In December 2015, Employer's management team informed company employees that the terms of the Handbook applied to every employee and that each employee would be required to comply with these rules. *Id.*

Employer claims it distributed copies of the Handbook to all employees by posting the handbook on bulletin boards in every division of the company. [Testimony of Mr. Sanchez.] Employee testified that he never received or saw a copy of the

Handbook and never attended any meeting in which the Handbook was discussed. [Testimony of Mr. Reyes.] No sign-up sheet was prepared to document which employees received copies of the Handbook.

The Handbook sets forth dozens of company rules and policies which, if violated, could lead to different types of discipline, ranging from a warning to temporary suspension to immediate dismissal. In particular, the Handbook states that "violation on any provision of this handbook and violation of any company policy may lead to termination of employment." *Id.* at p. 16. The section entitled, "Instant Dismissal" states that "[t]he Company may dismiss a worker without further notice for serious misconduct at work or on your personal time. Acts constituting serious misconduct are set forth [in the Handbook]." *Id.* at p. 14.

CONCLUSIONS OF LAW

I. The Investigation Was Conducted In Good Faith But Was Flawed.

Employer began its investigation of Employee in a reasonable manner, assigning an experienced staff to conduct the investigation by interviewing co-workers to determine whether Employee had violated company rules.

The evidence establishes that the investigation was conducted in good faith. First, the investigation was begun at the request of Project Supervisor Romeo Diaz, who testified that he had begun to hear rumors about certain alleged misconduct by Employee.[4] Mr. Diaz chose Employer's Security Chief, Ray Pangelinan, who had prior experience conducting internal investigations. Once assigned the task, Mr. Pangelinan acted reasonably by interviewing four co-workers who had worked with Employee and witnessed his conduct.

Mr. Pangelinan recorded the interviewees' responses so that he could create a written transcript. He reached his conclusions based on the group interviews he conducted. For some unknown reason, the Termination Memo never mentioned the Petition (Hearing Ex. J), submitted by Employee's co-workers, which severely criticized Employee's work attitudes and practices. Instead, the Termination Memo listed a series of company rules that Employer claimed had been violated, but the Memo failed to specify what conduct of Employee's led to that conclusion.

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[4] After an incident on January 8, 2016, Faruk told his co-worker, Vincent Cing about it. Cing then reported it to supervisor Joe Villagomez, who reported it to Romeo Diaz. Mr. Diaz then instructed Mr. Pangelinan to investigate the matter by interviewing witnesses. [Testimony of Mr. Pangelinan.]

As stated earlier, Mr. Pangelinan testified that he had focused on two incidences that occurred on December 28, 2015, and January 8, 2016. Those incidences involved damage to company property and an allegation that Employee failed to report the damage that occurred during his shift.

Although the investigation was done in good faith, it was flawed in several important respects. First, the investigator chose a questionable method of talking to all four co-workers together in a room and asking them to talk about Employee. A better practice would have been to interview each co-worker separately where the employee could give information privately to the investigator without being affected by their neighbor's responses.

Second, the Termination Memo listed many company rules that were allegedly violated by Employee; yet it failed to list any *facts* upon which Employer based its conclusions that the rules were violated. Thus, Employee had no way of knowing what specific conduct on his part had led to his termination.

Third, although Employer downplayed the significance of the Petition from Employee's coworkers, the Hearing Officer finds it likely that the Petition (Ex. J) and the Memo re Inappropriate Conduct (Ex. E), influenced management's decision to terminate Employee. Both documents asserted that Employee was deeply unpopular with his co-workers and that he was a source of discord within the Employer's construction project. However, the Termination Memo made no mention of either the Petition or the Memo re Inappropriate Conduct. Likewise, Employer's management, in testifying at Hearing, did not discuss the effect of either document. Despite Employer's silence on the matter, it is difficult to believe that these documents did not play an important role in the decision to terminate this Employee. [5]

Fourth, the Hearing Officer notes that certain Incident Reports produced by Employer during the investigation contradict Employer's assertion that these incidents were *never* reported by Employee or Faruk. [6] Pangelinan testified that

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[5] The Hearing Officer's inquiry was seriously hampered by the failure of Supervisor Joe Villagomez to appear and testify. Even though Mr. Villagomez signed the Termination Memo, Employer did not produce this witness to testify at the first hearing session. After the first hearing, Mr. Villagomez left his employment with Respondent and exited the CNMI. Last minute attempts to compel him to testify before departing, were not successful. As a result, we were deprived of testimony from one of the persons most knowledgeable about the events that led to Employee's termination.

[6] (1) Employee's supervisor, Joe Villagomez, wrote an incident report stating that Faruk had informed

"no reports" had been submitted by Employee or Faruk, but that statement is not correct, based on the reports in evidence. Pangelinan also maintained at hearing that these written reports were submitted by Employee and Faruk well after the events in question; however, this assertion was never proven and the documents, themselves, are dated 1/08/16 and 1/11/16, which is on or shortly after the events in question.

Finally, *Employer never interviewed Employee before the termination* to give him notice of the charges against him and a meaningful opportunity to respond to those charges prior to his termination.[7] It was only after Employee had been terminated that Mr. Pangelinan conducted a detailed interview with Employee to receive his version of events. Employer's failure to provide Employee with notice of charges and an opportunity to respond to those charges – both fundamental common law principles of due process - calls into question the fairness of Employer's decision to terminate Employee.

Even though Employer's investigation was flawed, and its conclusions – that Employee failed to protect company property and intimidated one co-worker – were somewhat questionable, the central issue of the case remains whether Employer was legally entitled to terminate Employee, an at-will employee, without cause. If so, the wrongful termination charge must fail as a matter of law.

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him that on January 8, 2016, that the dump truck tail light had been broken by a piece of plywood that "slid down the bucket" as Faruk was operating it. Villagomez said he had told Faruk and Employee to submit a written report about the broken tail light.

(2) Faruk submitted an Employee Incident Report, dated 1/08/16, giving the same information about the broken tail light as he had told supervisor Villagomez.

(3) Employee submitted an Employee Incident Report, dated 1/11/16, regarding this incident on 1/08/16, stating that he witnessed the tail light breaking while the driver was unloading the truck. [Note: Copies of all four reports were entered collectively as Hearing Exhibit D.]

[7] Mr. Pangelinan testified that during his initial investigation, he had spoken briefly to Employee about the two incidents and that Employee had denied everything. Employee testified that he had never been questioned by Pangelinan until after his termination. The Hearing Officer finds Employee's testimony on this issue to be more credible than that of Mr. Pangelinan.

II. Complainant Was An At-Will Employee Who Could Be Terminated With Or Without Cause, Unless A Recognized Exception Applied.

Complainant's employment in this case is properly termed "at-will" employment. Under American common law that developed in the late 19th century, employment of unspecified duration that is begun without a written contract is considered "at-will" employment.[8]

The general rule is that an at-will employee may be terminated at any time, with or without cause. However, this rule is subject to certain exceptions. The American common law doctrine of "at-will" employment appears to have been addressed in only one reported decision in the CNMI: *Shiprit v. STS Enterprises, Inc.*, CV99-0490, issued by Judge Lizama on 12/13/99. In that case, the Court analyzed the "at will" doctrine in the context of granting Defendant's Motion to Dismiss the case on procedural grounds. In its analysis, the Court noted that there are three general exceptions to the rule that at-will employees may be terminated at any time, with or without cause:

> First, the **public policy exception** to the at-will doctrine permits an at-will employee to recover for wrongful discharge upon a finding that the employer's conduct undermined an important public policy. Second, an exception based on contract law allows an at-will employee to recover for wrongful discharge upon proof of an **implied-in-fact promise of employment for a specific duration**. Such an implied-in-fact promise can be found in the circumstances surrounding the employment relationship, including assurances of job security in company personnel manuals or memoranda. Third, courts have found an **implied-in-law covenant of good faith and fair dealing** in employment contracts and have held employers liable in both contract and tort for breach of this covenant.

Shiprit [*citing Huey v. Honeywell, Inc.*, 82 F.3d 327. 330-331 (9th Cir. 1996)].

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[8] "The concept of employment-at-will emerged in the United States as a complement to laissez-faire capitalism. By the late 1880's, at-will had replaced the traditional presumption...with the individualist conception that indefinite hirings are terminable at the discretion of either party [citations omitted]." James J. Brudney, *Reluctance and Remorse: The Covenant of Good Faith and Fair Dealing In American Employment Law*, 32 Comp. Lab. L. and Policy J. 774-775 2010-2011 [hereinafter Brudney, *Reluctance and Remorse*].

III. Complainant's Termination Does Not Fit Within Any Recognized Exception To The General Rule That An At-Will Employee May Be Terminated With or Without Cause.

Given that this was at-will employment, Employee's wrongful termination claim must fail unless he proves that he fits one of the exceptions to at-will employment. As noted in *Shiprit, supra,* the only CNMI decision to address the matter, courts have found there to be three exceptions to the general rule that the employer may terminate an at-will employee for any reason, with or without cause. These potential exceptions are: (1) termination in violation of a fundamental public policy, (2) termination as a breach of an implied-in-fact promise of continued employment, or (3) termination as a breach of the implied covenant of good faith and fair dealing.

As to the first exception, there was no allegation or evidence presented that any public policy issue was involved in this termination. The case does not present any important public policy concerns. Employee was terminated by Employer based on its conclusion that Employee had damaged company property and neglected to inform Employer, and that Employee had harassed and intimidated a co-worker. Neither of these issues involves important public policy concerns. Therefore, the public policy exception is inapplicable.

The second exception – an implied-in-fact promise of continued employment – tends to arise in terminations of long-term employees with reasonable expectations of lifetime or continuing jobs.[9] But at-will employees do not enjoy this special relationship of trust and reliance.[10] In this case, the duration of employment was short – a mere 7 months - and no special relationship of trust or promise of continued employment was ever alleged, let alone proven. Accordingly, the second exception does not apply in this case.

The third exception – violation of the implied covenant of good faith and fair dealing - is problematic. The implied covenant is usually cited as being implied in <u>*written*</u> contracts, whereas the "at-will" employment in this case arose without a written contract.

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[9] See *Schoen v. Amerco, Inc.*, 896 P.2d 469,475-6 (Nev. 1995); see also *Wilder v. Cody Co. Chamber of Commerce*, 868 P.2d 211, 220-21 (Wyo. 1995) (recognizing a tort claim for breach of the covenant).

[10] *See Sands Regent v. Valgardson*, 777 P.2d 898, 899 (Nev. 1989); see also *Loghry v. Unicover Corp.*, 927 P.2d 706, 711-12 (Wyo. 1996) (declining to recognize cause of action for breach of the covenant under a contract theory).

As to whether this covenant should be invoked in at-will employment situations, we turn to other jurisdictions. Research reveals that the majority of states examining this issue have declined to find that a covenant of good faith and fair dealing applies to at-will employment.[11] A small minority of state courts have applied the covenant to at-will employment but those cases have typically involved two or three specific scenarios. First, the covenant has been applied where the termination of an at-will employee was done in bad faith to deprive the employee of some added or collateral benefit of the employment such as accrued leave[12] or earned sales commissions,[13] or to prevent the vesting of retirement benefits.[14] Secondly, the covenant has been applied where the termination of an at-will employee involves misrepresentations made by the employer to induce the employee to enter into the employment in the first place.[15]

Turning to the present case, CNMI courts have given no indication that they would adopt the "minority view" and hold that the implied covenant of good faith and fair dealing applies to at-will employment. Even if the CNMI judiciary were to adopt that minority view, the present case does not present any facts similar to the above-noted scenarios that have led courts to find that an employer's termination of an at-will employee amounted to a breach of the implied covenant of good faith and fair dealing. For the foregoing reasons, the Hearing Officer finds that the implied covenant of good faith and fair dealing does not apply to the at-will employment in this case.

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[11] See Brudney, *Reluctance and Remorse, supra* note 8, at 774-775: "A mere handful of jurisdictions, about 10 states, have accepted the covenant of good faith and fair dealing in at-will situations. See Clyde W. Summers, Kenneth G. Dau-Schmidt and Alan Hyde, *Legal Rights and Interests in the Workplace: Statutory Supplement and Materials* 193-200 (reporting that 9 or 10 states accept covenant in employment-at-will settings and 29 of 50 states have declined to adopt the covenant in the employment context)."

[12] *See Metcalf v. Intermountain Gas Co.*, 778 P.2d 744 (Idaho 1989).

[13] *See Fortune v. National Cash Register Co.*, 364 N.E.2d 1251 (Mass 1976).

[14] *See* Brudney, *Reluctance and Remorse, supra* note 8, at 773:

[15] *See Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 98-99 (Del. 1992). In that case, the Deleware Supreme Court applied the covenant to an employee's claim that his employer had induced him to accept an indefinite-term job offer while secretly intending to keep him on only temporarily until a suitable permanent candidate was hired.

CONCLUSION

The present case involves an at-will employee who was terminated by his employer for perceived violations of company policies. Employer argued that whether or not its decision was correct, was immaterial because, as a matter of law, Employer needed no cause to terminate an at-will employee. The Hearing Officer finds that under the law applicable to at-will employment, Employer could terminate Employee, an at-will employee, without cause, provided that none of the three recognized exceptions was applicable. *Shiprit, supra.* An analysis showed that none of the recognized exceptions apply in this case: (1) the termination did not violate public policy; (2) the termination did not breach any implied promise for continued employment, and (3) the covenant of good faith and fair dealing does not apply to terminations of this type. Accordingly, the charge of wrongful termination must fail.

Employee argued that the decision to terminate him had been unfair and unjust because he had not committed the charged conduct and because he had not been given an opportunity to give the Employer his own version of events before Employer terminated him. Given the flawed manner in which the investigation was carried out, it is understandable that Employee felt he had been treated unfairly. However, such unfairness is not a "wrong" for which the law recognizes a legal remedy. Accordingly, judgment shall be entered in favor of the Employer.

The Department being fully advised and good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Judgment is hereby entered in favor of respondent Bridge Investment Group LLC with respect to this labor claim.

2. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: December 19, 2017

Jerry Cody
Hearing Officer