

**Defamation - A high-level employee believed his employer had defamed him after his employer suspected him of Freon theft, the employee angrily shouted that the accusation was untrue, and he was terminated; the employee had difficulty obtaining unemployment benefits, and his former employer refused to give the employee a reference to potential new employers**

*Hollar v. Calhoun Enterprises,*  
07-900940

Plaintiff: William D. Azar, *William D. Azar, Attorney, P.C., Azar Law Offices*, Montgomery

Defense: H. Lewis Gillis and LaTasha A. Meadows, *Thomas Means Gillis & Seay, P.C.*, Montgomery

Verdict: Defense verdict

Circuit: **Montgomery**, 3-10-10

Judge: Johnny Hardwick

In 2007, Charles Hollar at been the chief operating officer for the Calhoun Enterprises, Inc. (CEI) chain of grocery stores for about nine years. He earned a salary of \$92,000.

When CEI decided to close down its store at Mt. Meigs, Hollar and another employee named Eddie Ward were responsible for overseeing the drawing down of the Freon in the store's cooling system. The Freon was to be transported to CEI's other stores for use there.

An outside vendor arrived at the Mt. Meigs store, withdrew the Freon, and placed it in recovery tanks. The tanks were left in the Mt. Meigs store for storage until they could be transported to CEI's stores in Tuskegee and Selma.

Shortly thereafter, Greg Calhoun was reviewing invoices for Freon in the CEI offices. He thought CEI was paying for excessive Freon.

On 7-30-07, he, Eddie Ward, and a third employee went to the Mt. Meigs store to look for the stored Freon. They found about 12 tanks. When they rolled and shook the tanks experimentally, however, they discovered the tanks were light and easy to move. They appeared to be empty.

Calhoun contacted the Montgomery police department and asked for an investigation to be started into the missing Freon. Calhoun also called Hollar in for a meeting on 7-31-07 about several issues, including the Freon. During the part of the meeting that involved the Freon, an upper-level manager and two police officers were present in addition to Calhoun and Hollar.

Calhoun telephoned the outside vendor and asked some questions about the extraction and storage of the Freon. Hollar became furious during the meeting and started to shout. He reportedly told Calhoun, "You're crazy if you think I'd steal from you!" At some point during the altercation, Calhoun fired Hollar.

Thereafter the police officers required Hollar to accompany them to the police station to give a statement concerning the missing Freon. Hollar rode in the front seat of the police car without handcuffs. Before they went to the police station, however, Hollar persuaded the police to take him to the Mt. Meigs store to make sure the Freon actually was missing.

The police contacted Calhoun and told him of the side trip, and Calhoun came to join the others. Once everyone was present, the tanks were found and shaken once again. This time, the tanks were discovered to be full of Freon.

Later testing of the Freon in the storage tanks, however, revealed a disturbing fact. The Freon in the tanks was now a different type of Freon from the sort that had originally been extracted from the Mt. Meigs store's cooling system. The new Freon was also contaminated. The original Freon was never discovered.

At the moment of finding the refilled tanks, however, the nature of the Freon in the tanks was yet undiscovered. The police officers requested Hollar to continue with them to the police station. He did so and provided a report, after which he left.

Hollar later filed for unemployment benefits with the Alabama Department of Industrial Relations. A dispute subsequently arose as to whether Hollar was entitled to the benefits.

CEI maintained that Hollar had been fired for misconduct and insubordination. Hollar claimed CEI also told the Department his termination had been due to theft. CEI denied having mentioned the theft and said that if the Department knew about the missing Freon's role in Hollar's termination, it was because Hollar himself had told the Department about it.

Hollar's application for unemployment benefits eventually reached an administrative hearing officer. The officer determined that Hollar had been discharged for insubordination and was entitled to unemployment benefits.

After winning this round, however, Hollar struggled with his attempts to find a new job. At least one potential employer, a grocery store, called CEI to ask Calhoun for an employment reference for Hollar. CEI did not return the phone call.

CEI did not admit that it received any other calls from potential employers wanting a reference for Hollar. Hollar

believed several other employers made unanswered calls to CEI.

At this point, Hollar decided it was time to file suit. He named Calhoun, individually and as an agent of CEI, and CEI itself as defendants. Hollar blamed defendants for defaming him by accusing him of theft, telling the Department he had been fired for theft, and refusing to give him a reference and for false imprisonment by the police.

CEI and Calhoun defended and denied wrongdoing. They argued that their statements made to the police officers were privileged and could not serve as the basis for a defamation action. They also insisted it was simply untrue they had told the Department Hollar had been terminated for theft. Instead, they told the Department he had been fired for insubordination, which was an accurate description of events.

Defendants also asserted that the failure to provide employment references did not suffice to create a cause of action for defamation. Finally, they denied having falsely imprisoned Hollar. Defendants admitted to having called the police, but they pointed out they had not controlled the police's actions or investigation.

When faced with the parties' conflicting assertions, a Montgomery jury returned a defense verdict. The court entered a consistent judgment.