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Plaintiff, employed for ten years by defendant as a plant guard and held in high repute by the community, was summarily discharged for allegedly taking company property. The property in question was an automobile generator that plaintiff claimed to believe was one he had arranged to purchase from the company as salvage for use in his own car. Plaintiff removed the generator in an open manner, explaining to other employees what he was doing. The generator was found in the guard booth where plaintiff had left it with another guard while he went to the plant medical department for treatment of an injury. On his return to the booth

he was confronted by his superiors with the property, informed he had violated regulations, and fired. Shortly thereafter, in an attempt to arrest rumors and restore morale, defendant informed certain other guards, selected at random, of the reason for plaintiff's discharge. Plaintiff brought an action for slander. The trial court ruled the communication unprivileged and submitted to the jury only the question of truth. A verdict for plaintiff was returned. On appeal from an order denying defendant's motion for judgment notwithstanding the verdict, *held,* affirmed. Fellow employees do not have sufficient interest in the discharge of a co-worker to protect by qualified privilege a slanderous communication made to them by the employer explaining the cause of the discharge. *Sias v. General Motors Corp.*, 372 Mich. 542, 127 N.W.2d 357 (1964).[1]

The law of qualified privilege recognizes that protection of private interests may justify publication of false and injurious communications about third parties when made in good faith.[2] In determining whether a privilege should attach, a court weighs the injury likely to result to the slandered party against the interests to be served by making the communication.[3] The general view is that a privilege will attach only when a "sufficiently important" interest of the recipient or some third party[4] is at stake, or when the publisher has an interest in the publication and the recipient possesses either a common[5] or reciprocal interest in, or duty concerning, the publication.[6] Thus, for example, if it is the publisher's interest of the recipient or some third party[4] is at stake or when the some corresponding interest in the matter or some duty to perform with respect to it.[7] The Michigan courts have put the rule as follows: "It extends to all communications made bona fide upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty to a person having a corresponding interest or duty."[8] This rule is endorsed in major treatises on

1. Hereinafter cited as the principal case.

2. For an early discussion of the policy questions involved, see Holmes, *Privilege, Malice, and Intent*, 8 HARV. L. REV. 1 (1894). See generally Veeder, *The History and Theory of the Law of Defamation*, 4 COLUM. L. REV. 33 (1904). For strongly contrasting views as to the relative importance of the interests involved, see Pound, *Interests of Personality*, 28 HARV. L. REV. 446 (1915), and Green, *The Right To Communicate*, 35 N.Y.U.L. REV. 903 (1960).

3. One view of the things to be taken into account by courts in this balancing of interests is presented in Harper, *Privileged Defamation*, 22 VA. L. REV. 642 (1936). This same analysis is presented in 1 HARPER & JAMES, TORTS § 5.25, at 437-38 (1956).

4. RESTATEMENT, TORTS § 595 (1938).

5. *Id.* § 596.

6. *Id.* § 594.

7. "This interest on the part of the recipient is an absolute prerequisite." Jones, *Interest and Duty in Relation to Qualified Privilege*, 22 MICH. L. REV. 437, 440 n.11 (1924).

8. Bostetter v. Kirsch Co., 319 Mich. 547, 556-57, 30 N.W.2d 276, 279-80 (1948), quoting from Bacon v. Michigan Cent. R.R., 66 Mich. 166, 33 N.W. 181 (1887).

defamation.[9] A critical uncertainty exists, however, with respect to what "corresponding interest or duty" will suffice for the privilege to attach. In the principal case the defendant's very real interest in morale was not disputed, but the court concluded that the corresponding interest of the recipients was not sufficient.[10]

While the recipients of the communication in the principal case did not need such information in order to perform a *duty*, a number of courts have recognized that employees might well have an *interest* in the cause of discharge of another employee.[11] Lord Esher, for example, in *Hunt v. Great Northern Railway*,[12] in which a railroad company informed all its employees of the reason for plaintiff's discharge, declared he could not "imagine a case in which the reciprocal interests could be more clear."[13] He pointed out that the employer had an interest in communicating to his employees what was expected of them and that the employees had an interest in knowing what the consequences of such misconduct would be.[14] In the principal case other interests might also have been present. Employees may very well have an interest in the honesty of their co-workers, as the conduct of each worker may reflect on the department as a whole.[15] Moreover, employees are likely to have an interest in their own morale,[16] and an employer's efforts to alleviate anxiety by clarifying a highly ambiguous job situation will certainly have an impact on the morale of the remaining workers. In addition, even beyond their separate interests, employees may be considered to have a common interest with their employer and other employees in the affairs of their department. Both Prosser and Newell indicate that such a mutual interest would support the defense of qualified privilege.[17]

9. NEWELL, SLANDER & LIBEL § 341 (4th ed. 1924); ODGERS, LIBEL & SLANDER 206 (6th ed. 1929).

10. The court in the principal case appears to be insisting that the recipient possess an independent "interest" in the sense that his own welfare is to some degree affected. Compare the *Restatement's* position, which requires merely that "the recipient's knowledge of the defamatory matter will be of service in the lawful protection . . ." of the publisher's interest. RESTATEMENT, TORTS § 594(b) (1938).

11. Denver Public Warehouse Co. v. Holloway, 34 Colo. 432, 83 Pac. 131 (1905); Gardner v. Standard Oil Co., 179 Miss. 176, 175 So. 203 (1937); Louisiana Oil Co. v. Renno, 173 Miss. 609, 157 So. 705 (1934); Hall v. Rice, 117 Neb. 813, 223 N.W. 4 (1929); Ramsdell v. Pennsylvania R.R., 79 N.J.L. 379, 75 Atl. 444 (1910).

12. [1891] 2 Q.B. 189.

13. *Id.* at 191.

14. *Ibid.* It should be noted that many courts, contrary to Lord Esher, might be unwilling to find a privilege when the communication is made to the entire work force. See Ramsdell v. Pennsylvania R.R., 79 N.J.L. 379, 381, 75 Atl. 444, 444-45 (1910), where a special point is made of the fact that the recipients were members of plaintiff's own department.

15. See Hall v. Rice, 117 Neb. 813, 223 N.W. 4 (1929).

16. The existence of a morale problem over the incident means the other guards were disturbed by their own job situation. The sudden and unexplained departure of plaintiff might well have caused them serious concern over their own job security.

17. PROSSER, TORTS § 110, at 809 (3d ed. 1964). He indicates a privilege exists when

The Michigan Supreme Court has twice previously held that general employees have no corresponding interest or duty that would warrant extension of a qualified privilege to communications made by the employer to them about a fellow employee;[18] but the principal case is distinguishable from these cases, and, in fact, they were not even cited. In neither of these earlier cases was there any indication of the existence of a morale problem. In both earlier cases the communications were made as accusations, and among the recipients were other employees who were without any special interest in why the plaintiff might be disciplined. Moreover, in both of these earlier cases the communications were held privileged with respect to certain other employees whose duties involved the hire or discharge of others or the investigation of irregularities.[19] Rather than indicating that employer communications to employees about co-workers are never privileged, these holdings seem to stand only for the proposition that no privilege exists when no interest or duty of the recipient can be shown. Holding privileged those communications made to employees whose duties required they have such information might even lend support to a finding of privilege in the principal case, for the interests of the employer and employees in labor tranquility is just as significant as their mutual interest in the successful performance of an employee's duties.[20]

The holding in the principal case appears to impose an unfortunate limitation upon qualified privilege. The implication is that, in the absence of some *duty* of the recipient for which he needs such information, the only interest of the recipient that will suffice for a privilege to attach is some specific pecuniary interest, unless, of course, the communication has to do with some public matter in which all citizens may be presumed to have an interest.[21] If, indeed, this is the inference to be drawn, the view that dollar-

"officers, agents or employees . . . communicate with . . . other employees . . . about the affairs of the organization itself . . . ." *Id.;* NEWELL, *op. cit. supra* note 9, § 432.

18. Poledna v. Bendix Aviation Corp., 360 Mich. 129, 103 N.W.2d 789 (1960); Johnson v. Gerasimos, 247 Mich. 248, 225 N.W. 636 (1929).

19. That the employee-recipients needed such information to perform their job duties adequately was also the ground upon which a privilege was found in Bacon v. Michigan Cent. R.R., 66 Mich. 166, 33 N.W. 181 (1887).

20. In a much earlier Michigan case it was held that "there is no right to make untrue and injurious statements concerning others when they are not made to persons having right and power to investigate, and in an honest attempt to invoke such investigation. . . ." Foster v. Scripps, 39 Mich. 376, 382 (1878). But just nine years later in Bacon v. Michigan Cent. R.R., *supra* note 19, the court found a privilege where no duty to investigate was involved. In the later case, the railroad's station agents, the recipients of the communication, had no investigatory responsibility. They did, however, need such information because of their responsibility for hiring local help. If the same openness to recognition of interests that characterized the *Bacon* decision had persisted, the court in the principal case might have found a privilege.

21. The principal case, of course, involves only private interests.

value is the ultimate criterion in determining the sufficiency of a reciprocal interest in a commercial setting has received regrettable support.

Why the court in the principal case ignored the very real interests involved and the considerable contrary authority is not indicated. On the facts of the case one may very well feel that the defendant-employer's conduct was unreasonable and that he should be liable, but one may well quarrel with the means by which this result was obtained. In the absence of malice or some other abuse destroying the privilege,[22] imposition of liability in situations like this undermines the very protection that the qualified privilege is intended to provide to parties seeking to further legitimate interests.

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22. One possible reason why the court held no privilege attached in the principal case is that in Michigan, once a defense of qualified privilege attaches, it is quite difficult for the plaintiff to show sufficient abuse to destroy it. For a discussion of what is required to overcome the defense, see Lawrence v. Fox, 357 Mich. 134, 97 N.W.2d 719 (1959). For two different, yet less rigorous, approaches, see RESTATEMENT, TORTS §§ 600-05 (1938) and Hallen, *Character of Belief Necessary for the Conditional Privilege in Defamation*, 25 ILL. L. REV. 865 (1931).