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FILE COPY

Record No. 7033

In the Supreme Court of Appeals of Virginia At Richmond

THE KROGER COMPANY, ET AL.

v.

JEAN YOUNG

FROM THE CIRCUIT COURT OF MONTGOMERY COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7033

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 9th day of October, 1968.

THE KROGER COMPANY AND AVERY PENDLETON, Plaintiffs in error,

against

JEAN YOUNG, Defendant in error.

From the Circuit Court of Montgomery County
William S. Jordan, Judge

Upon the petition of The Kroger Company and Avery Pendleton a writ of error and *supersedeas* is awarded them to a judgment rendered by the Circuit Court of Montgomey County on the 8th day of February, 1968, in a certain motion for judgment then therein depending, wherein Jean Young was plaintiff and the petitioners were defendants.

And it appearing that a suspending and *supersedeas* bond in the penalty of $26,000, conditioned according to law, has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, an additional *supersedeas* bond conditioned according to law is required in the penalty of $2,500.

RECORD

* * * * *

page 22 } INSTRUCTION NO. 1-B

The Court instructs the jury that if you believe from a preponderance of the evidence that words were falsely spoken by the defendants of the plaintiff that she was a thief or accusing her of stealing money, such words are slanderous *per se,* that is, they are slanderous from their very nature and without further proof thereof. The law presumes damages to result from their publication, and in order to recover compensatory damages it is not necessary for the plaintiff to prove any personal spite or ill will on the part of the defendants nor is it *nessary* to prove that she suffered either actual or pecuniary loss.

Given WSJ

* * * * *

page 24 } INSTRUCTION NO. 3

The Court instructs the jury that the occasion upon which the defendant spoke the words is known in law as a privileged occasion, but the privileged occasion would not protect the defendant if he abused it.

If you believe from a preponderance of the evidence that the defendant spoke the words,

(1) With actual malice; or

(2) Even though believing the words to be true, he used language which was intemperate or disproportionate in strength and violence to the occasion and which was unnecessarily defamatory of the plaintiff; or

(3) Not in good faith, and without an honest belief in their truth; or

(4) Purposely arranged to speak the words in the presence of a person or persons who were wholly uninterested in the matter and who had no right to be present and who in the natural course of things would not have been present; or

(5) For the purpose of gratifying some sinister or corrupt motive such as hatred, revenge, personal spite, ill will, or desire to injure the plaintiff: or

(6) With such gross indifference or recklessness as to amount to a wanton or wilful disregard of the rights of the

plaintiff; then the defendant abused the privilege which might otherwise have attached to the occasion and the said privilege was lost, and you shall find your verdict for the plaintiff.

Given WSJ

* * * * *

page 28 } INSTRUCTION NO. A-1

The Court instructs the jury that the Kroger Company was within its rights in conferring with the plaintiff, Jean Young, as to the manner in which she performed her services as an employee of Kroger and that statements made by Kroger representatives at the conference were privileged, and therefore if you believe that statements were actually made at the conference, as claimed by the plaintiff, Jean Young, and that they were slanderous and insulting, such statements remain privileged whether true or false, and cannot be the basis of a verdict for the plaintiff, unless you further believe from the evidence that such statements constituted an abuse of privilege on the part of Kroger.

Given WSJ

page 29 } INSTRUCTION NO. B-1

The Court instructs the jury that the Kroger Company was within its rights in conferring with the Union representatives as to the employment of Jean Young and statements made by Kroger representatives at such conference were privileged and therefore, if you believe that statements were actually made at the conference as claimed by the plaintiff, Jean Young, and that they were slanderous and insulting, such statements remain privileged, whether true or false, and cannot be the basis of a verdict for the plaintiff unless you further believe from the evidence that such statements constituted an abuse of privilege on the part of Kroger.

Given WSJ

page 30 } INSTRUCTION NO. C-1

The Court instructs the jury that if you believe from the evidence that Joseph W. Young, husband of Jean Young, interviewed Avery Pendleton, store manager of Kroger, and

inquired as to the reasons for Kroger's actions concerning his wife, Jean Young, statements by Avery Pendleton in response to such inquiry were privileged and therefore, if you believe that statements were actually made as claimed by the plaintiff, Jean Young, and that they were slanderous and insulting, such statements remain privileged whether true or false and cannot be the basis of a verdict for the plaintiff unless you further believe from the evidence that such statements constituted an abuse of privilege on the part of Kroger.

Given WSJ

page 31 } INSTRUCTION NO. G-1

The Court instructs the jury that if you believe from a *preponderence* of the evidence that the Kroger Company did not abuse its discretion in investigating the matter of the alleged misconduct of Mrs. Young at the initial conference and during the conversations between Kroger representatives and Union representatives, or between Mr. Young and Mr. Pendleton, the store manager, and if you further believe from a *preponderence* of the evidence that the Kroger employee Mr. Black did not use the words as claimed by Mrs. Strickler, then your verdict should be in favor of the defendants.

Given WSJ

* * * * *

page 40 } INSTRUCTION NO. A

The Court instructs the jury that the Kroger Company was within its rights in conferring with the plaintiff, Jean Young, as to the manner in which she performed her services as an employee of Kroger and that statements made by Kroger representatives at the conference were privileged, and therefore if you believe that statements were actually made at the conference as claimed by the plaintiff, Jean Young, and that they were slanderous and insulting, such statements remain privileged and cannot be the basis of a verdict for the plaintiff unless you further believe from the evidence that such statements were made with malice.

Refused WSJ

page 41 } INSTRUCTION NO. B

The Court instructs the jury that the Kroger Company was within its rights in conferring with the Union representatives as to the employment of Jean Young and statements made by Kroger representatives at such conference were privileged and therefore, if you believe that statements were actually made at the conference as claimed by the plaintiff, Jean Young, and that they were slanderous and insulting, such statements remain privileged, whether true or false, and cannot be the basis of a verdict for the plaintiff unless you further believe from the evidence that such statements were made with malice.

Refused WSJ

page 42 } INSTRUCTION NO. C

The Court instructs the jury that if you believe from the evidence that Joseph W. Young, husband of Jean Young, interviewed Avery Pendleton, store manager of Kroger, and inquired as to the reasons for Kroger's actions concerning his wife, Jean Young, statements by Avery Pendleton in response to such inquiry were privileged and therefore, if you believe that statements were actually made as claimed by the plaintiff, Jean Young, and that they were slanderous and insulting, such statements remain privileged, whether true or false and cannot be the basis of a verdict for the plaintiff unless you further believe from the evidence that such statements were made with malice.

Refused WSJ

page 43 } INSTRUCTION NO. D

The Court instructs the jury that Kroger was within its rights in explaining to Connie Strickler the reason why she was being transferred to position of Cashier at the Christiansburg Kroger Store, that statements made at the conference were privileged, therefore, if you believe that statements were actually made at the conference as claimed by the plaintiff, Jean Young, and that they were slanderous and insulting, such statements remain privileged and cannot be the basis of a verdict for the plaintiff unless you further be-

lieve from the evidence that such statements were made with malice.

Refused WSJ

page 44 } INSTRUCTION NO. D-1

The Court instructs the jury that Kroger was within its rights in explaining to Connie Strickler the reason why she was being transferred to position of Cashier at the Christiansburg Kroger Store, that statements made at the conference were privileged, therefore, if you believe that statements were actually made at the conference as claimed by the plaintiff, Jean Young, and that they were slanderous and insulting, such statements remain privileged and cannot be the basis of a verdict for the plaintiff unless you further believe from the evidence that such statements constituted an abuse of privilege on the part of Kroger.

Refused WSJ

* * * * *

page 46 } INSTRUCTION NO. F

The Court instructs the jury that if you believe from a *preponderence* of the evidence that Kroger Company did not act with malice at the *previleged* conferences and that Kroger employee Black did not use the words as claimed by Mrs. Strickler, then your verdict must be for the defendants.

Refused WSJ

page 47 } INSTRUCTION NO. G

The Court instructs the jury that if you believe from a *preponderence* of the evidence that the Kroger Company did not act with malice in investigating the matter of the alleged misconduct of Mrs. Young at the initial conference and during the conversations between Kroger representatives and Union representatives, or between Mr. Young and Mr. Pendleton, the store manager, and if you further believe from a *preponderence* of the evidence that the Kroger employee Mr. Black did not use the words as claimed by Mrs.

Strickler, then your verdict should be in favor of the defendants.

Refused WSJ

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* * * * *

On the 25th day of July, 1967, came the parties to this action in person and by counsel, this case having heretofore been set for trial on this date.

Thereupon came a jury, a panel of thirteen (13) selected from the regular venire summonsed for this term of court, who were examined by the Court and found free from all legal exceptions and qualified to serve as jurors; thereupon counsel for the plaintiff and the defendants struck three (3) each from said panel, and the remaining seven (7) composed the jury for the trial of this case, against whom no objections were raised, to-wit: Albert L. Martin, Wendell Jones, Herbert Albert, Alonzo Brisco, Clarence E. Slusser, Paul Surface and David R. Miller, who were sworn to well and truly try the issue joined between the plaintiff and the defendants, and a true verdict render according to the law and the evidence.

Both sides having presented all of their evidence and rested and it being late in the afternoon, the court adjourned the proceedings over until the 26th day of July, 1967, at 10:00 o'clock A. M.

On the 26th day of July, 1967, came again the parties in person and by counsel, and also came the jury adjourned over from the 25th day of July, 1967.

page 54 } And having heard all of the evidence, instructions of the Court and argument of counsel, the jury retired to their room to consider of their verdict and after sometime returned into Court and presented the following verdict: "Jean Young, Plaintiff, vs. The Kroger Co. *et al,* Defendants We the jury upon the issue joined, find in favor of Jean Young, Plaintiff in the amount of $25,000.00 damage. Herbert H. Albert, *Forman.*"

Whereupon the jury was discharged, and counsel for the defendants moved the Court to set aside the verdict of the jury and requested ten (10) days time in which to file their grounds for said motion. The Court doth take said motion under advisement, and grants the defendants ten days from

this date within which to file in writing their grounds for said motion.

Enter this Order: July 26, 1967

W. S. Jordan
Judge.

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* * * * *

This day came the parties hereto, by counsel, and it appearing unto the Court that by previous order entered by the Court in this cause on July 26, 1967, the defendants herein were granted ten (10) days from July 26, 1967, within which to file in writing their grounds to set aside the verdict of the jury rendered in this suit on the 25th day of July, 1967, wherein the plaintiff was awarded by the jury a verdict in the amount of $25,000.00 in damages.

And it further appearing unto the Court that the defendants did within the said ten days time file said motion in writing which the defendants termed "Assignments of Error in Support of Motion to Set Aside Verdict." And the Court did take said motion under advisement and granted upon defendants' motion time to file a written "Memorandum of Law in Support of Defendants' Motion to Set Aside Verdict or in the Alternative to Grant a New Trial", and the Court did likewise grant unto the plaintiff time to file written authority in opposition thereto, which was accordingly done by the plaintiff, and unto the defendants time to file a memorandum in reply to the plaintiff's memorandum, which was accordingly done by the defendants.

And upon a consideration of all of which, the Court doth overrule said motions made by the defendants and whereupon in accordance with the jury verdict, it is OR-
page 100 } DERED that the plaintiff, Jean Young, have and recover judgment against the defendants, The Kroger Company and Avery Pendleton, joint and several, in the sum of $25,000.00, with interest from the 1st day of Feb., 1968, until paid, plus her taxable costs incurred herein, to which action counsel for the defendants duly excepted.

And since the defendants, The Kroger Company and Avery Pendleton, have indicated their intention to apply to the Su-

preme Court of Appeals of Virginia for a Writ of Error and *Supersedeas* to the judgment of this Court, it is ORDERED that execution on the judgment hereinabove rendered be, and the same hereby is, suspended for a period of four (4) months from this date; and if the defendants duly file a Petition for a Writ of Error in the Supreme Court of Appeals of Virginia, execution on the judgment is suspended until the Supreme Court of Appeals has acted upon said Petition; and if a Writ of Error is granted in this case, it is ORDERED that execution on the judgment be suspended until an opinion has been rendered by the said Supreme Court of Appeals of Virginia; all of which is conditioned upon the defendants, The Kroger Company and Avery Pendleton, or someone for them, giving or filing a bond, with corporate surety, in this Court within twenty (20) days from this date in the penalty of $26,000.00, conditioned according to law.

Enter:

W. S. Jordan
Judge

Feb. 8, 1968

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

TO: Mr. John B. Myers, Jr., Clerk of the Circuit Court of the County of Montgomery, Montgomery County Courthouse, Christiansburg, Virginia.

Notice is hereby given that the Kroger Company and Avery Pendleton appeal from a final judgment rendered by this Court on the 8th day of February, 1968, and announce their intention of applying for a Writ of Error and *Supersedeas* to the Supreme Court of Appeals of Virginia.

ASSIGNMENTS OF ERROR

1. The Trial Court erred in overruling the defendants'

motion to strike the evidence of the plaintiff for the reasons assigned in the record; and specifically, because the evidence adduced at trial established that all of the allegedly slanderous and insulting communications involved in the suit were qualifiedly privileged and there was insufficient evidence of malice to permit the jury to find that the privilege had been defeated.

2. The Trial Court erred, for the reasons assigned in the record, in granting plaintiff's Instruction 1-B.

3. The Trial Court erred, for the reasons assigned in the record, in granting plaintiff's Instruction 2.

4. The Trial Court erred, for the reasons assigned in the record, in granting plaintiff's Instruction 3.

5. The Trial Court erred, for the reasons assigned in the record, in granting plaintiff's Instruction 4.

page 108 } 6. The Trial Court erred, for the reasons assigned in the record, in granting plaintiff's Instruction 5-A.

7. The Trial Court erred, for the reasons assigned in the record, in granting plaintiff's Instruction 6-A.

8. The Trial Court erred, for the reasons assigned in the record, in refusing to give defendants' revised Instruction A.

9. The Trial Court erred, for the reasons assigned in the record, in refusing to give defendants' revised Instruction B.

10. The Trial Court erred, for the reasons assigned in the record, in refusing to give defendants' revised Instruction C.

11. The Trial Court erred, for the reasons assigned in the record, in refusing to give defendants' Instructions D and D-1.

12. The Trial Court erred, for the reasons assigned in the record, in refusing to give defendants' Instruction E.

13. The Trial Court erred, for the reasons assigned in the record, in refusing to give defendants' Instruction F.

14. The Trial Court erred, for the reasons assigned in the record, in refusing to give defendants' Instruction G.

15. The Trial Court erred in overruling defendants' Motion to Set Aside the Jury Verdict or in the Alternative for a New Trial for the reasons assigned in defendants' Memorandum of Law and Reply Memorandum in support of said motion.

Dated this 28th day of March, 1968.

THE KROGER COMPANY
and
AVERY PENDLETON

By Leonard Muse

* * * * *

page 109 }

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Filed in Clerks Office
Circuit Court of Montgomery County
29 day of March 1968
John B. Myers, Jr., Clerk

By Ronilda Turner, D. C.

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ASSIGNMENTS OF CROSS-ERROR

* * * * *

Jean Young, the plaintiff in the above-styled case, hereby sets forth the following assignment of cross-error:

(1) That the Court erred in ruling that the defamatory statements made by Avery Pendleton to Wendell Young, the plaintiff's husband, were privileged and in giving the defendants' Instruction C-1 thereon.

Respectfully submitted,

JEAN YOUNG

By C. Tabor Cronk
Of Counsel for the Plaintiff

* * * * *

Filed in Clerks Office
Circuit Court of Montgomery County
11th day of April 1968
John B. Myers, Jr., Clerk

By Georgia Elliot, D. C.

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page 4 }

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The Court: All right, call your first witness.

JEAN HALL YOUNG, Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Goldsmith:

Q. Please state your full name?

A. Jean Hall Young.

Q. And where do you live, Mrs. Young?

A. Montgomery Street, Christiansburg, Virginia.

Q. And how long have you lived in Christiansburg?

A. About twenty-eight years.

Q. And how old are you now?

page 5 } A. Thirty-one.

Q. You have a family and all your relatives live around here?

A. Yes, sir.

Q. And during this thirty-one years until this Kroger incident, had you ever been accused of dishonesty or stealing anything?

A. No, sir.

Q. Are you married?

A. Yes, sir.

Q. And to whom are you married?

A. Joseph Wendell Young.

Q. And do you have any children?

A. I have one.

Q. How old is that child?

A. He is thirteen years old.

Q. Now, on December the 15th, Mrs. Young, I will ask you to please state whether or not that was your day to work?

A. No, sir, I wasn't scheduled to work on that day.

Q. And for how long had you worked for Kroger Company up 'til then?

A. Two years and three months.

page 6 } Q. And what had been your job with Kroger Company?

A. I was cashier.

Jean Hall Young

Q. Had you been a cashier from the time you started there?
A. Yes, sir.
Q. Up until that date?
A. Yes, sir.
Q. And who was manager of this store when you went to work there as a cashier?
A. Harry Saunders.
Q. Who?
A. Harry Saunders.
Q. Harry Saunders?
A. Yes, sir.
Q. And what had been your understanding of statement of Mr. Saunders with regard to your responsibility on the cash register?
A. I was trained in Baltimore, Maryland, as a cashier, and I was taught to work on one till and no one else was to touch it. And I checked my own till with witnesses present, and when I went to work for Kroger's, I was shocked at the way they ran the store in giving a till to a person,
page 7 } and then having as many as four of five others working on the same till on the same day, without having it checked before they put these other people on it.
So, I told Mr. Saunders that I would never be responsible for the money in that till until I was given a till by myself to work on and be responsible for, and check my own till with witnesses present.
Q. Did he do that or did they continue to have four or five people working on the same till?
A. No, sir, he didn't give me a till. He just continued to put other people on it.
Q. Now, would you explain to these Gentlemen of the Jury, what you mean by a "till"?
A. A till is a tray that they put the money in to put in the cash register.
Q. Now, does it have more than one till to a cash register?
A. No, sir.
Q. Now, you had been there two years and three months prior to December 15th, '65, and up 'til that time, had any Kroger official ever accused you or said anything to you about being dishonest?
A. No, sir.
Q. Had you been reprimanded or any complaint
page 8 } filed against you?
A. No, sir.

Jean Hall Young

Q. Now, what was your regular schedule of work for Kroger at that time?

A. I was just a part-time employee at that time, and our schedule was put up at twelve o'clock on Friday the week before the previous week, and uh, sometimes I would work between twenty and thirty hours.

Q. And was all that on the cash register?

A. Yes, sir.

Q. And what was your regular day off?

A. Most of the time I was off on Monday, Tuesday and Wednesday, and my working days were Thursday, Friday and Saturday.

Q. And were you off work this Wednesday?

A. Yes, sir.

Q. And who was your Shop Steward, Mrs. Young?

A. Mrs. Edith Bowman.

Q. Was she working on Wednesday, the 15th?

A. No, sir, she wasn't.

Q. Now, where were you?

A. I was at home on that day because my child
page 9 } was ill, and I didn't know what was wrong with
him at the time because I couldn't get ahold of a doctor to bring him to the house, and he was too ill to take to a doctor.

Q. Did you finally get a doctor?

A. Not until late that night.

Q. And what was wrong with the child?

Mr. Muse: I don't think that has anything to do with the case, Your Honor.

The Court: I sustain the objection.

Mr. Goldsmith:

Q. Now, while you were there, who called?

A. Avery Pendleton called me at about two-thirty, and asked me to come in to work.

Q. What did you tell him?

A. I told him I couldn't possibly come in because the child was too ill and running a temperature of a hundred and three, because I had taken his temperature, and I was trying to get ahold of a doctor to come to the house, and I hadn't been able to find one at that time.

Q. Well, what did he tell you?

Jean Hall Young

A. He told me that he just had one cashier working and that he needed me desperately and begged me to
page 10 } come in, and told me that if I would come in for an hour or two, until they checked out, that he would let me go back home. So I told him that I had the phone beside the bed of the child, and that I would come in for an hour or two, and he could call me if he needed me.

Q. All right now, when you got to the Company door, what happened? Did they put you to work?

A. No, sir, Mr. Pendleton met me at the time clock and told me that there were two men upstairs that would like to talk to me. So I proceeded to go upstairs.

Q. Did he say anything to you about working?

A. No, sir.

Q. Did you work any more that day?

A. No, sir.

Q. All right, and did you go upstairs?

A. Yes, sir.

Q. And who was there?

A. Mr. Holtman and a man whose name I don't remember, or didn't remember at the time, who identified himself as a security man for Kroger's.

page 11 } Q. Now, what is Mr. Holtman's job—is he a Kroger official?

A. Yes, sir, he is.

Mr. Muse: He is Manager of Operations, Mr. Goldsmith.

Mr. Goldsmith: You admit he is a Kroger official?

Mr. Muse: Oh, yes.

Mr. Goldsmith:

Q. And did he ever tell you the name of this so-called security man at that time?

A. He introduced me to him, but I didn't catch his name at that time.

Q. Did you learn his name later?

A. Not until last Wednesday.

Q. And is that this Mr. Byram they are talking about?

A. Yes, sir.

Q. Did he state that he was working for Kroger?

A. Yes, sir.

Q. All right now, what did they tell you there?

A. He told me—well, at first he asked me if I
page 12 } was married and asked me if I had any children

Jean Hall Young

and what their ages were, and asked me how long I had been married, and then he asked me if my husband had been in a car accident and was not working. And I told him that he had been back to work for about four or five months.

Q. All right, go ahead.

A. He said that they had been having some trouble in the store and would I mind answering some questions for them, and I told him, "No", that I would help him in any way possible that I could.

And he asked me if I knew of any dishonesty in the store, and I told him "No". And he asked me if I had ever been dishonest, and I told him "No". And he said that he had witnesses and evidence in his briefcase, and he pointed to his briefcase, that I had been dishonest. And I asked him to produce these witnesses and to let me see the evidence, and he brought in a girl, Ann Chandler, and she said to me, "I have confessed. If you have done anything, tell them. They just want to help you", and I told her I was sorry for her, and that's all I said to her.

So they took her out—

Q. And while Ann Chandler was in this room,
page 13 } did she ever accuse you of being dishonest?

A. No, sir.

Q. Did she ever say anything in your presence—

A. No, sir.

Q. —to you or either Mr. Holtman or anybody else—

A. No, sir.

Q. —did she accuse you of any dishonesty?

A. No, sir.

Q. You just told her you felt sorry for her?

A. Yes, sir.

Q. All right now, what happened after that?

A. He asked me if I had ever taken money out of the cash register or failed to ring up sales, and I told him not to my knowledge, but I told him if I had failed to ring up a sale, I had put the money in the till and it had stayed there definitely.

He asked me how would I like my child to know that I had been dishonest, and I told him that if I had been dishonest that I wouldn't want him to know, but that I hadn't done anything wrong.

Q. What did he say to you then?

A. He said that he was just there to help me,
page 14 } and why didn't I admit that I had been dishonest,

Jean Hall Young

and I said, "I don't need your help". And he shook his fist in my face, and he says, "Young lady, I have had five heart attacks and I've never seen the day that I didn't need help". And I said, "I am not talking about that. I am talking about your kind of help".

Q. And what happened then?

A. And he said—I told him that I didn't have to sit there and listen to them accuse me of being dishonest, and he said, "Oh, I'm not accusing you of being dishonest", and I said, "Yes, you are, what else would you call it?"

Q. All right, after that, what happened?

A. He says, "We have put money in the cash register and marked it, and when we checked the register it wasn't in there. What happened to it?" I said, "I don't know, unless I gave it to other people for change, or used it to cash checks with, because I never took it."

Q. Now, after that—did Mr. Holtman say anything?

A. No, sir, not at that time.

Q. And did you know Mr. Holtman prior to
page 15 } this?

A. Yes, sir, I had seen him.

Q. And you knew he was a Kroger official?

A. Yes, sir.

Q. And did he ever correct Mr. Byram, the so-called security man?

A. No, sir.

Q. And did he ever say that they weren't accusing you of stealing?

A. No, sir.

Q. And what did they do after that?

A. They just kept trying to get me to admit to being dishonest, and I just kept telling them that I hadn't been dishonest and I wasn't admitting anything that I hadn't done, and so he told me that I could go home.

Q. Did you have any conversation with him in regard to a lie-detector test—did he ask you if you would be willing to take one?

A. Yes, he asked me if I would take a lie-detector test, and I told him, "Yes, if everybody including the manager in that store would take a lie-detector test, I would take one too".

Q. You never backed away from that statement
page 16 } at any time, did you?

A. No, sir.

Jean Hall Young

Q. Now, how many people working on this cash register where you worked?

A. I have counted as many as four or five different people working on the same register that I worked on.

Q. And they all had the same access to the cash register that you did?

A. Yes, sir.

Q. Now, after they told you to go home, did Mr. Avery then put you to work?

A. No, sir, he called me on Saturday—

Q. Wait just a minute, I am talking about this day, not what happened Saturday—he never did put you to work. He called you down there saying he wanted you to come to work, is that right?

A. Yes, sir.

Mr. Muse: Mr. Goldsmith, I am sorry. I couldn't hear your question. Would you mind repeating that?

Mr. Goldsmith: My question was, he didn't put you to work, but he called you down there to go to work, but he didn't put you to work—

page 17 } A. No, sir, he never put me to work.

Q. All right, when you went home, who did you call about this matter, and who did you see first about it?

A. I saw my husband when he arrived home from work, and I was quite upset and crying.

Q. All right now, let me ask you this, how long were you in this room?

A. Approximately an hour or so, maybe over.

Q. And you said that they kept trying to get you to admit or sign a statement or do something to admit that you were a thief and dishonest?

A. Yes, sir.

Q. And in what ways did they try to do that besides shaking their fist in your face and—

A. They asked me if I would swear to God that I wasn't dishonest and I said, "Yes", and later on he said, "Well, you have a sick child at home—would you swear on his life that you have never been dishonest?" And I said, "Yes, I would, but I have already sworn to God, and I love God more than I do my child".

Q. All right, when your husband came in, did page 18 } you tell him about it?

Jean Hall Young

A. Yes, sir, I told my husband what had happened.

Q. What did he do?

A. He went to the Kroger store to see Mr. Pendleton.

Q. You didn't hear any conversation he had with Mr. Pendleton?

A. No, sir, I did not.

Q. All right now, did you call anyone else about this?

A. I called Edith Bowman, the Shop Steward at her home.

Q. Was this her day off?

A. Yes, sir, it was.

Q. Was Wednesday her regular day off?

A. Yes, sir, she had had Wednesday off for years.

Q. And had she always had Wednesday off?

A. Ever since she had worked there.

Q. And as Shop Steward, is it customary in this store and the usual thing when a grievance or complaint filed, to call the Shop Steward in?

A. Yes, sir.

page 19 } Q. And at any time when they were accusing you of being dishonest and trying to get you to admit to being dishonest, did they ever call Edith Bowman in for a conference?

A. No, sir.

Q. And you called her. Do you know what she did about it?

A. She called Avery Pendleton and asked him what—

Q. Well, you didn't hear that. She is here to testify. Now, who took the complaint over after that?

A. The Union took it over. Mr. Ralph Mottesheard and Mr. William Johnson took the case over.

Q. Now, they let you go home, they sent you home rather?

A. Yes, sir.

Q. Told you to go home, and I will ask you whether or not they ever put you back to work on the cash register?

A. No, sir, they never have to this day.

Q. Did Mr. William Johnson and Mr. Mottesheard then take over?

page 20 } A. Yes, sir.

Q. And they were the ones that insisted they put you back to work, is that right?

A. Yes, sir.

Q. And they did then put you back to work later, is that right?

A. Yes, sir, on February 22nd, 1966.

Jean Hall Young

Q. And in what department did you go to work?

A. They took me back and put me in the Dairy Department.

Q. And what did they do about the cash register—said they was so busy there that they couldn't get by without you there, and said they needed you desperately to work, and who did they fill your place with on the cash register?

A. When I went back to work?

Q. No—I'm talking about this day—

A. Connie Strictler—they brought Connie—Connie Strictler from Blacksburg and put her on the cash register.

Q. Now, when they put you back to work on the 22nd, did they offer you any back pay?

A. No, sir.

page 21 } Q. I will ask you this, has Mr. Avery Pendleton, Manager of this store, or Mr. *Holton* or any other official of the Kroger Company, the Defendant in this case, ever come to you and apologized for this conference and accusing you of dishonesty?

A. No, sir, they never have.

Q. All right, now, how long did you stay in this store—Christiansburg store, I mean, after you went back on February 22nd?

A. From February 22nd until September the 25th.

Q. And were you working regularly in the Dairy Department?

A. No, sir, just part-time.

Q. Then where did they transfer you?

A. I was transferred to Radford store in the Dairy Department.

Q. And have you been working there since?

A. Yes, sir.

Q. Did they put you back in Radford ever on a cash register?

A. No, sir.

page 22 } Q. Mrs. Young, I hand you an envelope here which has a lot of slips in it—I want to show them to Counsel for the other side first. (Slips are shown to Counsel for Defendants).

Are these your pay slips from the time—after you were called back to work—

A. After I was called back to work, these are my pay slips, from the time I came back to work until the time I went on full time.

Jean Hall Young

Q. From December 15th until now, have you figured up what you have lost in pay?
A. Yes, sir.

Mr. Muse: If it please the Court, that is not an element of damage in this case.
The Court: I sustain the objection.
Mr. Goldsmith: We except to the Court's ruling.

Q. Now, Mrs. Young, after you went back in the Dairy Department, I will ask you whether or not other employees of Kroger—well, I will ask you first—I would like to lay a foundation for it; now, outside of discussing this with your attorneys, and Shop Steward, Mrs. Bowman, and Union officials, I will ask you if you have discussed this charge of stealing with anyone else?
page 23 } A. No one but my family.
Q. Now, is it general knowledge, and have you gathered from other employees throughout Radford and Christiansburg stores, that the Company had accused you of dishonesty, and is it known by other employees?

Mr. Muse: I object—
The Court: That is contradictory of her previous answer if she hasn't discussed it with anyone other than her family.
Mr. Jenkins: We are asking her if people know about it—it has gotten out.
The Court: Not to her knowledge, if she hasn't discussed it with anyone.
Mr. Jenkins: Someone has told her about it—
Mr. Goldsmith: I asked her, Your Honor—that's the reason I laid the foundation—
The Court: I sustain the objection. You can put the other people on—
Mr. Goldsmith: We except. I would like to be given the opportunity to dictate my objection into the record, and exception.
The Court: All right, you may have that opportunity.

page 24 } Mr. Goldsmith:
Q. Now, after you went to Radford, Mrs. Young, who was Manager over there?
A. Vernon Mumpower.

Jean Hall Young

Q. And what has he done to—on the job, in regard to seeking to get you to resign—making it difficult for you?

Mr. Muse: I didn't hear the question, Mr. Goldsmith.

Mr. Goldsmith: I said what has he done to make her resign and make it difficult for her.

Mr. Muse: I object to that.

The Court: I sustain the objection.

Mr. Muse That has no bearing on this case.

Mr. Goldsmith: I would like to get her answer in chambers, if I may.

The Court: You can put that in later. I sustain the objection. You can except and put it in the record later.

Mr. Goldsmith: Well, I except, Your Honor, because the rules of Court say to do it at that time.

Mr. Muse: I'll waive that provision.

Mr. Goldsmith: I don't know that you can waive it.

Mr. Muse: You can do anything by agreement.

page 25 } Mr. Goldsmith: I don't think so. We except to the Court's ruling.

Q. Now, I'll ask you, Mrs. Young, if you and your Union representative—officials, have constantly tried to get you put back in your position on a cash register so you can prove your honesty?

A. Yes, sir.

Q. They never have put you back there, have they?

A. No, sir.

Q. And have any of the jobs or work that you have been given since December 15th, 1965, been ones in which you handled money?

A. No, sir.

Q. Now, Mrs. Young, I want—you stated—I want you to show and demonstrate to this Jury please, when this Mr. Byram, the security agent, shook his fist at you—I want you to show this Jury just how he did it, his demeanor, and how close he came to you, and all that?

A. He got up out of the chair and leaned over

page 26 } and said, "Young Lady—" (Witness demonstrates by shaking her fist).

Q. Had you in any way when he shook his fist at you, had you in any way except deny that you were dishonest, given Mr. Byram any provocation for getting up out of the chair,

and coming over where you were and shaking his fist in your face?

A. No, sir, I had been just as polite as I possibly could be.

Q. Were you scared?

A. No, sir.

Mr. Goldsmith: Take the witness.

The Court: Gentlemen, I assume that it will be a fairly lengthy cross-examination. It's five minutes to one, and I think it's time we adjourn for lunch.

I will caution the Jury not to discuss this case with anyone while you are out to lunch, and Court is adjourned until two o'clock.

Mr. Goldsmith: I would like to get my exception into the record.

The Court: All right, after the Jury leaves, you may do so.

page 27 } (Out of the presence of the Jury)

Mr. Goldsmith: Read the question back, please.

"Q. Now, is it general knowledge and have you gathered from other employees throughout Radford and Christiansburg stores, that the Company had accused you of dishonesty, and is it known by other employees?"

A. Yes, I have had many employees to come to me and ask me what happened, that they had heard that I was fired for stealing, and how did I get back on, and many of my friends also. And several have even shunned me because of this.

Mr. Goldsmith:

Q. And is that generally true in the store and among your friends?

A. In the store and among my friends, and in this town—this whole town.

Q. That has been brought forcibly to your attention both by employees—

A. Many times.

Q. —and by people in the Community?

A. Many times.

Q. And these people that have shunned you be-
page 28 } cause of it, have you known them for years?

A. I have known them all my life and many of them I went to school with.

Jean Hall Young

Mr. Goldsmith: Now, I want to state my objection to that part of the damages and slander action is, the results flowing from accusations of this nature which are *per se*, slanderous, and that the Court is narrow in sustaining Mr. Muse's motion because we have the right to show the results flowing directly from the actions of the Kroger officials.

(Adjournment for lunch)

(Return to Courtroom with Jury present. Direct Examination of Mrs. Young resumed)

Mr. Goldsmith: I want to ask her another question or two, Your Honor.

The Court: All right.

Mr. Goldsmith:

Q. Mrs. Young, I want to ask you if you have been humiliated by this incident, and if so, describe to the Jury how please?

A. Many of the employees in the stores and friends of mine have asked me why I was not working, the time that I was off, and said that they had heard that I had been dis-
page 29 } missed for being dishonest.

Also, many of my friends that I have known all of my life and that I went to school with, and business people in town, have asked me about this incident, and my son had asked me why I wasn't working, and I had to explain to him.

Q. Now, you grew up here and went to school here, is that right?

A. Yes, sir.

Mr. Goldsmith: Take the witness.

CROSS EXAMINATION

By Mr. Muse:

Q. Mrs. Young, this conference that you referred to, attended by Mr. Holtman—this is Mr. Holtman sitting right here, is it not?

A. Yes, sir.

Q. And Mr. Byram, took place in the Christiansburg store?

A. Yes, sir.

Jean Hall Young

Q. In the conference room?
A. Yes, sir.
Q. You were told, as I recall your testifying, that one of the employees whom you named, had admitted tak-
page 30 } ing money from Kroger?
A. Yes, sir.
Q. And that she was a cashier?
A. Yes, sir.
Q. You were also told, as I recall your saying, that she had implicated you?
A. No, sir, she did not. I mean I was not told that she had implicated me.
Q. You were not?
A. No.
Q. Was anything said to you that caused you to believe that she had implicated you?
A. The only thing that might have caused me to believe this was when they brought her in.
Q. Now, Mr. Byram—there was a table in this conference room, was there not?
A. Yes, sir.
Q. And Mr. Byram was sitting on one side of the table and you were on the other?
A. No, sir.
Q. On the same side of the table?
A. He was sitting right in front of me in a chair.
Q. The table wasn't between you?
page 31 } A. No, sir.
Q. And you say he shook his fist in your face?
A. Yes, sir, he did.
Q. Now, a few days ago on the 19th of July, you gave a deposition, did you not, in this case?
A. Yes, sir.
Q. I will ask you—

Mr. Goldsmith: What page does it appear on?
Mr. Muse: Page Nine, middleways down. I will ask you if this question was asked you. Question by Mr. Johnson—Mr. Johnson is the one who questioned you, isn't he?

A. Yes, sir.
Q. "Question—He got mad"—now, "He" refers to Mr. Byram. "Answer—He got mad and he said—" —this is your

answer—"He got mad and he said, 'Young Lady (indicating)' —and he shook his finger in my face".

A. He also did that.

Q. Did you say anything in that examination about his sticking his fist in your face?

A. No, sir, I wasn't asked anything about that.

page 32 } Q. You were not asked anything about shaking his finger in your face, were you?

A. No, but he did both.

Q. But you only told about one?

A. That's right.

Q. Well, when you told about one, why didn't you tell about the other, wouldn't that be logical?

A. I guess I just didn't think of it at the time.

Q. Well, it would be more impressive a man shaking his fist in your face than shaking his finger at you?

A. Well, he shook his finger at me quite a bit, but that was the one time he did shake his fist in my face.

Q. He also said to you at that conference, "We haven't accused you of doing anything dishonest." He said that also, did he not?

A. Yes, he said that after they had accused me.

Q. In what words did he use to accuse you?

A. He told me that he had evidence and wit-

page 33 } nesses to prove that I had been dishonest, and why didn't I just admit it.

Q. And then after all of that, he said to you, "We haven't accused you of doing anything dishonest"—he said that plainly, didn't he?

A. Not in those words. After I told him I didn't have to sit there and be accused of being dishonest, he said, "Oh, we haven't accused you of being dishonest".

Q. Isn't that what I said?

A. Not in those words.

Q. "We haven't accused you of doing anything dishonest" —no difference in what you say and what I say as far as dishonesty is concerned?

A. All right.

Q. Now, did Mr. Holtman *made* any statements in that conference?

A. No, sir, he never said anything except when he told me to go home.

Q. Did he give you any explanation as to why he said to go home?

Jean Hall Young

A. He said they were going to investigate further and they would let me know in two or three days what their investigation was.

page 34 } Q. You were a part-time employee?

A. Yes, sir.

Q. The young lady who came from Radford—Blacksburg, the Blacksburg store, and worked as a cashier after you went home, was a full-time employee at Blacksburg, was she not?

A. No, she was not.

Q. She was not?

A. No, sir.

Q. Are you certain of that?

A. She told me she wasn't.

Q. You don't know what the records of the Company show?

A. I didn't see the records. I only went by what she told me.

Q. You were never fired, were you?

A. They didn't say that I was fired, no, sir.

Q. And you did return to work, did you not?

A. After nine weeks, yes, sir.

Q. And you returned to work at Christiansburg?

A. Yes, sir.

Q. In the same store?

A. Yes, sir.

page 35 } Q. And went in the Dairy Department?

A. Yes, sir.

Q. During your employment by Kroger at Christiansburg, hasn't all of the employees in the Dairy Department been women?

A. In Christiansburg, yes, sir.

Q. Been true in Radford also, hasn't it?

A. As far as I know, yes, sir.

Q. And when you returned to the Dairy Department, your wages were equal to those as cashier, were they not?

A. Yes, sir.

Q. How long had you returned—been back to work at the Christiansburg store before you were transferred to Radford?

A. I returned to work on February the 22nd, and I was transferred to Radford around the 25th of September. I think that was the exact date.

Q. I think that will be close enough, and it may be correct, I don't know. Now, when you returned to the work at the

Christiansburg store in the Dairy Department, did you return as a full-time employee, or were you a part-time employee?

A. I returned as a part-time employee.

page 36 } Q. When did you get to be a full-time employee?

A. Not until I went to Radford.

Q. Did you go to Radford as a full-time employee?

A. Yes, sir.

Q. So at the time you were transferred to Radford in the Dairy Department, you changed from a part-time employee at Christiansburg, to a full-time employee at Radford?

A. Yes, sir.

Q. Now, when did you become head clerk—I presume you call it head clerk, in the Dairy Department at Radford? How long had you been there before that?

A. I think I had a six-week trial basis until I went—I was the head dairy clerk there.

Q. Well, I am a little uncertain about this. When you went to Radford, did you go there to be trained as head clerk in the Dairy Department?

A. I don't know whether they called it a training period or just—or what it is. Any way I had to work six weeks before I got head dairy clerk pay.

page 37 } Q. But during those six weeks did you work as head dairy clerk—

A. Yes, sir.

Q. —on a trial basis?

A. Yes, sir.

Q. Now, you were not head dairy clerk in Christiansburg?

A. They have no head dairy clerk in Christiansburg.

Q. And you were only a part-time employee?

A. Yes, sir.

Q. So you went from Christiansburg to Radford as a full-time employee, and after six-weeks trial period, you became head dairy clerk, did you not?

A. Yes, sir.

Q. That was a promotion, was it not?

A. Yes, sir.

Q. And the difference in pay as of now for instance, from your position in Christiansburg and Radford—

Mr. Goldsmith: I am not going to object to this question, but I'm going to ask the Court to reverse the ruling on our

page 38 } presenting the wage picture which you ruled out in examination in chief.

The Court: The two are not the same, Mr. Goldsmith.

Mr. Jenkins: We except to the ruling of the Court.

Mr. Muse: Let me rephrase that question, if I may—if I can remember it.

Q. The position you are now occupying as head dairy clerk in Radford, pays about thirty cents per hour, approximately thirty cents an hour more than a cashier's position, does it not?

A. Yes, sir, I think so.

Q. Now, you worked what, forty hours a week?

A. Yes, sir.

Q. So thirty times forty is twelve dollars a week, so that the present position that you occupy and which you occupied shortly—within six weeks after you went there, it is a full-time job, and you make approximately twelve a week more than a cashier—that's true, isn't it?

A. Yes, sir.

page 39 } Q. I believe you said you related the happenings to your husband when you returned from work, and Mr. Johnson, I believe it is, the Shop Steward—not Shop Steward, but Union representative?

Mr. Goldsmith: Bowman.

Mr. Muse: Bowman, thank you.

Q. Mr. Bowman, is that correct?

A. I am sorry—would you repeat the question.

Q. Yes, of course I will. I understood you to say when your husband came home, you related him your experiences, and also to a Mr. Bowman, who was the Union representative of the Kroger employees?

A. Yes, sir.

Q. Did Kroger have a rule for its cashiers, that when a sale was made, that before the next sale was made, the cash till should be closed?

A. I was never told anything about any rules that Kroger had from the time I went to work.

Q. In other words, you were employed without being given any rules or any information as to your duties?

A. That's exactly right.

Jean Hall Young

Q. But you had had experience as a cashier,
page 40 } or training as a cashier?
A. Yes, sir.

Q. Is it not a general rule of cashiers—

A. Yes, sir—yes, sir.

Q. —that after each purchase and ringing up of the amount, that the cash drawer should be closed—

A. That's right.

Q. Before the next purchase—before the next sale was made, that's true, isn't it?

A. Yes, sir.

Q. Let me illustrate. I didn't ask that question very clearly I'm afraid. Wasn't it a general rule relating to cashiers' duties, that if I walk in and buy five dollars worth of merchandise and I come by you as cashier, and I give you the five dollars money, that you of course, ring that up and give me any change if necessary, and then close the cash drawer before Mr. Johnson comes along with his purchases?

A. That's right.

Q. That's a general policy, is it not?

A. Yes, sir.

Q. You knew that, did you not?
page 41 } A. Yes, sir.
Q. Did you violate that rule?

A. Not to my knowledge, no, sir.

Q. You don't recall having made a transaction as cashier, receive the money, deposit in the drawer, and then make another sale or so before closing the drawer—you don't recall that?

A. I don't recall it—ever doing it. But as I said before, if I ever did, the money stayed in the till.

Q. I am not saying it didn't, but I am just asking you if you failed to follow the routine of a cashier as I have outlined. I am not trying to say you took any money. I am trying to make that quite plain.

Mr. Muse: I think that is all, Mrs. Young.

RE-DIRECT EXAMINATION

By Mr. Goldsmith:

Q. Now, Mrs. Young, Mr. Muse has gone into quite a bit about this rule of closing the till, you had been trained to do that, had you not?

Jean Hall Young

A. Yes, sir.

Q. Before you ever went for Kroger?

A. Yes, sir.

page 42 } Q. And whether you were working part-time or classed as part-time employee, you testified to twenty to thirty hours a week—it is a fact that you had been working regularly every week for Kroger for two years and three months?

A. Yes, sir.

Q. Had anybody, either your first boss who was transferred to another store, or Mr. Pendleton, ever come by and reprimand you for not closing this till before December 15, 1965?

A. No, sir—no, sir, no one had ever said anything to me about it.

Q. Now, had you complained to the original manager about the situation the way they run it at Kroger's?

A. Yes, sir, I had.

Q. Did they do anything about it?

A. No, sir.

Q. And they were still permitting three, four, five girls to operate one cash register without checking the other one out?

A. Yes, sir, and even bag boys operated it.

Q. What?

page 43 } A. Even the bag boys—some of the bag boys operated the cash register.

Q. Who were bag boys?

A. They are just part-time boys that bag groceries.

Q. And all this accusation to you then, and complaint, came after the 15th?

A. Yes, sir.

Q. Now, Mr. Muse asked you another question about the Dairy Department, particularly at Radford; Kroger didn't take you back to work either in the Dairy Department or any department, until they knew that the Union representatives were seeking to get you back and knew they had employed counsel, did they?

A. Yes, sir.

Q. And when you went to the Dairy Department, how did they treat you?

A. I was constantly hounded by the Manager, and he even told the head stock clerk to stay on me as much as possible.

Jean Hall Young

Mr. Muse: Wait a minute, did you hear that?
Mr. Goldsmith: Did you hear that?

page 44 } A. No, he came and told me.

The Court: Strike that from the record as hearsay evidence, and the jury will disregard that.
Mr. Goldsmith: She said he came and told her.

A. The stock clerk told me.

Mr. Goldsmith: He's her boss, one of her bosses.
The Court: I don't understand him to be an official of Kroger Company.
Mr. Muse: No, he is not an official of Kroger Company—he is just an employee.

Mr. Goldsmith:
Q. Well, he isn't Vice President, Board of Directors, but he has—he is over you employees, isn't he?
A. Yes, he is.
Q. Supervisor of employees?
A. He has the authority to give me orders and to reprimand me on things.

Mr. Muse: He doesn't have authority to speak for Kroger.

Mr. Goldsmith:
Q. Now, the day—Mr. Mumpower was Manager
page 45 } of the store, wasn't he?
A. Yes, sir.
Q. Did they write up a grievance during this period and ask you to sign it?
A. Yes, sir, right after Christmas, they cut my hours last year—for two weeks, they cut my hours to twenty some hours, and it's our custom to clean our dairy case every week. He told me to forget the dairy case and not to bother it for those two weeks, so I didn't. And right after he put me back on forty hours—

Mr. Muse: Judge, I submit this has nothing to do with the issue in this case.
The Court: The case is founded on the alleged accusation on the 15th of December, 1965. This took place in another city

at least nine months afterwards, and has no bearing on what took place on December 15th, 1965, or any damages that may or may not have resulted from that time, so I sustain the objection, and ask you not to go into it.

Mr. Goldsmith: Well, we object to the Court's objection—ruling, strictly on the ground that Mr. Muse went into it himself, brought it out, and we have a right to go into it.

Mr. Muse: Well, he brought out—

page 46 } The Court: Let's get on, Gentlemen.

Mr. Goldsmith: All right, we except to the Court's ruling.

Q. Now, the Kroger attorney has been very dilatory, or diligent I should say—diligent in trying to show that you make twelve dollars a week more while in Radford, do you have to drive over there?

A. Yes, sir, and I have to have a car where I didn't have to have a car here.

Q. And that's twenty some miles a day, is that correct?

A. Yes, sir.

Q. And you have to provide your own lunch over there?

A. Yes, sir.

Q. And plus purchasing an automobile?

A. That's right.

Q. Does that cost you more than twelve dollars a week?

A. It certainly does.

Mr. Goldsmith: All right, stand aside.

(witness stands aside)

page 47 } JOSEPH W. YOUNG, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Goldsmith:

Q. Were you sworn, Mr. Young?

A. Yes, sir.

Q. Would you please state your name?

A. Joseph W. Young.

Q. Most people call you Wendell?

A. Yes, sir.

Joseph W. Young

Q. How old are you?

A. Thirty-four.

Q. And is Jean Young who just testified, the young lady sitting here, your wife?

A. That's correct.

Q. Now, Mr. Young, it has been brought out here that the security agent asked your wife if you hadn't been injured and laid off from work on December 15th—how long had you been back to work?

A. I don't remember, approximately three or four months.

Q. Well, during this period that you were injured, hadn't you been paid in advance, a considerable sum of
page 48 } money so that you—you and your family wouldn't have a financial—

Mr. Muse: I object.

The Court: I sustain the objection.

Mr. Goldsmith: I except to the Court's ruling, and ask the privilege to state my objection into the record.

The Court: All right.

Mr. Goldsmith:

Q. Now, Mr. Young, on December 15th, were you working?

A. Yes, sir.

Q. And when you came home, what did you find, and what condition did you find your wife in?

A. When I come home it was approximately fifteen after five, maybe twenty after, and just opened the door and noticed my wife had her uniform on, and was sitting there crying in a state of shock.

And I asked her what in the name of God was wrong, and she said—

Mr. Muse: I object to what she said, Your Honor.

Mr. Goldsmith:

Q. Did you learn from Mrs. Young what had
page 49 } happened at Kroger?

A. I did.

Q. And what did you do after you learned what had happened at Kroger's?

A. Well, she told me her side of it, so I went back to the store myself and talked to Mr. Pendleton there, and he was waiting on a customer.

Joseph W. Young

Q. That's the man sitting over there? (Indicating in Courtroom)

A. That's correct.

Q. Was he Manager of the Kroger store in Christiansburg?

A. Yes.

Q. Was he Manager on that date?

A. Yes.

Q. All right.

A. And I asked Mr. Pendleton what happened. I said I've heard Jean's side of the story, I want to hear his side; and he said that Jean had—that they had proof that Jean had been taking money out of the till, and failing to ring up purchases.

And I said, "Well, Mr. Pendleton, if you've got so much evidence, why don't you prosecute?" And he said, "Well, it's out of my hands now. They may do it."

page 50 } Q. They had evidence that she had taken money out of the till—

A. Said they had proof.

Q. Did you have any further conversation with him?

A. No, I didn't, I left.

Q. Now, I want to ask you this, Mr. Young, did Mr. Pendleton freely tell you this information?

A. He did.

Q. You didn't have to coerce him in any way?

A. No, I did not.

Q. You did not threaten him in any way?

A. No.

Q. He just voluntarily told you that they had evidence that she had taken money out of the till?

A. And failed to ring up purchases.

Q. And failed to ring up purchases—and then the last thing he said to you that they'd probably prosecute, is that right?

A. No, he said it was out of his hands—said they probably would.

Q. Now, how long did you say your wife—how

page 51 } long was it that she continued in this condition that you described?

A. Well, she was still like that when I got back, approximately ten or fifteen minutes.

Mr. Goldsmith: All right, take the witness.

Edith Bowman

CROSS EXAMINATION

By Mr. Muse:

Q. Mr. Young, were you previously acquainted with Mr. Pendleton?

A. I've just seen him, that's all.

Q. You knew him?

A. I knew him when I seen him, that's all.

Q. Now, did he know you?

A. He probably knowed me when he seen me. I've picked my wife up several times there.

Q. On this occasion that you went to talk with him, did he know that you were the husband of Mrs. Jean Young?

A. I take for granted he did.

Q. You have every reason to believe so?

A. Yes, sir.

Q. And you asked him as a husband, what took place?

A. That's right.

page 52 } Q. And he made the statement to you that you have just given to the Jury?

A. That's right.

Mr. Muse: That is all, no further questions.

(witness stands aside)

EDITH BOWMAN, another witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Goldsmith:

Q. What is your name, please?

A. Edith Bowman.

Q. And on December 15th, 1965, were you employed by Kroger?

A. Yes, sir.

Q. In what department were you employed?

A. The Dairy Department.

Q. And were you the Shop Steward at that time?

A. Yes, sir.

Q. And how long had you been Shop Steward?

A. Oh, I don't remember exactly how many years. I don't remember what year—

page 53 } Q. But you had been for a number of years?
A. Yes.

Q. And I will ask you what the custom is, when the Company is making a complaint against an employee, an accusation?

A. Well, my job as the Shop Steward, I'm—

Mr. Muse: I object to the question. The question is, "What is the custom with respect to the Union or the Shop Steward and the Company"—now, that doesn't have a thing in the world to do with this—

The Court: I think we might as well understand right at this point that any Union activities or grievances, is separate and distinct from this trial, on the basis of accusations made on the 15th of December, and you must keep them separate.

Mr. Muse: That's the point I was making.

Mr. Goldsmith: Your Honor, the point I'm making, if Mr. Muse will state my question correctly is, is it customary to call the Shop Steward in when a complaint is being made, and I want to show in this case, they didn't do it.

The Court: Well, that may have some merit or not, I do not know, between the employee and employer and
page 54 } the Union, but that's not involved in this suit, and let's keep Union activities out of it.

Mr. Goldsmith: Well, we wish to except to the Court's ruling because it has a direct bearing in our position, on this case.

Mr. Jenkins: Your Honor, we would also like permission to vouch for the record what this witness would say, at a later time.

The Court: All right, you may do so later.

Mr. Jenkins: All right, thank you.

Mr. Goldsmith:

Q. Were you on duty that date, December the 15th?

A. No, sir. No, sir, that was my day off.

Q. Now, did Mrs. Young call you and inform you that she had been laid off or sent home?

A. Yes, sir, she called me around seven o'clock—

Q. Would you tell what she said with reference to the call—

A. Well, she called me and said that—

Mr. Muse: I object, Your Honor.

Edith Bowman

Mr. Goldsmith:

Q. Did she inform you that she had been laid
page 55 } off?

A. Yes, sir.

Q. Did you contact Mr. Pendleton?

A. Yes, sir.

Q. And he was then manager of the Christiansburg store?

A. Yes, sir.

Q. And what did he tell you?

A. He said he knew nothing of it; that I would have to get in touch with Mr. Holtman and an unidentified man.

Q. Did you go back to work the next day?

A. Yes, sir.

Q. Did you have a conversation with Mr. Pendleton the next day?

A. A short one.

Q. And what was that conversation?

A. He asked me if I had seen Jean being dishonest or anything, and I told him, "No, I haven't". And I asked him if that was the reason she was laid off, and he said to his knowledge, he didn't know anything about it.

Q. Now, what—were you transferred then? Who took her job—who took Jean Young's job?

page 56 } A. Jean took the Dairy Department when she come back to work.

Q. That was later, two months later?

A. Yes, in February.

Q. And what did they transfer you to?

A. Checker.

Q. Had you ever had any experience as a checker?

A. No, sir.

Q. And has Kroger ever put Mrs. Young back as a checker?

A. No, sir.

Mr. Muse: I object. It's a fact, Judge, that doesn't have a thing in the world to do with the case. They have a right to put Mrs. Young where they want to put her.

The Court: I think it is a moot question, since it's in the record her complete employment from that date to this.

Mr. Goldsmith: I would like to be heard in chambers.

The Court: Well, go ahead and ask her.

Edith Bowman

Mr. Goldsmith:

Q. Have they ever put her back as a checker?

page 57 } A. No, sir.

Q. Have they ever put her back in any job where she handled money or a position of trust?

A. No, sir.

Q. I will ask you whether or not, it is common knowledge in the store, Christiansburg store, why Jean Young was laid off?

Mr. Muse: I object to that, Your Honor.

The Court: I will have to overrule you on that.

Mr. Muse: May I state my exception to the Court?

The Court: Yes.

Mr. Muse: I except to the Court's ruling on the grounds that the source of the information to the employees is not given, number one; number two, the extent of the information is not given—is not stated to this witness, and three, the accuracy of the information is not stated.

Mr. Goldsmith: Go ahead and answer the question. Is it common knowledge of the store as to why Jean Young was laid off?

A. Well, yes, uh—the gossip was that she was laid off for taking money out of the till.

page 58 } The Court: All right, now, at that point I wish to strike from the record all of that evidence because she has termed it as gossip and nothing more, and it would be improper, and strike it from the record, and Gentlemen of the Jury, please disregard it.

Mr. Goldsmith:

Q. I am going to ask you how you learned this information—

The Court: I don't want any gossip—she can name people and—

Mr. Goldsmith:

Q. Name people—can you name people who discussed it and you heard discuss it, Mrs. Bowman?

A. Well, I overheard part of conversations.

Q. And were they employees?

A. They were employees.

Q. And was that general among the employees in this store?
A. Yes, sir.

Mr. Goldsmith: Take the witness.

page 59 } CROSS EXAMINATION

By Mr. Muse:
Q. I take it, Mrs. Bowman, is it Miss or Mrs. Bowman?
A. Mrs.
Q. That the overheard conversations, you don't know where those persons got the information, do you?
A. No, it was just—
Q. Gossip—
A. —overheard, conversations going on among employees.
Q. It was gossip among the employees, wasn't it?
A. Right.
Q. Is that correct?
A. Right.

Mr. Muse: I move that it be stricken.
The Court: Yes, sir, I sustain the motion.
Mr. Jenkins: Your Honor, we respectfully except to the ruling of the Court, on the ground that it is material.
Mr. Muse: All right, thank you.

(witness stands aside)

page 60 } CONNIE STRICTLER, another witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Goldsmith:
Q. You were sworn, I believe?
A. Yes, sir.
Q. Are you Miss or Mrs. Strictler?
A. Mrs.
Q. And where is your home?
A. Radford.
Q. And on December 15th, of 1965, were you an employee at Kroger?

A. Yes, sir, in Blacksburg.
Q. And what was your job?
A. I was cashier.
Q. How many cashiers did they have in Blacksburg?
A. About seven, I believe—I am not sure.
Q. Were you transferred to Christiansburg?
A. Yes, sir.
Q. Do you recall the date?
A. I believe I started working over there December 18th, on a Saturday.

page 61 } Q. And did you talk to Mr. Pendleton about being *trasnferred* to the Christiansburg store?

A. Well, I didn't know him at the time. I met him the day I went over there, but I hadn't talked to him before.

The Court: I can't hear you. Look this way when you speak, please.

A. Uh—I hadn't met him until I went over there that Saturday. I hadn't talked to him.

Mr. Goldsmith:
Q. Did you have a conversation with him about the job and why you were transferred over there?
A. No, sir.
Q. Who put you to work over there?
A. Mr. Black.
Q. All right now, what is Mr. Black's job?
A. Well, he is one of the supervisors of Kroger—head man.
Q. And is he the man who transferred you from Blacksburg to Christiansburg?
A. Yes, sir.
Q. And what did he say to you?

page 62 } A. Well, he told me they needed a full-time girl at Christiansburg, because they had to get rid of two of the girls over there for taking money.

Q. And who were the two girls that they let go?
A. They let go Ann Chandler and Jean Young.
Q. Jean Young is this young lady right here (indicating in Courtroom)?
A. Yes, sir.
Q. And that was Mr. Black, one of the supervisors for Kroger?
A. Yes, sir.

Connie Strictler

Q. And he told you they let these two girls go for taking money?

A. Yes, sir.

Q. And the only two girls let go were Ann Chandler and Jean Young?

A. As far as I know.

Q. And did you have any further conversation with him about it, or just come on over and go to work over here?

A. Reported to work at nine o'clock.

Q. And were you a full-time or part-time clerk?

A. I am full-time now. I was part-time in

page 63 } Blacksburg.

Q. You were part-time in Blacksburg?

A. Yes, sir, and then when I was transferred to Christiansburg, they made me full-time.

Q. And how long had you been working for Kroger before you were transferred over here?

A. I think about two and a-half years.

Q. Had you been working part-time regularly a certain number of hours every week?

A. I averaged about thirty or thirty-two hours a week.

Q. And that has been approximately two years?

A. Yes, sir.

Q. Did you have any further conversation with Mr. Black?

A. No, sir, not about the transfer. We say hello when I come in, and that is about it.

Q. Did he volunteer this information to you that he let these two girls go because they were taking money, or did you elicit the information from him or—

A. Well, when he asked me about it, I had given my notice to leave Kroger's because of the hours. I wanted

page 64 } a full-time job. And I asked him for certain if I would get forty hours, and he said, "Yes", on account of they had to let two girls go.

Q. And he volunteered this information?

A. Yes.

Q. And then you learned of the two girls and that Jean Young was one of them?

A. Yes.

Q. Had you known Mrs. Young before?

A. No, sir.

Q. At the time, you didn't know who he was talking about?

A. No, sir.

Ralph H. Mottesheard

Mr. Goldsmith: Take the witness.

CROSS EXAMINATION

Mr. Muse:

Q. When Mr. Black, according to your testimony, said he wanted you over to the Christiansburg store from the Blacksburg store, because of—he had to get rid of two girls for taking money, did he name the girls?

A. No, sir.

Q. He did not name anybody?

A. No, sir.

page 65 } Q. And you didn't ask him?

A. No, sir.

Mr. Muse: All right, that's all.

(witness stands aside)

RALPH H. MOTTESHEARD, another witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Goldsmith:

Q. What is your name?

A. Ralph H. Mottesheard.

Q. And what is your job?

A. I am Business Representative for the Retail Clerks Local 278 in Roanoke, Virginia.

Q. And after December the 15th, were you detailed to investigate the discharge or release or letting go, of Jean Young?

A. Yes, sir.

Q. And what official did you first approach and discuss it with?

A. Mr. Avery Pendleton, the store manager.

Q. And what did Mr. Pendleton say?

A. I asked Mr. Pendleton what the problem was,
page 66 } and how come the girls were dismissed, and Mr.
Pendleton informed me that he didn't know nothing about it, that he didn't dismiss them, that Mr. Holtman and some unidentified man, security agent, told her to go.

Ralph H. Mottesheard

Q. He did say he didn't know anything about it?
A. He told me that he did not know nothing about it.
Q. Was he at that time the manager of the store?
A. He was the manager of the store.
Q. And where was it you had your conversation?
A. Outside of the store, in front of the store. He was working with the bascarts.
Q. That was in Christiansburg?
A. In Christiansburg.
Q. Did you have a conversation then with Mr. Black, Supervisor, in connection with this—
A. Not this same day, sir.
Q. But later?
A. Later, yes, sir.
Q. All right now—
page 67 } A. I had a conversation with Mr. Black in regard to the discharge of Mrs. Young in Wytheville, Virginia, and Mr. Johnson, the Executive Officer of the Local, was present at this time, and we discussed this case with Mr. Black and requested him to put Mrs. Young back to work, with back pay, and discussion went on, and he said he could not do it, and that he would not do it; that he could not have anyone working on the cash registers that he could not trust.
Q. And were you talking at that time about anybody else but Mrs. Young?
A. To my information, not in Wytheville, we wasn't.
Q. You went to see him about Mrs. Young?
A. Specifically for this reason.
Q. And was he also talking about Mrs. Young when he said he wouldn't put a person back on the cash register he didn't trust?
A. The statement that he made was that they could not use anyone on the cash register they didn't trust. We were discussing Mrs. Young's situation.
Q. And was anybody else brought into the con-
page 68 } versation?
A. No, sir.
Q. And he made that statement voluntarily?
A. Made it voluntarily.
Q. And did you gather from that they were talking about Mrs. Young?
A. Yes, sir.

Ralph H. Mottesheard

Q. And you were able later to get her back in the Dairy Department, is that right?

A. The Company did take her back in the Dairy Department, a different job than she had. They did take her back.

Q. Did they ever take her back on the cash register?

A. To my knowledge, she has not run a cash register since the day that she was—

Q. Now, in this—you talked to Mr. Black later, I believe, conversation beside this, at Blacksburg, is that right?

A. We had a meeting—well, we met with Mr. Black in Blacksburg in regard to another case, but we also—every time we—I happened to run across Mr. Black, we asked about the Jean Young case, and we asked him to make a decision of what he was going to do about the case, and

page 69 } he persistently said that he wasn't going to do nothing about it.

Q. Do you know Mr. Holtman?

A. Mr. Holtman?

Q. Yes.

A. Yes, sir.

Q. And did you have a conversation with him about it?

A. No, sir.

Q. Never discussed it?

A. No, sir.

Q. Did you discuss it with any other Kroger officials besides Mr. Pendleton and Mr. Black?

A. Mr. Fulcher, Personnel Director at Kroger Company.

Q. And when was that—during this period?

A. Well, it was during this period, yes. And on many times since, I have discussed it with Mr. Fulcher.

Q. And did you ask and request him to give her her job back on the cash register?

A. I asked him to take her back to her old job, yes, sir.

Q. And did he refuse to do it?

page 70 } A. He refused to do it.

Q. Is he over Mr. Black?

A. I would assume He is Personnel Director. I would say that he would be.

Q. Did he ever make any statements to you about the case except that he wouldn't take her back?

A. No, sir.

Q. Now, do you know how many stores Mr. Black has under him?

A. Do I know how many?

Ralph H. Mottesheard

Q. Yes, sir.
A. Approximately fifteen. I wouldn't know exactly.

Mr. Muse: It is eighteen.

Mr. Goldsmith:
Q. He is a right important guy?
A. Oh, yes, sir, he is Zone Manager for this area.
Q. And you approached him as to why she was discharged, is that right?
A. Yes, sir.
Q. Did he ever deny to you that she was dis-
page 71 } charged?
A. No, they never denied it. They never admitted it either.
Q. And it is true that she didn't work?
A. It is true that she did not work.
Q. And didn't put her back to work until both you and William Johnson who is Executive Officer of the Local, insisted they put her back to work?
A. That's correct.
Q. Had you made direct inquiry of other employees of Kroger during this period?
A. Yes, sir.
Q. And did they know generally why they discharged Jean Young?
A. Everyone had the idea that she was discharged for dishonesty. This was the general feeling. This was more or less rumors I would assume, but it was the general feeling throughout, not only the Christiansburg store, but the whole zone, that this case had happened, and she was discharged for dishonesty.
Q. And no one expressly told you that—you don't know the source of that information, but it was pretty general, wasn't it?
page 72 } A. Yes, sir.
Q. And as far as you and Mr. Johnson were concerned, it wasn't just gossip, was it?
A. That's right, sir.
Q. Actual discharge, and that was the reason Mr. Black gave you, they didn't trust her?
A. That is right.

Mr. Goldsmith: Take the witness.

William M. Johnson

CROSS EXAMINATION

By Mr. Muse:

Q. Now, Mr.—how do you pronounce your name?

A. Mottesheard.

Q. Now, if you will look straight ahead, all of us can hear you much easier. You have had many dealings with Mr. Black?

A. Yes, sir.

Q. In your official capacity with the Union?

A. That's right, sir.

Q. Your conversation with Mr. Black and Mr. Pendleton and Mr. Fulcher, was in your official capacity as Union *Representtive*?

A. That's correct, sir.

page 73 } Q. Now, are you telling this Court and Jury and the rest of us that Mrs. Young was discharged by Kroger?

A. This is the grievance we had. She was definitely not working, and the Company refused to take her back.

Q. Who told you she was discharged?

A. No one has told me that she was discharged. She was sent home and they refused to call her back to work.

Q. Refused to call her back—you mean hadn't called her back yet?

A. That's it, sir.

Q. That is what you are saying?

A. Yes, sir.

Mr. Muse: Stand aside.

(witness stands aside)

WILLIAM M. JOHNSON, another witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Goldsmith:

Q. I believe you were sworn this morning?

page 74 } A. Yes, sir.

Q. And what is your name?

A. William M. Johnson.

William M. Johnson

Q. Now, Mr. Johnson, what is your official position with the—what is your job?

A. I am with the Retail Clerks International Association, Secretary-Treasurer of the Retail Clerks Local Union No. 278.

Q. Are you the Executive Officer of that Local?

A. I am.

Q. And did you investigate and confer with Kroger officials after December 15th, with regard to the Jean Young case?

A. I did.

Q. And who did you first confer with?

A. Mr. Pendleton, the store manager.

Q. And where was he when you conferred with him?

A. In the store.

Q. And what did Mr. Pendleton tell you?

A. No comment—very evasive of any questions that I asked.

Q. Was Mrs. Young working then?

page 75 } A. No, sir.

Q. And was Mr. Mottesheard working with you?

A. Yes, sir.

Q. And were you working to get Mrs. Young back to work?

A. Yes, sir.

Q. And had she at that time, been discharged?

A. Yes, sir.

Q. Who else did you see besides Mr. Pendleton? Did he refer you to anybody?

A. He referred me to higher-ups. He didn't quote them by name, but in accordance with the agreement, I proceeded on to the next step of the agreement which was with the Zone Manager.

Q. And who was he?

A. Mr. Ben Black.

Q. And where did you confer with Mr. Ben Black?

A. I requested a meeting with Mr. Black, and was supposed to have met here in Christiansburg on a given date, and he called me at twelve o'clock on the day that I was supposed to have met him here at two o'clock, and told me it was impossible for him to meet with me. He was going

page 76 } the other direction, and we would have to postpone the meeting until a future date, at which time we did set a meeting for Wytheville, Virginia, at Vernon's Restaurant in Wythevill, Virginia, when I conferred with Mr. Black in regard to reinstatement of Mrs. Young.

William M. Johnson

Q. And what did he tell you about Mrs. Young and reinstatement as a cashier?

A. He told me he would not reinstate her. He was not in a position to reinstate her, and he would not pay her for the time lost, and he would not consider putting her back as a cashier.

Q. Did he tell you why he wouldn't consider putting her back as a cashier?

A. He said that Kroger had to have people handling their money that they could trust.

Q. Now, when he made that statement, was he talking about anybody but Jean Young?

A. No, sir.

Q. And did you all work on this matter to get her reinstated with Kroger continuously until they took her back February 22nd, 1966?

A. We did.

page 77 } Q. And did they ever deny to you that they had discharged her?

A. No, sir.

Q. And did they take her back?

A. Yes, sir, they did take her back.

Q. And where did they take her back to?

A. They put her in the Dairy Department, not as a cashier.

Q. In the Dairy Department, does that require any handling of money or anything of that nature?

A. No, sir.

Q. Did you then continue your protests that they hadn't put her back as a cashier?

A. Yes, sir, the contention was then, and still remains, that she was not reinstated to her job and paid for the time that she had lost.

Q. Now, did you talk to other Kroger employees?

A. Yes, sir.

Q. About this matter?

A. Yes, sir.

Q. And was that in Christiansburg store or in other stores?

page 78 } A. Well, I talked to them—well, of course, this is a discussion throughout many of the stores. The case itself, of course, was discussed in the store, but it's discussed in the majority of the stores.

Q. Did they know why Kroger had discharged her or let her go?

William M. Johnson

Mr. Muse: I object to the use of the word, "discharge" —that's an issue—

The Court: I sustain the objection.

Mr. Goldsmith: I object to the Court's ruling—

Mr. Muse: You were stating it as a fact in your question. That's what I'm objecting to.

Mr. Goldsmith: Well, he's already said she was discharged.

Mr. Muse: You said so.

Mr. Goldsmith: Well, he did too.

The Court: No, sir.

Mr. Goldsmith:

Q. Well, all right, what did you consider had happened to Jean Young?

Mr. Muse: I object to what he considers.

Mr. Goldsmith: All right. What had happened
page 79 } to Jean Young?

A. My notice of Mrs. Young was that she was discharged along with another employee; namely, Ann Chandler, for—for failure to follow Company policies.

Q. So your investigation was a result of the fact that the woman had been sent home, and you were notified she was discharged?

A. That's right.

Q. And you considered her discharged because she wasn't working?

A. That is correct.

Q. And that was the basis upon which you negotiated with Kroger?

A. Right.

Q. And did the other employees know why she was sent home?

A. Yes, sir, they said it was because of failure to—

Mr. Muse: I object to what the other employees said.

The Court: I don't think what the other employees said is admissible in this case.

Mr. Goldsmith: Well, it is common knowledge
page 80 } why she was sent home?

A. The common knowledge known throughout was the fact that she was discharged for improper handling of Company funds.

William M. Johnson

Mr. Goldsmith: Take the witness.

CROSS EXAMINATION

By Mr. Muse:

Q. The common knowledge you are talking about, Mr. Johnson, was common gossip, wasn't it?

A. I don't know whether it was gossip or not because the word of mouth seems to spread pretty rapidly, and I wouldn't say that it was gossip.

Q. You don't know who started it?

A. Yes, I know who started it.

Q. All right, who started it?

A. Kroger Company, when they discharged Mrs. Young.

Q. Now, you say that Kroger Company discharged Mrs. Young. Who told you that Kroger Company discharged Mrs. Young?

A. Well, she was not working, sir. And that was my official protest, that she be reinstated to her job and paid for the time that she had lost.

Q. Reinstated—

page 81 } A. Reinstated means to her job.

Q. She was a part-time employee, was she not?

A. Yes, sir.

Q. And Kroger called her to work as a part-time employee whenever they wanted to, didn't they?

A. She was supposedly to have been scheduled by the Contract.

Q. As a part-time employee, she was not on a regular schedule, was she?

A. She was supposed to be scheduled, and any time she was not to report to work, she was to be called or notified before she reported to work.

Q. And they could notify her—if they didn't notify her to report, there wasn't any obligation on the part of the Company to call her back until the Company wanted to, was there?

A. She was supposed to be on the schedule by seniority.

Q. As a part-time employee?

A. As a part-time employee.

Q. Did any of the Kroger officials ever tell you that Mrs. Young was discharged?

page 82 } A. No, sir, they have never told me she was discharged, because in my position and with the fact that I too, have an arbitration case pending with Kroger Company—

William M. Johnson

The Court: Wait a minute. I respect you for the position you occupy and for the work that you do, but it has no part in this law suit. If you will quit giving your conclusions and opinions, and answer the questions directly, I think we will get the record straight.

A. All right, sir.

The Court: But otherwise, we won't.

A. All right, sir.

Mr. Muse:

Q. I am asking for your knowledge, not your conclusions, Mr. Johnson. This is true, is it not, that no Kroger official ever told you that Mrs. Young had been discharged?

A. Not to my memory, no one has ever told me that she was discharged—no official.

Q. Every conference that you've had—when you had a conference with Mr. Pendleton and Mr. Black, that conference was in your official position, was it not?

page 83 } A. That is correct.

Q. Since Mrs. Young has returned to work, been called back to work, she has been given at least one promotion, hasn't she?

A. Yes, sir.

Mr. Jenkins: Your Honor, we object to that, if we couldn't go into the details of what happened—

Mr. Muse: Well, it's already there. I think that is all.

RE-DIRECT EXAMINATION

By Mr. Goldsmith:

Q. Now, Mr. Johnson, we have used the word, discharged, and you have used the word, reinstated. When you talked to Mr. Black the first time, is it a fact that Mrs. Young was not working?

A. That is correct.

Q. And the first time you talked to him, he absolutely refused to reinstate her, didn't he?

A. That is correct.

Q. And it was only later after many conferences, two months from the time, February 22nd, over two months later, that she was put back to work?

page 84 } A. That is true.

William M. Johnson

Mr. Muse: You are leading the witness right substantially.

Mr. Goldsmith: Well, so did you. And I want to get the sequence straight, and I want to get this word, reinstated,—

The Court: It is all evidence and it's all in the record.

Mr. Goldsmith:

Q. Now, Mr. Muse went into—at some length about this question of being a part-time employee. Mrs. Young had been with Kroger's to where she had gotten on the seniority list, hadn't she?

A. That is correct.

Q. And she was high enough on that list that she had to be regularly scheduled, is that correct?

A. That's correct.

Q. Now, tell me what kind of schedule that would be, daily, weekly, or what?

A. It's supposed to be on a daily schedule, and as I stated earlier, any time that the manager does not need this employee, he is supposed to notify them before they report to work not to come in, that he doesn't need them
page 85 } that day.

Q. And I don't want to say that she was a part-time, but she was a regular part-time—

A. She was a regular part-time.

Q. And there was people on that seniority list lower than she was?

A. Yes, sir.

Q. At the time she was let go home or whatever they call it, non-discharge or non-reinstatement or whatever it was, she was out of work?

A. That is correct.

Q. She had been removed from the seniority list?

A. As far as I know.

Q. Now, Mrs. Strictler was on that same list?

A. Yes, sir, in another town.

Q. And they have many on that list?

A. Yes, sir.

Q. Now, she was off over two months; I will ask you whether or not that is a short, medium length, or unusual length of time for an employee who has reached the seniority list?

A. It is an unusual time.

page 86 } Mr. Muse: We object. That calls for a conclusion.

The Court: I sustain the objection.

Mr. Goldsmith: We except.

Q. How long have you been dealing with Kroger?

A. Sixteen years.

Q. And you have had frequent lay-offs of employees?

A. I have.

Q. And can you tell me of any employee besides Mrs. Young who has been laid off and kept off as long as she has?

Mr. Muse: We object.

The Court: I sustain the objection.

Mr. Goldsmith: As a matter of fact, I would like to reserve the right to state my grounds for it—this man knows Kroger better than Kroger does.

Mr. Muse: I have no objection to putting it in the record later.

Mr. Goldsmith: I may have asked this, Your Honor, and if I have, pardon me for repeating myself.

page 87 } Q. When you were talking to Mr. Ben Black you made the statement, in Wytheville, that you weren't talking about anybody else?

A. No, sir.

Mr. Goldsmith: All right.

(witness stands aside)

BEATRICE M. MEAD, another witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Goldsmith:

Q. Were you sworn this morning, Mrs. Mead?

A. Yes, sir.

Q. For the record, please state your name?

A. Mrs. Beatrice M. Mead.

Q. Mrs. Mead, were you working for Kroger on December 15th, 1965?

A. Yes, sir.

Beatrice M. Mead

Q. And where were you working?

A. I was a cashier at Kroger. I was running the cash register.

Q. In Christiansburg?

page 88 } A. In Christiansburg, yes, sir.

Q. And how long have you been employed by Kroger?

A. I will be employed ten years in October.

Q. Now, on December the 15th, the day that they sent Jean Young home, were you called into the office by anyone, the conference room?

A. Yes, I was called in the conference room.

Q. And were you asked anything about Jean Young?

A. I was asked if I had seen anybody—I don't recall if her name was mentioned. They asked me if I had seen anybody take any money out of the cash register, or if I had seen any of the girls take any merchandise.

Q. What did you tell them?

A. I told them "No".

Q. Was it before or after that, they let Mrs. Young go?

A. Mrs. Young hadn't come yet. She was at home. She wasn't in the store.

Q. Now, on that day, did they at any time, put Mrs. Young to work?

page 89 } A. No, sir.

Mr. Goldsmith: All right, thank you.

CROSS EXAMINATION

By Mr. Muse:

Q. Who was present, Mrs. Mead, at the time this conversation took place?

A. The conversation was with Mr. Holtman, I believe, and another gentleman. I don't remember his name.

Q. In the conference room at the—

A. At the Kroger store.

Q. At the Christiansburg store?

A. Yes.

Q. And was that on December the 15th?

A. Yes, sir.

Q. Nobody's name was mentioned at that conference—they were just asking if you had seen anybody?

A. I don't believe that anybody's name was mentioned.

Mr. Muse: That's all, thank you.

(witness stands aside)

page 90 } FRANK SHELTON, another witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Goldsmith:

Q. For the record, please state your name?

A. Frank Shelton.

Q. And what is your occupation, Mr. Shelton?

A. I am a merchant here in town.

Q. And where is your place of business located?

A. At 11 East Main Street, just below the old Church here.

Q. Just below the Courthouse?

A. That's right.

Q. Is that Lawrence and Shelton?

A. Lawrence and Shelton.

Q. And Mr. Shelton, do you know Jean Hall Young?

A. Yes, I do.

Q. And how long have you known her?

A. I suppose all her life.

Q. Do you know her general reputation for being a peaceful, law-abiding citizen?

page 91 } A. She is.

Q. Is that reputation good or bad?

A. It is good.

Q. Do you know her general reputation for truth and veracity and honor, Mr. Shelton?

A. Yes.

Q. Is that reputation good or bad?

A. It is.

Q. You mean—is it good?

A. It is good.

Q. Based on that reputation, Mr. Shelton, would you believe Jean Young under oath, in the matter in which she's interested?

A. I would.

Q. Mr. Shelton, you are a merchant doing business or running a general store, is that right?

A. That's right.

Q. And I will ask you whether or not you would employ a person who had been let go for stealing?

Mr. Muse: I object to that question.
The Court: I sustain the objection.
Mr. Goldsmith: We except to the Court's ruling.

page 92 } Q. Mr. Shelton, before you employed anybody, generally, are their records investigated?
A. I do.
Q. That is generally what you merchants do?
A. That's right.
Q. And you check that pretty carefully?
A. We try to.
Q. And you check former employers?
A. That's right.
Q. To try to determine about the person—
A. That's right.
Q. And based on that, is whether or not you hire them?
A. Yes, sir.

Mr. Goldsmith: Take the witness.
Mr. Muse: I have no questions.

(witness stands aside)

page 93 } GRADY McCONNELL, another witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Goldsmith:
Q. For the record, state your name and your present position?
A. Grady McConnell, Sheriff of Montgomery County.
Q. How long have you been Sheriff?
A. Three and a-half years.
Q. And prior to that, what was your occupation?
A. State Police.
Q. How long had you been a State Trooper?
A. Twenty-seven years.
Q. How long had you been stationed in Montgomery County?

Harry M. Holtman

A. Twenty-seven years.
Q. Do you know this young lady, Mrs. Jean Young?
A. Yes, I do.
Q. Do you know her general reputation for being a peaceful, law-abiding citizen?
A. Yes, sir.
page 94 } Q. Do you know her general reputation for truth and veracity and honesty?
A. Yes, sir.
Q. I'll ask you whether her reputation is good or bad?
A. It's good.
Q. And based on that reputation, would you believe her under oath, in a matter in which she was interested?
A. I would.

Mr. Goldsmith: Take the witness.
Mr. Muse: No questions.

(witness stands aside)

Mr. Goldsmith: Your Honor, the Plaintiff rests.
The Court: Plaintiff rests.
Mr. Muse: All right, call Mr. Holtman.

HARRY M. HOLTMAN, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Muse:
Q. State your name, please sir?
A. Harry M. Holtman.
Q. By whom are you employed?
page 95 } A. Kroger Company.
Q. In what capacity?
A. Manager of Operations.
Q. Located where?
A. In Salem, Virginia.
Q. Territory covered?
A. Four states, including fifty-eight stores, West Virginia, Virginia, North Carolina, and parts of Tennessee.
Q. Does that include Christiansburg?
A. That's right.
Q. You have been in that position how many years?

Harry M. Holtman

A. I've been in this position two and a-half years.

Q. How long have you been with Kroger?

A. Twenty-five years.

Q. How long have you been in Roanoke?

A. Eighteen years.

Q. What was your position with Kroger prior to your present position?

A. I was Zone Manager.

Q. Now, are you familiar with the Christians-
page 96 } burg Kroger Store?

A. I am.

Q. When I refer to the Christiansburg store, it will be Kroger store—

A. Right.

Q. Does your Company have an agreement with a security agency?

A. They do.

Q. What is a security agency?

A. A security agency is called in to check the store from an outsider's viewpoint. They go in to check the personnel to see if they are efficient, whether they are cordial to the customers, whether the merchandise is priced correctly or not; they make purchases and make sure the customer is charged the correct amount. They check for wrong prices—just general conditions of the store.

Q. Was a security agency called in on the Christiansburg store?

A. They were.

Q. Why?

A. We had a large shortage in this store, amounting to about ten thousand dollars over a period of six months' time,

six months' time, and after consulting with the
page 97 } store manager and finding out what he had been

doing to correct the shortage, I asked the store manager what else did he think was causing the shrink, and he mentioned that he felt there may be some irregularities at the checkstands.

Q. Now, how is a shortage determined?

A. The shortage is determined by taking the amount of merchandise that is billed into a store versus the sales, and then an inventory is taken, and then the difference between what he should have and what he has, is determined shortage.

Q. Is there always a shortage?

Harry M. Holtman

A. Normally, there is a reasonable amount allowed for shrinkage, as we call it.

Q. What is a normal amount?

A. Normal—I am giving you the division average at this point, is about three tenths of one percent.

Q. What was the shortage in this case?

A. It was over one percent. I think it was 1.12. The dollars amounted to about ten thousand dollars; about three of that, we say would be normal.

Q. Amounted to—

A. Almost seven thousand dollars.

page 98 } Q. Over the normal?

A. Over the normal.

Q. Now, did the security agency send its representatives in?

A. They did.

Q. Is that agency separate and distinct and apart from the Kroger Company?

A. That is right. They are hired on a contract basis.

Q. Did they make the survey?

A. They did.

Q. Did they give a report to Kroger?

A. They did.

Q. What did that report show?

Mr. Goldsmith: Your Honor, I object to that. That is hearsay as far as my client is concerned.

The Court: I believe it is.

Mr. Muse: Well, the reason we think it is admissible is this, there was a shortage here. Now, investigation was made. That conference was a privileged conference. We have a right to show the background that justified the conference that was privileged.

page 99 } The Court: I think you can show that there was a survey made, and that it reported a shortage, but if you go into any further details, it would have to be done by the one who made the report and let him testify as to the details.

Mr. Muse:

Q. Was there a shortage?

A. There were discrepancies in the cash transactions.

Mr. Jenkins: We object to that, Your Honor, as hearsay.

Harry M. Holtman

I think he ought to bring the man in here and put him on the witness stand to show it.

Mr. Muse: We are going to have here as a witness, the man in charge of the survey.

The Court: Sir?

Mr. Muse: We will introduce as a witness, the gentleman who had charge of the survey.

The Court: All right, sir, go ahead.

Mr. Muse: He will be our next witness.

Q. Did your Company have—did any of your employees confess to the shortage?

A. Yes, we talked to several of the employees, and one of the employees, a cashier, confessed to taking a

page 100 } sizeable amount of money.

Q. Approximately what amount?

A. Five hundred dollars.

Q. Was it by a written confession?

A. It was.

Q. Was a conference held with the Plaintiff?

A. A conference was held.

Q. Where?

A. In the store, Christiansburg store, conference room.

Q. On what day?

A. December 15th.

Q. Of this year?

A. Of 1965.

Q. 1965?

A. '65.

Q. Who was present?

A. Mr. Byram, Representative for the survey system or the security service and myself.

Q. Who was in charge of the survey made in the Christiansburg store?

A. The person in charge of the survey, or the person—

Q. The overall boss of the survey?

page 101 } A. Byram.

Q. Is he here?

A. He's here.

Q. Now, Mrs. Young was present, was she?

A. She was.

Q. Would you tell us what happened?

A. After talking to one of the employees who I just men-

tioned, confessing to taking this amount of money, she implicated Jean Young—

Mr. Goldsmith: I object to that. It has no basis whatsoever in this case.

The Court: I understand they have a written statement showing that implication—

Mr. Goldsmith: It's still hearsay.

Mr. Muse: No—no.

Mr. Goldsmith: They have the privilege of summonsing that person here.

Mr. Muse: We couldn't find them, and neither could you—that's what you said in your—

Mr. Goldsmith: Well, I did. I tried to find her too.

Mr. Muse: Judge, we are not introducing this statement. There is a distinction in what I'm going to say between what—

page 102 } the legal position I am taking, and the one that these gentlemen are taking. We are not introducing this statement as proof of the fact—

The Court: I understand—you are simply asking him if she implicated her as a basis for the investigation.

Mr. Muse: That's exactly right.

The Court: And I have ruled you may do this.

Mr. Muse: Thank you.

Mr. Jenkins: We except to the ruling of the Court on the grounds that it is hearsay.

Mr. Muse:

Q. Why was a conference held with Jean Young?

A. Because the person—the cashier that confessed taking the money, implicated Jean Young.

Q. Are you using the word, implicated, as having the same meaning as involving?

A. Right.

Q. Tell us what happened at that conference?

A. After the confession was signed, we asked the young lady if she would wait in another room while we called in

page 103 } Jean Young for—while we—to question her, and she said she would.

We called in Jean Young and the questioning proceeded. Jean Young denied that she had been involved in any taking of any money from Kroger; that she—she denied 'til the conference was over that she had taken any money. We asked Jean Young—we asked the young lady to

come back again and tell, or to confront Jean Young with the same statement that she had given us.

Q. And what young lady are you referring to?

A. Shall I mention her name?

Q. No, but the one—

A. The one that confessed. And we—and she confronted Jean Young by saying, "Jean, you might as well tell them. I've told them everything". And Jean Young still denied being any part of taking any money.

Q. Now, Mr. Byram as I understand was in that conference?

A. He was.

Q. Who did the talking, the questioning?

A. Mr. Byram.

Q. Did you do any?

page 104 } A. None.

Q. Just tell the Jury what this gentleman said as far as you can remember?

Mr. Jenkins: Your Honor, that would be hearsay. He is here to testify.

The Court: I don't think it would—go ahead.

Mr. Jenkins: We except to the ruling of the Court.

Mr. Muse:

Q. Go ahead, Mr. Holtman.

A. As I recall, I think he opened the discussion by asking Jean Young whether she was aware of the shortage in the store. She said she was. She had heard about it. She was asked if she knew anything about it, and she said, "No". And I think Mr. Byram talked about his children and grandchildren, and that finally got around to talking about the—Ann—the young lady that confessed and had implicated her.

The questioning as I recall, was more of a father talking to a daughter type-of-thing, rather than any raising their voices or shaking their fists. The uh—I am trying to remember exactly what happened. There were three

page 105 } persons questioned at the time, and this is pretty basically the way the questioning went.

Q. Did Mr. Byram shake his fist at the Plaintiff?

A. No.

Q. What did he do?

A. To understand this, you would have to see the conference room. The conference room is very small, and he—I believe on one occasion he did use his finger to emphasize a

Harry M. Holtman

point, but in no case, as I recall, did he use his fist in any way.

Q. At that conference was Mrs. Young accused of improperly—accused to taking money from Kroger?

A. No, she was not. We were questioning her regarding the statement made by the other girl.

Q. Does your Company have a rule about operating the cash drawer?

A. They have a—the Company has a procedure that every cashier is indoctrinated in the proper procedure of handling cash. I would say every cashier—this is left up to the store manager and the head cashier, but we do have a

page 106 } procedure that we ask to be followed.

Q. Is there any information pertinent and proper in this case that I have overlooked within your scope of knowledge?

A. No.

Q. Was the Plaintiff fired?

A. Oh, no—no. No, she was not fired. After the conference was over, I asked her to —I asked her to go home, that we would be in touch with her; that it was a matter—we had to study the matter further and I would have to be in touch with the Zone Manager, Mr. Black.

Q. Was that done?

A. This was done.

Q. Anything else?

A. That's all.

Mr. Muse: Take the witness.

CROSS EXAMINATION

By Mr. Goldsmith:

Q. All this young lady who confessed and implicated Jean Young did, was walk in the room and said, "Jean, you might as well tell them. I have told them everything". That's your statement?

A. Right.

page 107 } Q. Now, had you talked to Mr. Pendleton about this before you sent for Jean Young?

A. About what?

Q. About this whole matter, about Jean Young and about the other girl?

A. No. I asked him to call in Jean Young. We wanted to talk to her.

Harry M. Holtman

Q. Did you ask Mr. Pendleton to do that?
A. Yes, sir.
Q. Did you tell Mr. Pendleton that you were calling her back to put her to work?
A. No.
Q. You told him to call her and ask her to come down for a conference, didn't you?
A. I told him to have her come in the store, right.
Q. So if he told her he was calling her in to put her back to work, he was lying to her, wasn't he?
A. I don't understand the question.
Q. All right, it's very simple, Mr. Holtman. You asked Mr. Pendleton, Avery Pendleton, the gentleman sitting right over here (indicating in Courtroom)—

page 108 } A. Right.

Q. —to call Jean Young to come into your store for a conference?
A. That's right.
Q. You didn't tell Mr. Pendleton to call her in to put her back to work for two or three hours, did you?
A. I asked her to come in for a conference and she's protected by a contract—
Q. I'm not asking—I asked you if you asked that man to call her to come back to work that day?
A. No, I didn't ask her to come back to work, no.
Q. All right, so if he called her, and she had a sick son at home, and told her he desperately needed her for work, he was lying to her, wasn't he?
A. I don't know what he told her.
Q. Well, I asked you if he did say that, he was lying to her?
A. Well, I don't know what he told her.
Q. And this so-called implicating woman you are talking about, she never did at any time, walk in that conference and look at this girl, and say "You were stealing",

page 109 } did she?

A. She says that—
Q. "I've told them everything".
A. That's right.
Q. And that's all she said. She never did mention the word, stealing. She never did mention the word, dishonesty, did she?
A. She didn't mention it in relation to Jean Young. She mentioned it in relation to herself.
Q. Yes, and you let Jean Young go home, didn't you?

Harry M. Holtman

A. Yes, sir.

Q. And you didn't take her back until after Mr. Mottesheard and Mr. Johnson had been on your coattails for over two and a-half months, did you?

A. I haven't spoken to Mottesheard or Johnson.

Q. You never said a word to them—

A. No.

Q. They had been after Mr. Black, who is the man who put her back?

A. I don't know what they did.

Q. But they didn't put her back for over two months, did they?

page 110 } A. According to the records, that's right.

Q. And you let her go on the word of a thief—

A. I didn't let her go. I asked her to go home.

Q. Well, what do you call it—

A. Well, certainly—

Q. You didn't call her back to work? You said you'd call her back in two or three days—

A. Well, I think the store manager told her that.

Q. Well, either you or the store manager, and both of you were Kroger employees, and you told her you would call her back in two or three days?

A. I didn't tell her that.

Q. Well, you heard her told though?

A. No, I didn't hear—

Q. And you let her go—

A. No, I didn't.

Q. You heard of it?

A. No, I didn't hear of it either.

Q. And Mr. Pendleton knew before you left that store why you let Jean go, and he knew before you left that store, he wasn't going to call her back, either you or Mr.

page 111 } Ben Black either.

A. I didn't let her go, and I had nothing to do —I asked her to go home and said we would study the matter further.

Q. Well, what do you call that? You let her go home—you didn't let her go to work?

A. No.

Q. You didn't work her for two or three hours that day like Mr. Pendleton told her he was going to?

A. I don't know what he told her.

Q. Well, let's put it—she didn't work?

Harry M. Holtman

A. Right. I don't know whether he told her two hours—

Q. All right, if you kept her away from work for two and a-half months, you kept her away on the word of an admitted thief, didn't you?

A. I didn't keep her away from work at all.

Q. Well, Kroger Company, the Company you work for, kept her away—you deny that they kept her away from December 15th until February 22nd, do you deny that?

A. No, and—

Q. And who's your boss?

page 112 } Mr. Muse: Give him a chance to answer—an opportunity to finish.

Mr. Goldsmith: I'll give it to him, sure.

A. And the reason she was not called was because in conference with Mr. Black, we took into consideration the fact—the opening of the A & P Blacksburg store, and also the College letting out for the holidays, and with a drop in business in the Blacksburg store, we felt that a regular employee in the Blacksburg store should be given the work.

Q. And the V.P.I. College, as you call it, doesn't stay open until February 22nd, does it?

A. Our business doesn't pick back up again and—

Q. Wait a minute, and another thing—you brought another part-time employee from Blacksburg over to this store?

A. I am not familiar with what was done.

Q. Oh, you just want to—now, you were over, as the boss, over Mr. Black, weren't you?

A. Yes.

Q. And you are a man who is in charge of fifty-eight stores, and you let this woman go home, and you were
page 113 } the man—you were the big boss on that day, weren't you?

A. I told her to go home—

Q. December 15th?

A. That's right.

Q. You told her to go home, and you never countermanded that order at any time, did you?

A. No, sir.

Q. And you have never countermanded any order to put this girl back on the cash register?

A. No.

Harry M. Holtman

Q. You have never been to her and apologized to her that you were sorry you let her go, have you?

A. No, sir, as far as I am concerned, she wasn't let go.

Q. Well, let's—you have admitted she was let go—

A. She was sent home.

Q. Well, she was sent home then—what do you call that—you admit that?

A. Oh, yes.

Q. You never called her back?

A. No.

page 114 } Q. You never ordered Mr. Black to call her back?

A. Mr. Black—uh—

Q. You never ordered Mr. Pendleton to call her back—and you were the top dog and man that day at Kroger Grocery and Bakery Company, is that right?

A. That's right, I asked the girl to go home.

Mr. Muse: Give the witness an opportunity to finish his answer, Mr. Goldsmith. You are interrupting him.

Mr. Goldsmith: I don't mean to interrupt him.

The Court: Do you have any other explanations you want to give to any of your other answers?

A. No.

Mr. Goldsmith:

Q. All right, now, you let her go home and you never countermanded that order?

A. That's right.

Q. All right. You have never been to Jean Young and apologized for letting her go home on the word

page 115 } of an admitted thief, have you?

A. I've never been to Jean Young.

Q. Well, you've never written her?

A. No.

Q. And you have never seen that she got put back on a cash register and position of trust, have you?

A. No.

Q. And she is not now working in a position of monetary trust where she handles funds, is she?

A. No.

Q. And so you want to tell this Jury that you are Manager over fifty-eight stores, and you had your detective—you were

paying this security man, weren't you—Kroger was, I mean your Company was paying them?

A. Right.

Q. He was your employee?

A. Right.

Q. And he asked this girl if her child wasn't sick, didn't he?

A. I don't remember.

Q. He asked her about her husband being in

page 116 } a wreck, didn't he?

A. I don't recall.

Q. Well, you can't deny it, can you?

A. I don't recall it.

Q. You heard Mrs. Young testify?

A. I am not sure whether he asked her that or not.

Q. And if you don't recall that, it's very apt that you don't recall when he called her a thief and told her she was dishonest and they had evidence she was taking money, do you?

A. That would be important. I would remember that.

Q. Oh, and what you are trying to tell this Jury here is that you, as big-shot in Kroger, over fifty-eight stores, and a paid detective call a young girl, young woman, into a closed conference, and you all tried to expand and be the big father image—is that what you are trying to tell us? It was a fatherly conversation—is that what you are trying to tell this Jury, isn't it?

A. This is the way it impressed me.

Mr. Goldsmith: All right, thank you.

(witness stands aside)

page 117 } A. C. BYRAM, another witness called on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Muse:

Q. State your name?

A. Byram.

Q. And your initials?

A. A. C.

Q. By whom are you employed?

A. C. Byram

A. Now with the National Business Security Company in Oklahoma City.

Q. At the time of this happening, by whom were you employed?

A. The Hopper and Hawkins Survey System, Dallas.

Q. Did they have a contract with Kroger?

A. Yes, sir, they did.

Q. Mr. Byram, what is your background experience?

A. You mean as far as the job is concerned, or before the job?

Q. Well, before the job. Tell us a little bit about yourself?

A. Well, I pastored a Baptist Church for

page 118 } twenty years.

Q. Where?

A. In Florida, Texas, and Oklahoma.

Q. How long has it been since you severed your pastorate?

A. Some eight or nine years, something like that.

Q. Why?

A. I had three heart attacks.

Mr. Jenkins: Your Honor, we object to that. It's immaterial.

The Court: I overrule the objection.

Mr. Jenkins: We except to the ruling of the Court.

Mr. Muse:

Q. Now, when you—by reason of your health condition and heart attacks, what business did you go into?

A. I went with the Hopper and Hawkins Survey System.

Q. You were with them for how many years?

A. Six years.

Q. Is your present employment of comparable

page 119 } nature?

A. Yes, sir, it was. It was an avenue of missions that when I found out about it, I discussed it with my doctors and explained to them and they told me I could do the work.

Q. Now, did you have charge of the security investigation at the Christiansburg Kroger store?

A. Yes, sir.

Q. Were the people who made the survey, operating under your direction?

A. Yes, sir.

Mr. Goldsmith: I want to ask a question please.
Mr. Muse: All right.
Mr. Goldsmith: Did you actually make any part of the investigation in the store yourself?
A. No, sir, my crew did.
Mr. Goldsmith: All right, I object to this gentleman talking or saying anything about the survey at the Christiansburg store. It's all hearsay as far as he is concerned.

Mr. Muse:
Q. Was it—the survey, made under your
page 120 } direction?
A. Yes, sir.
Q. Was that a part of your responsibility?
A. Yes, sir.

Mr. Muse: I think it is proper.
The Court: I think he can testify as to the survey.
Mr. Goldsmith: I would like to ask another question, please. Are those people still living who actually made the survey?

A. Yes, sir.
Q. And they could be called as witnesses?
A. Yes, sir.
Q. And they have not been?
A. Pardon?
Q. And you were in charge of it, and you were taking their word for what they found?
A. Not necessarily, sir.
Q. Well, you didn't do any of it yourself, and these people are available to testify who did make it?
A. Yes, sir.

Mr. Goldsmith: All right, I object then.

Mr. Muse:
Q. Are those people in Virginia?
page 121 } A. No, sir.

Mr. Goldsmith: I don't think it makes any difference where they are.
The Court: Go ahead.

A. C. Byram

Mr. Jenkins: We except to the ruling of the Court, that it is hearsay and anything this man knows is hearsay.

Mr. Muse:

Q. Mr. Byram, what was the general result of that survey?

A. The complete survey, or just the actual findings of the survey?

Q. Well, let me ask you this, when you go into a survey, what do you look for?

A. Number one, my Company would just inform me that a store—we were to run a survey on a particular store or stores.

Q. All right, we will take the Christiansburg store—

A. Yes, sir, I do not know how much. My Company, oh sometimes they would tell me, sometimes they wouldn't. They would say—

Q. Well, how about the Christiansburg store?

page 122 } A. —a shortage in the store—

Q. Take the Christiansburg store.

A. —and we gave a three-day survey of the store, and when the survey was completed, each day and each entrance that these four people would make during different times of the day, they would write a complete detailed report as to what they saw in the store.

Q. What are they looking for, just give us some idea?

A. They were looking for—there were several things. They check to see if the store is clean. They try to look at that store as a new potential customer would be. They check to see if the store is clean, if merchandise is properly marked, if there is any boxes or maybe broken glass on the floor that might cause a customer to stumble and fall. They check the manager, the co-manager, and the cashiers to see if they are courteous and polite to the customers. They check and see if each sale is recorded properly and the way it should be recorded.

Q. Did you discover as a result of that survey, that one employee had taken money that she should not

page 123 } have taken?

A. Yes, sir, we did.

Q. Did that employee implicate anyone else?

A. Yes, sir, she sure did.

Q. Who did she implicate?

A. Mrs. Jean—

Mr. Goldsmith: (interrupting)—wait a minute, we wish to object—

Mr. Jenkins: On the grounds of hearsay, Your Honor.

The Court: I overrule the objection.

Mr. Jenkins: We except.

Mr. Muse:

Q. Did you participate in a conference in the conference room, in which Mrs. Jean Young, the Plaintiff, and Mr. Holtman here and yourself were, I understand, together?

A. Yes, sir, I did.

Q. Who did the talking?

A. I did.

Q. Just go ahead and describe to the Court and Jury what took place, what was said so far as you can recall, and the general atmosphere of the—

page 124 } A. The general conversation—on some four or five occasions, we found this one person had not recorded her sales as she should have recorded them, and we came over here to hold an interview with her, and I asked her how come she was not recording the sales as a customer would give her the money, and she—

Mr. Goldsmith: Who are you talking about?

A. Must I name her?

Mr. Goldsmith: No, I am asking you if you are talking about Mrs. Young or this other—

A. I'm getting to that.

Mr. Goldsmith: All right, I just wanted to be sure—you are not talking about Mrs. Young?

A. Not yet, no, sir.

Mr. Goldsmith: All right, we expect you to talk about her, but we want to get it straight from somebody else.

Mr. Muse:

Q. We are interested in primarily—you said, as I recall, and I'm doing this to save time, that this employee admitted taking the money—did she give a written statement?

A. Yes, sir, in her own handwriting.

page 125 } Q. Did she sign it?

A. Yes, sir.

Q. You said that she implicated the Plaintiff?

A. Yes, sir.

A. C. Byram

Q. All right, now, let's get to the conference—
A. All right, sir.
Q. —in which the three of you were present?
A. Yes, sir.
Q. Tell us about that conference?
A. The best I can remember—that's been over a year and a-half ago, but I do not believe that Mrs. Jean was working that day, but she was called in, and I told her what this lady had said, had implicated her—
Q. What language did you use—do you remember what you told her?
A. I told her that—I told Mrs. Jean that this lady had told me that she had taught her how to do this.
Q. Now, "she" meaning whom?
A. Mrs. Chandler, Ann Chandler.
Q. That she had taught—
page 126 } A. That Jean had taught Ann how to perform this operation.
Q. All right, go ahead.
A. And uh, Mrs. Jean said that wasn't true; in fact, she said she didn't even know what I was talking about.
Mrs. Ann Chandler had walked out into the little waiting room, so I got up and walked out and told Mrs. Chandler that Jean said that wasn't true, that she didn't teach her those things, and she didn't know anything about it, and she said—

Mr. Goldsmith: We object, Your Honor. This man is talking about a conversation held out of Jean Young's presence in another room.
The Court: I sustain the objection.
Mr. Muse: Just don't go into that.

Q. Did this young lady come in?
A. She did.
Q. The conference?
A. Yes, sir.
Q. Tell us the conversation that took place where the other lady came in—
A. She just looked at—
Q. Now, who is "she"?
page 127 } A. Mrs. Chandler, Ann Chandler.
Q. Well, when you say "she", I cannot tell who you are talking about.

A. I'm sorry. Ann Chandler said, "Jean, you might as well tell them, because I have told them everything", and Jean said, "Well, I don't know what you're talking about. I never done anything like that in my life, and I just don't know what you're talking about". That was the end of the conference.

Q. Did you ever accuse the Plaintiff of dishonesty?

A. Oh, no, sir, I couldn't. I had no proof.

Q. Misconduct of any sort?

A. No, sir, I couldn't have.

Mr. Muse: Take the witness.

CROSS EXAMINATION

By Mr. Goldsmith:

Q. Now, you do not know from your own observations or your own knowledge, anything that happened in this store?

A. From the reports—

page 128 } Q. I am asking you a question, you can answer that yes or no. I asked you if you knew anything of your own knowledge and observations of what happened in this store?

A. No.

Q. All right, sir, when you called this Ann Chandler in there, she never at any time, accused in your presence and the presence of Mr. Holtman, looked at this woman, and accused her of stealing, did she?

A. Yes, sir.

Q. Well now, you just told this Jury—now, let's get this straight—you said you can't remember because it's been about two years ago, but you did say that the only thing Ann Chandler said was, "Jean, you might as well tell them. I have told them everything".

A. That's right.

Q. That's all she said?

A. That's right.

Q. And Jean Young immediately said, "I don't know what you're talking about".

A. That is true.

page 129 } Q. Yes, sir, and so I'll ask you again, while Ann Chandler was in that room, she never looked at this girl and told her that she was guilty of stealing or—

A. No, sir, no, sir. I'm sorry. I misunderstood your question.

A. C. Byram

Q. And all this stuff—did you tell Jean Young, or do you deny that you told Jean Young while she was in there, that you had evidence and you could prove that she was guilty of stealing?

A. No, sir.

Q. Or that she was taking money out of the till?

A. No, sir.

Q. Well, why did you bring in the hardship of her husband in the case, that he had recently been in an accident—why did you bring that up?

A. Bring in what now?

Q. You told Mrs. Young that her husband had recently been in a serious accident and injured, didn't you?

A. No, sir.

Q. You deny that?

A. Yes, sir.

Q. And you deny that you discussed her sick
page 130 } child?

A. Yes, sir.

Q. You didn't do that?

A. No, sir.

Q. If you did, you don't remember?

A. How could I—I was only in there thirty minutes.

Q. Well, what part of your memory is good—were you also like Mr. Holtman trying to give a big fatherly image?

A. No, sir.

Q. What?

A. No, sir.

Q. How long did you stick around?

Mr. Muse: Stick around where?

Mr. Goldsmith: The store.

A. From the time we got there until the time we left, was approximately two hours.

Q. How long was Jean Young there?

A. Approximately thirty minutes.

Q. And in that thirty minutes, all that was said then was that you asked her if she knew anything about any stealing or any shortages, and she said, "No", and you called Jean
Young in, and she made her statement and you
page 131 } let her go. And all that took thirty minutes, and
that is all of the thirty minute conversation that you can sit up here and tell this Jury that you remember?

A. No, I remember more than that, but we are talking about Jean Young, and approximately thirty minutes is all the time that I spent with Mrs. Young. I spent more time than that in the store, but not with Mrs. Young.

Q. Well, let's pin it down to thirty minutes. That's what I'm trying to do—and you were a detective, is what you were —if you want to call it that—that's what you were, your crew went in here as detectives, weren't you?

A. Well, we were not referred to as detectives—

Q. Well, but that is what you were—security agents and all that—but that is what you were sent in here to investigate and find out who was stealing Kroger's money, isn't that true?

A. If it was, I wasn't told that.

Q. All right now, until this thief we are speaking of, implicated Jean Young, you had absolutely nothing on Jean Young, did you?

A. Not a thing, no, sir.

page 132 } Q. So if anybody said they had enough evidence to prosecute her on, they were lying, weren't they?

A. Yes, sir, they sure were.

Q. And if you said it, you were lying?

A. I sure was, but I didn't say it.

Q. And Jean Young, you also found out, had been an employee for two years and three months, and been loyal to this Company during that three years, as far as you knew?

A. Well, as far as I know, sure—sure.

Q. Well, as far as that report you had, and all this detail you had—my goodness gracious man—and you are familiar with the New York Times Reports on these supermarkets like Kroger?

A. No, sir.

Q. You are not familiar with those?

A. No, sir.

Q. You are not familiar with what they show as the usual shortage of twenty-six percent, are you?

A. No, sir.

Q. Now, you were present when Mr. Holtman sent Jean Young home, weren't you?

page 133 } A. I don't believe, sir, because normally when I finish—

Q. I'm not talking about normally now. I am asking you if you were present, and you can say yes or no, or you don't remember.

A. C. Byram

A. I don't remember.

Q. All right, so it's a whole lot you don't remember, isn't it?

A. (No answer).

Q. Now, did you know that she did go home?

A. (No answer).

Q. You stuck around, didn't you, until later after your conference with Jean Young?

A. I waited downstairs—I don't wait around when the Company officials take over. I get out.

Q. All right, you waited around there—you didn't see Jean Young working there, did you?

A. Not that I remember.

Q. Well, you had Jean Young in there, and you and this great father image of yours, was doing the best you could to get this young lady to confess, weren't you?

A. No, sir.

page 134 } Q. You asked her to, didn't you?

A. Yes, sir, if she had.

Q. And you also asked her to take a lie-detector test, didn't you?

A. No, sir.

Q. You deny that?

A. Because we don't have one, or I didn't. My crew didn't.

Q. I am not saying you had one—there aren't but three places in the United States qualified to use them, but you can get them. You deny that? You deny that you had any conversation about her sick child?

A. If her child was sick, I think I would be like anyone else. I might have asked her how her child was, but as far as discussing the child, I don't even remember that part of it. I don't remember her having a sick child.

Q. Didn't you ask her if she would swear on the Bible and to her God whether or not she had stole any money?

A. No, sir.

Q. You didn't ask her that?

A. No, sir.

page 135 } Q. You being a Baptist preacher and you didn't think to ask her that?

A. No, sir, I wouldn't. No, sir, that's too dangerous.

Q. Didn't you tell her also about your heart attacks and she needed your help?

A. No, sir, I don't see what good that would do.

Q. Well, how did Mrs. Young know about your having a heart attack if she didn't hear you say it?

A. Some of the Company officials, they knew it.
Q. How did they know it?
A. I told them. They knew it.
Q. Well, you didn't hear Mr. Holtman tell them anything about your heart attacks—
A. I don't know what Mr. Holtman said prior to that or after I left.
Q. Well, you were there when this young lady came in?
A. Pardon?
Q. Mr. Holtman and you were there when she was brought in by Mr. Pendleton?
page 136 } A. Well, definitely we were there because we were waiting to talk to her.
Q. And you stayed until after she left?
A. Well, if you know that you know more than I do.
Q. Oh, so you've just got a bad memory and don't remember that. Do you remember hearing Mr. Holtman tell her to go home?
A. No, sir, because chances are, I left the conference before.
Q. And is it a fact that you have had heart attacks?
A. Yes, sir, I've had three of them.
Q. Mrs. Young had no way of knowing that, unless you or some Kroger official told her—
A. Well, I don't know about that, sir.
Q. All right, you were paid by Kroger, weren't you? Your Company was paid by Kroger, weren't they?
A. I'm sure they were. My Company paid me, but I'm sure that Kroger paid the fee.

Mr. Goldsmith: All right.

(witness stands aside)

page 137 } B. W. BLACK, another witness called on behalf of the Defendant, being first duly sworn testified as follows:

DIRECT EXAMINATION

By Mr. Muse:
Q. State your name, please sir?
A. B. W. Black.
Q. Mr. Black, by whom are you employed?
A. By the Kroger Company.

B. W. Black

Q. In what capacity?
A. Zone Manager.
Q. How many stores under your jurisdiction?
A. Eighteen.
Q. Does that include the Christiansburg store?
A. It does, yes.
Q. Are you acquainted with the Plaintiff in this case?
A. I am, yes, sir.
Q. Now, are—how often are inventories taken?
A. In this particular store, it was on a thirteen week basis. We have some stores that it is on a twenty week basis.

Q. This was a thirteen week basis?
page 138 } A. Thirteen week basis, yes, sir.
Q. How is an inventory taken?

A. It is taken by a group of auditors employed by our Salem office. This is their special job. This is all they do is take inventories in stores. Six men I believe, take the inventories.
Q. What's the basis of the inventory?
A. They audit the merchandise at the retail price—what is marked on the can. The office charges the store at retail; the store sells it at retail, and the auditors audit it at retail.
Q. And theoretically, does the cash of the store plus the merchandise, theoretically equal the merchandise sent to the store?
A. It should equal, yes.
Q. Theoretically?
A. Yes.
Q. But does it ever equal?
A. Never as a pattern. It fluctuates by reason of price changes, by reason of breakage, shoplifting, errors in pricing, errors in checking out—quite a few—perishable losses are sometimes greater than others. Sometimes prices
page 139 } are advancing, sometimes they are declining—never quite the same pattern each—
Q. What is the average loss of inventory?
A. Three tenths of a percent has been the pattern in the last five to ten years in this division.
Q. Now, when the inventory was taken that led to this interview of the Christiansburg store, what was the percentage of losses?
A. The loss was in excess of one percent, over a two in-
year.
ventory period; in other words, twenty-six weeks or half a

B. W. Black

Q. Let me ask you this question mathematically. Was that three times, more than three times above the average?

A. In excess of three times average, yes, sir.

Q. Did you ever talk with Jean Young about this matter?

A. Never with Jean Young about this matter, no.

Q. You know Mr. Ralph H. Mottesheard?

A. Yes, sir.

Q. Where did you discuss this case—this mat-
page 140 } ter of Jean Young with Mr. Mottesheard?

A. The only meeting I recall was in Wytheville, Virginia, on about January the 7th, 1966.

Q. Did that involve the discussion of recalling Mrs. Young back to work?

A. It did, yes, sir.

Q. What comment, if any, did you make?

A. I told him at that time—he asked about back pay and recalling. I told him I would not recommend back pay and I would recall her when and if the volume of business justified it.

Q. Did you make a statement to him that you couldn't have anybody on a cash register that you could not trust?

A. No, sir.

Q. You deny making such a statement?

A. I do.

Q. Do you know Mr. William M. Johnson?

A. Yes, sir.

Q. Who is he?

A. William Johnson is the Business Agent for the Retail Clerk's Union.

Q. And this Mr. Mottesheard—

A. I am not sure of his title. He works with
page 141 } William Johnson, however.

Q. Union representative?

A. That's right.

Q. Now, did you have a conference or any other conference with Mr. Johnson except the one in Wytheville?

A. By telephone, I had several telephone calls and several letters from him, but not a direct personal contact, I don't believe.

Q. What did you tell him with respect to the Plaintiff, Mrs. Young?

A. (No answer)

Q. Returning to work?

A. I told him that we would recall her when we needed her.

B. W. Black

Q. Did you tell him in effect that you would not reinstate her—did you make that statement to him?

A. That I would not—

Q. Reinstate the Plaintiff, that you were not in a position to reinstate her, and that Kroger had to have people on the registers they could trust. Did you make any such statement?

A. No, sir.

page 142 } Q. Have you ever accused the Plaintiff of being dishonest?

A. No, sir.

Q. Was Mrs. Connie Strictler a part-time employee or a regular employee?

A. By our records, she was a regular employee.

Q. Is there a standard by which that is determined?

A. Yes.

Q. Did she meet that standard?

A. By our records, yes, sir.

Q. Was she transferred for a period from Blacksburg to Christiansburg?

A. She was.

Q. Did you direct that?

A. I did.

Q. Explain that to the Jury.

A. In the week of Christmas, 1965, Jean Young was suspended for further investigation. Our store which is seven or eight miles away in Blacksburg—on this particular week he has a great decline in sales due to College closing up for Christmas holidays. We anticipated a further

page 143 } drop in the very near future, due to a new competitor entering the market.

Q. Is that A & P?

A. That's the A & P Shopping Center, yes. We had also had a game and continuity program going which was dropped, and we anticipated having to lay off someone in Blacksburg, and at this time we transferred Connie Strictler rather than, not necessarily lay her off, but to lay someone else off over there.

Q. You say she was a regular employee?

A. Yes, sir.

Q. And what was the status of Mrs. Young?

A. Mrs. Young was laid off for further investigation.

Q. Was she a regular employee or part-time employee?

A. Mrs. Young was a part-time employee.

Q. What explanation if any, did you give to Mrs. Connie

Strictler as to why you were transferring her to Christiansburg?

A. I think the fact that we needed her; also, the fact that she lived in Christiansburg at the time motivated that she be the one to come to the Christiansburg store.

page 144 } Q. Did you tell her that she was being transferred because you had to get rid of two girls for taking money?

A. She replaced by my records, one girl.

Q. But did you make the statement to her that she was being transferred because you had to get rid of two girls for taking money?

A. No, sir.

Q. Anything else pertinent to this case that I have overlooked asking you?

A. (No answer).

Q. Let me ask this question. When the Plaintiff came back to Kroger, what position did she occupy, what department?

A. She came back as a part-time employee. She was in the Dairy Department.

Q. You have eighteen stores under you, I believe you testified?

A. That's correct.

Q. All of them have Dairy Departments?

A. All have Dairy Departments, yes, sir.

Q. And is that traditionally or not, a department for women?

A. It has been traditionally a department for

page 145 } women. We have, in eighteen stores, I believe is correct, five men and thirteen women as the department heads.

Q. Does the department head in the Dairy Department—how does that compare with the cash register operators?

A. In the Christiansburg store, the rate is the same. In the store Mrs. Young is now employed in, it is—the Dairy Department pay is greater by thirty or forty cents an hour than the cashier job.

Mr. Muse: Take the witness.

CROSS EXAMINATION

By Mr. Goldsmith:

Q. You are Ben Black, is that right?

B. W. Black

A. That is correct.

Q. And the conference that you finally held with Mr. Mottesheard and Mr. Johnson in Wytheville, was in early January, wasn't it?

A. That's correct.

Q. And the purpose of that conference was to get you to reinstate Mrs. Young to the position as cashier, was it not?

A. To reinstate Mrs. Young with the Kroger

page 146 } Company—

Q. I asked you a specific question as to whether it was to get Mrs. Young reinstated as cashier, and you can answer that yes or no, and then make any explanation you want to?

A. No, sir.

Q. And you deny that?

A. Yes, sir.

Q. And she had been discharged, or let go home in your fatherly image as Mr. Holtman says, on the 15th of December, is that right?

A. That's correct.

Q. And you say for further investigation—investigation for what?

A. I did not send Mrs. Young home. The investigation was to cover any discrepancies in the stores that we had.

Q. Mr. Muse asked you a question, what you told Mr. Mottesheard, Mr. Johnson sitting over here (indicating in Courtroom), you can look over here and see him—

A. Yes, sir.

Q. —and Mrs. Strickler, and your answer was in each case, that she was sent home for further investigation—Mrs. Young?

page 147 } A. That's correct.

Q. And the only thing that Mrs. Young had been charged with in the two years and three months she's been in your stores, according to your happy father, was an implication by Ann Chandler of stealing, is that right?

A. I am not familiar with the charge.

Q. But she was sent home for investigation?

A. Yes.

Q. Now, I ask you for what, if you don't know it—why did you make such a statement?

A. It involved a violation of Company policies in operating a cash register with the drawer open.

Q. Did you see it?

A. No, sir, I did not.

Q. And you never talked to Mrs. Young about it?

A. No, sir, I did not.

Q. In the two years and three months she was there, you never had an adverse report on Mrs. Young, and there is no Company records against her, is there?

A. So far as I know, there isn't.

page 148 } Q. Well, I'm sure if there was, you or some Kroger father would produce it.

Now, you say that you did not have but one conference with Mr. Mottesheard and Mr. Johnson. Isn't it a fact that you had another conference with these gentlemen in Blacksburg after February 22nd when Mrs. Young was put back to work? Doesn't that refresh your memory a little bit?

A. I won't deny it because I have had so many conferences with them over so many different problems that I would have to dig out the records to see.

Q. Oh, you are like the others; you want to remember some and don't remember others, but you don't deny to this Jury although you have so stated—

A. I have—

Q. —that you only had one conference about Mrs. Young—do you deny now that you had a conference about Mrs. Young with these two men sitting right back here—look at them, Mr. Mottesheard and Mr. Johnson, in Blacksburg, shortly after you had put Mrs. Young back as a dairy maid or whatever you call it—do you deny that, or just don't

page 149 } remember it?

A. I don't deny it, but I don't remember it either.

Q. All right now, as a matter of fact, you said that you told them that you would put Mrs. Young back when the business increased, you have never put Mrs. Young back as a cashier, have you?

A. No, sir.

Q. You have that authority, don't you?

A. (No answer).

Q. You are the boss over all the store managers—eighteen stores, you are Zone Manager?

A. In my judgment, it was best for all concerned that Mrs. Young be put at this job.

Q. I am asking you a simple question which you can answer yes or no, and then you can talk for a week. I asked you a

simple question, if you have ever put Mrs. Young back to, or reinstated her to her old job as cashier?

A. No, sir, we don't have a job as a cashier—

Mr. Goldsmith: (Interrupting) I want to tell him that he can talk as long as the Judge will let him.

page 150 } The Court: Any information you want to add?

A. We have a classification by Union contract of a female grocery clerk, and it pays the same rate for any job that they do, except two jobs, the head cashier and the head dairy clerk in certain stores, and in my judgment and the turmoil that we had, it was better that Mrs. Young, and we were still checking on the store, that Mrs. Young be in the Dairy Department. We were checking on the front end operation. I might say we are still checking on the front end operation.

The Court: Any further cross-examination?

Mr. Goldsmith: Yes, sir, I just wanted to be sure he finished his explanation.

Q. Now, you do admit to this Jury and you just made the statement yourself that it raised turmoil in that Company—

A. No—I—

Q. You just used the word, turmoil. Now, that was your word, not mine, not your lawyer's. It was Ben Black's word. You said due to all the turmoil in that store—now, read it back—

(Court Reporter reads witness's answer back).

page 151 } Q. Now, that was the Christiansburg store you were talking about, isn't that right?

A. That's correct.

Q. And everybody knew what caused the turmoil, didn't they?

A. I can't say that.

Mr. Muse: I can't hear you.

A. I can't say as to what everybody—

Mr. Goldsmith:

Q. But it was your word, turmoil?

A. Yes, sir, I said it.

Q. All right, and it centered around Mrs. Young. And constantly, from December 15th, 1965, until February the 15th, 1966, a period of over two months, whether you call it investigation, whether you call it you let her go home, or whether you call it discharged, the Union took the position that she was discharged and they were trying to get you to reinstate her, isn't that a fact; regardless of what you call it?

A. No, sir. The Union never said she was discharged.

Q. I say regardless of what you call it—

page 152 } The Court: Gentlemen, let's don't get into that —the Union investigation.

Mr. Goldsmith: Well, I am asking him—you said this, that you told these men in early January, I believe you said the first week in January, I'm not sure of the date, but I think you said early January—that you would recall her which means she had been let go, hadn't she, temporarily, according to you?

A. She had been laid off.

Q. Yes, sir, or laid off?

A. That's right.

Q. Now, you used the word a minute ago, suspended, is that what you mean by that?

A. I think I mean the same—

Q. Same thing?

A. Yes, sir.

Q. It was either laid off or suspended—all right, that you would recall her back to work. Isn't it a fact that in your Christiansburg store, you took this lady right here in the yellow-striped waist (indicating in Courtroom), you or the store manager or somebody, took her out of the Dairy Department, who had never worked as a cashier and put her on there with Connie Strictler over here, to give page 153 } you two people in that store. You took a new hand and had to train her, and did not put this young lady in that job, instead of training somebody else, and then when you called her in, you put her in the Dairy Department that you'd taken this one out of?

A. That's substantially correct.

Mr. Goldsmith: Thank you, sir.

(witness stands aside)

Avery Pendleton

AVERY PENDLETON, another witness called on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Muse:

Q. State your name?

A. Avery Pendleton.

Q. Were you the store manager at the time this happened that you have been listening to?

A. I was the store manager at the Christiansburg store.

Q. Where are you now located?

A. I am located at the Crossroads Mall in
page 154 } Roanoke.

Q. Is that a promotion?

A. Well, I asked to go back to Roanoke.

Q. Is that where your home is?

A. That is where I've lived since the war.

Q. You, of course, know Mrs. Jean Young, the Plaintiff?

A. I do.

Q. And did she operate under your supervision?

A. Yes, she worked under my supervision.

Q. Does your Company have a policy, a rule, a procedure applying to the registering of sales by the cashier on the cash register?

A. Yes, they do.

Q. What is that policy?

Mr. Goldsmith: Your Honor, I object to what the Company policy is. I think it is a question of what the procedure was in this particular store.

Mr. Muse: I'm talking about this particular store, where he was located.

The Court: Confine it to this store.

Mr. Muse: That's all I'm interested in.

A. The procedure in this store was that each sale be rung as a *seperate* transaction. The articles would be
page 155 } rung up, the money collected, the tape and the stamps and the change be given the customer; then the drawer would be closed after the money being placed in it, and the new transaction would take place.

Q. Did the Plaintiff know of that rule?

A. I was not there when she came to work with the Com-

pany, but at different occasions, I talked to the cashiers about money transactions and other transactions pertaining to the—

Q. Was the Plaintiff present at those conferences—some of them?

A. Well, I feel she was. I couldn't say definitely which. We had many concerning games and other conferences at which time we hit upon the procedure behind the games, and sales, *et cetera.*

Q. You know Mrs. Young's husband, Mr. James W. Young?

Mr. Goldsmith: Joseph Wendell.

Mr. Muse: I've got James instead of Joseph. Thank you for correcting me.

A. I knew him when I seen him with her. Other than that, I never had talked with him.

page 156 } Q. Did you know him prior to this happening?

A. Not other than maybe seeing him bring her to work.

Q. But my question, did you know who he was?

A. Well, I recognized who he was when he came in the store to talk to me.

Q. Did he come in the store to talk to you?

A. He did.

Q. Did you know who he was?

A. I think he told me who he was. I guess I recognized him too, having seen him with her.

Q. What did he ask you?

A. Well, he asked me what had happened, and I tried to explain that Jean Young was sent home for further check or whatever word you'd like to use; that I was not in the conference with Mrs. Young; that I do not know what was said, but I was told by Mr. Holtman she was sent home for further check.

Q. Did you tell him then or any other time, that they, meaning Kroger, had proof that Jean had taken money out of the till?

A. I did not.

page 157 } Q. You deny that you made such a statement?

A. I did not make it.

Mr. Muse: That's all. Take the witness.

Avery Pendleton

CROSS EXAMINATION

By Mr. Goldsmith:

Q. Mr. Pendleton, I believe you are also the Defendant in this suit, and vitally interested in it, other than being a Kroger employee, is that right?

A. Yes, sir.

Q. Now, you do admit that you told Mr. Young that Jean had been sent home for further investigation—you admit that, is that correct?

A. That's correct.

Q. And you are telling this Jury that you didn't tell him that she was being investigated for what?

A. (No answer).

Q. What she was being investigated for—didn't you as a matter of fact, tell that man that she had been sent home for investigation for stealing?

A. No, sir.

Q. You deny that?

A. I deny that.

page 158 } Q. Just investigation?

A. That's right.

Q. And they—I want to ask you something else. You have been sitting over there and heard Mr. Ben Black testify and he's your boss, is that right?

A. That's right.

Q. Two steps removed from—

A. I don't know about that.

Q. I beg your pardon, he's just once removed—it's Mr. Father over here who is your once removed boss, but he said there was quite a bit of turmoil in this store after this, and it centered around Jean Young, is that correct?

A. That I don't know.

Q. You mean to sit here and tell this Jury that you were the store manager and you don't know what happened in your own store?

A. I know that the store operated as usual after she was—

Q. And uh, now, how many years had you been there before this happened, which was December 15th, 1965, do you remember that?

A. Oh, a year and—from April to December.

page 159 } Q. And isn't it a fact that under the Kroger system of cashiers that three and four, and some-

times as many as five people operate cash registers—the same cash register?

A. At times they would be relieved for break or lunch.

Q. All right, sir, let me ask you the question again; as many sometimes as three, four, five people operate the cash register, answer yes or no?

A. No.

Q. Without a check between people who use it?

A. No.

Q. You deny that?

A. I do.

Q. Do you know Edith Bowman?

A. I know Edith Bowman.

Q. How long has she worked for Kroger?

A. I don't know the exact years—

Q. She has been there much longer than you in this store?

A. Longer than I have in that store, that's

page 160 } right, sir.

Q. And Edith Bowman has always been honest and fair with you, hasn't she?

A. Yes.

Q. You heard her testify here that as many as three, four, five people operate the same cash register?

A. I don't remember her saying that.

Q. All right, sir and now, Mrs. Young had been there for over a year with you as the boss, hadn't she?

A. Yes.

Q. And she was on the seniority list, wasn't she?

A. She was part-time, and I believe least seniority.

Q. She was on the seniority list to be called in, and for the whole time you were there, this woman worked from twenty to thirty hours a week, didn't she?

A. No, sir.

Q. Well, have you got her card here—

A. There were times she only worked fourteen and fifteen hours.

Q. Now, she had worked regularly every week during this period?

page 161 } A. She had worked some hours, yes.

Q. And during this entire time, you had never filed a grievance, a reprimand or anything against Mrs. Young, had you?

A. Not any specific case that I remember.

Q. Now, you know there hasn't been any. She was one of

your best and loyal employees, and you sent her home, according to you for further investigation, is that right—Mr. Father Holtman sent her home, is that right?

A. That's right.

Q. All right now, you heard me question Mr. Black, and it is a fact that after Mrs. Young was sent home, that they sent Mrs. Strictler over here from Blacksburg, is that correct?

A. That's correct.

Q. And you took Mrs. Edith Bowman out of the Dairy, is that right?

A. We did.

Q. Mrs. Bowman had never operated a cash register before in her life in the Kroger store, and been employed with them about ten years, is that right?

A. I don't know, sir.

page 162 } Q. Well, while you were there—you do know that she had never operated a cash register, isn't that right?

A. That's right.

Q. And you had to even train her to operate it, to hit the right buttons and things like that, didn't you?

A. We do train people for different jobs, yes, sir.

Q. I'm asking you about Mrs. Bowman?

A. I trained her for a cashier.

Q. And then you put Mrs. Young back in the Dairy Department, is that right?

A. I did.

Q. And you were present when Mr. Mottesheard came to the store, weren't you?

A. At what time?

Q. The next day?

A. Yes, sir, the next day or so. I don't remember the exact date.

Q. And you refused to talk to him, is that right?

A. I did not refuse. I told him why—

Q. I beg your pardon—you told him you didn't

page 163 } know anything about it, didn't you?

A. I told him that I did not take part in the conference.

Q. You told her husband she was under investigation—what did you tell Mr. Johnson?

A. I told him she was sent home for a further check.

Q. Now, isn't it a fact that this woman, this young lady

sitting back of me, has been a faithful and loyal employee, faithful cashier, all the time you had been there, is that correct?

A. She had been a part-time cashier.

Q. All right, but the entire time you had been there, she had been very faithful and loyal in her work, hadn't she?

A. Average employee, yes, sir.

Q. And she was not given the job back until after the heat was put on by the Union and lawyers, and I'll ask you if the average employee is given a promotion?

A. Yes, they are.

Q. Is it now a fact that you had never—you have already testified this here—never had a complaint against this young lady from the time you were in the store, and you said to this Jury, no specific complaint, and is it a fact as cashier, she was never given her job back as a cashier or position of trust in handling money—is that right?

page 164 }

A. We have no cashier—we have no job that's termed as cashier. We have only female clerks.

Q. All right sir, I'm asking you—I'll put it a little differently—she's never been put on the cash register?

A. No, she hasn't been put on the cash register, not while I was there.

Mr. Goldsmith: All right, that's all.

(witness stands aside)

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The Court: At this point in the trial of the case, and on the motion to strike the Plaintiff's evidence, I have to view the evidence in the light most favorable to the Plaintiff, and there is certainly a substantial conflict which, in my judgment, mixes the question of law and fact, and the Court of Appeals has said that it then becomes a matter for the jury to determine, and for that reason I overrule the motion.

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The Court: I have already ruled that I am not going to give any punitive damage instruction because there is no malice in the case. Having ruled that there is no malice in the case I cannot give Instruction No. 5.

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page 192 } The Court: Instruction refused on the grounds that there's no evidence to support malice either expressed or implied.

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page 197 }

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page 198 } The Court: We settled that malice question and I ruled that there was no malice there, and actual malice will have to be changed to the abuse of privilege.

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A Copy—testee:

Howard G. Turner, Clerk.

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