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## THE MISSOURI SERVICE LETTER STATUTE

RALPH K. SOEBBING\*

At common law a master was under no legal duty to give a testimonial of character to a servant who had left his employment.<sup>1</sup> Thus, even to a loyal and faithful servant the master had only a moral obligation to furnish what has become known as a service letter.<sup>2</sup> However, a number of states,<sup>3</sup> including Missouri,<sup>4</sup> have changed the common law rule by enacting statutes designed to benefit the employee by giving him the right to request a service letter under certain circumstances. It is the purpose of this article to analyze the Missouri Service Letter Statute in light of the evil sought to be remedied, to review the case law with some reference to recent developments, and to offer a few suggestions for the proper handling of service letter requests.

### I. EARLY HISTORY

The forerunner of section 290.140, RSMo 1959 was first enacted by the Missouri legislature in 1905.<sup>5</sup> During the early years of its existence relatively few cases involving the statute reached the appellate courts;

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1. *Carrol v. Bird*, 3 Esp. 202, 170 Eng. Rep. 588 (K.B. 1800).

2. See general discussion at 35 AM. JUR. *Master and Servant* § 38 (1941).

3. Service Letter Statutes enacted in other jurisdictions are beyond the scope of this article.

4. Section 290.140, RSMo 1959 reads as follows:

Whenever any employee of any corporation doing business in this state shall be discharged or voluntarily quit the service of such corporation, it shall be the duty of the superintendent or manager of said corporation, upon the written request of such employee to him, if such employee shall have been in the service of said corporation for a period of at least ninety days, to issue to such employee a letter, duly signed by such superintendent or manager, setting forth the nature and character of service rendered by such employee to such corporation and the duration thereof, and truly stating for what cause, if any, such employee has quit such service; and if any such superintendent or manager shall fail or refuse to issue such letter to such employee when so requested by such employee, such superintendent or manager shall be deemed guilty of a misdemeanor, and shall be punished by a fine in any sum not exceeding five hundred dollars, or by imprisonment in the county jail for a period not exceeding one year, or by both such fine and imprisonment.

5. Mo. Laws 1905, at 178.

however, in recent years the Service Letter Statute has become an increasingly popular source of litigation.

The evil sought to be remedied by the Service Letter Statute was that of "blacklisting" former employees, a practice that arose among some corporate employers, notably the railroads. This practice is described in the early case of *Cheek v. Prudential Ins. Co.*<sup>6</sup> where the Supreme Court quoted from an earlier Texas case as follows:

"The statute here under discussion was passed to meet and remedy an evil that had grown up in this state among railway and other corporations to control their employés. It seems that a custom had grown up among railway companies not to employ an applicant for a position until he gave the name of his last employer, and then write to such company for the cause of the applicant's discharge, if he was discharged, or his cause for leaving such former employer. If the information was not satisfactory to the proposed employer, he would refuse to employ the applicant. They could thus prevent the applicant, by failing to give a true reason for his discharge or blacklisting him, from procuring employment in either instance. . . . It was to compel the former employer to state the true cause of its employé leaving its service, and to prevent blacklisting, that brought about the passage of this statute."<sup>7</sup>

## II. ANALYSIS OF THE STATUTE

The statute itself does not specifically create a cause of action whereby the aggrieved employee may recover money damages from his former corporate employer. However, in the *Cheek* case the Missouri Supreme Court held that the defendant employer became liable to the plaintiff for the damages he sustained in consequence of the employer's refusal to issue a service letter.<sup>8</sup> The court specifically rejected the defendant's contention that the statute merely imposed a duty upon the superintendent personally, rendering him guilty of a misdemeanor for failure to give the plaintiff such a letter. Later cases, following the *Cheek* case, have consistently held that it is the responsibility of the corporation to issue the letter and to respond in damages if it fails to do so.<sup>9</sup> While the latter

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6. 192 S.W. 387 (Mo. 1917).

7. *Id.* at 392.

8. *Id.* at 390.

9. *Brink's, Inc. v. Hoyt*, 179 F.2d 355 (8th Cir. 1950); *State ex rel. Terminal R.R. Ass'n of St. Louis v. Hughes*, 350 Mo. 869, 169 S.W.2d 328 (1943).

portion of the statute does provide that the defaulting superintendent or manager shall be deemed guilty of a misdemeanor, and further provides for appropriate penalties, no such criminal prosecutions have ever reached the appellate courts. It may be assumed that in the usual case the discharged employee, although anxious to recover money damages, has little or no interest in redressing his grievance from a criminal standpoint. One also suspects that most prosecutors would be less than enthusiastic about proceeding under the penal provisions of the statute.

In the *Cheek* case<sup>10</sup> the defendant also attacked the statute as an unconstitutional and discriminatory exercise of the state's police power, an impairment of the freedom of speech under Article II of the Missouri Constitution and a violation of the Fourteenth Amendment of the United States Constitution relating to deprivation of property without due process of law. All of these contentions were rejected as untenable in light of the statute's purpose to prevent injustice to the employee.<sup>11</sup>

The statute by its terms specifies a written request<sup>12</sup> to the superintendent or manager of the corporation to issue a service letter, such letter to be "duly signed by such superintendent or manager. . . ." In several of the earlier cases the defendant contended that the plaintiff had not made his request upon the proper person; *i.e.*, the person upon whom the request was made was not the "superintendent or manager" as designated in the corporate organization. The appellate courts had little difficulty in disposing of this argument, holding that the title of the officer is not controlling.<sup>13</sup> In other words, if the person upon whom the request is made performs the duties of a "superintendent" or "manager" insofar as the plaintiff is concerned, then the official title given such employee by the employer is immaterial.<sup>14</sup>

A further requirement of the Service Letter Statute is that the employee must have been in the service of the corporation for a period of at least ninety days prior to the termination of his employment. In *Acker-*

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10. *Cheek v. Prudential Ins. Co.*, *supra* note 6.

11. The United States Supreme Court affirmed the *Cheek* case on the constitutional issues. *Prudential Ins. Co. v. Cheek*, 259 U.S. 530 (1922).

12. The requirement that the request be written was added by amendment in 1941. Mo. Laws 1941, at 330.

13. *Walker v. St. Joseph Belt Ry.*, 102 S.W.2d 718 (K.C. Mo. App. 1937); *Lyons v. St. Joseph Belt Ry.*, 232 Mo. App. 575, 84 S.W.2d 933 (K.C. Ct. App. 1935).

14. *Chrisman v. Terminal R.R. Ass'n of St. Louis*, 237 Mo. App. 181, 157 S.W.2d 230 (St. L. Ct. App. 1942).

*man v. Thompson*<sup>15</sup> one of the defenses offered by the employer was that the plaintiff was not entitled to a service letter since he had not worked daily during the last two years of his employment, notwithstanding the fact that he did work when it was available and had worked for the railroad for more than ten years until his discharge. The supreme court, noting that the statute had been previously construed to require a continuous employment of at least ninety days, held that the plaintiff continued in the "service" of the defendant in spite of the fact that he did not work every day before his discharge.

The contention was also made that since the Service Letter Statute was applicable by its terms to a corporation it could not apply to a trustee in bankruptcy. However, the court followed its earlier decision in *State ex rel. Kurn v. Wright*<sup>16</sup> and held that the trustee was amenable to the Service Letter Statute since it was the trustee's duty to manage and operate the railroad in the same manner that the railroad's management would do were it not for the bankruptcy.

### III. SUFFICIENCY OF THE REQUEST

The Service Letter Statute itself does not specify the form in which the written request by the employee is to be. Suppose the employee merely asks for a letter of recommendation. Is this sufficient to require the former employer to issue a service letter? The Supreme Court answered this question in *Carr v. Montgomery Ward & Co.*,<sup>17</sup> where the plaintiff's request was for "a letter of recommendation so that I might obtain work."<sup>18</sup> The Supreme Court held that this did not constitute a written request for a service letter since a service letter, as contemplated by the statute, may or may not constitute a recommendation. The court apparently felt that the request in this instance was simply not within the purview of the statute.

On the other hand, in *Brink's, Inc. v. Hoyt*<sup>19</sup> an employee's letter which asked for a letter of recommendation, but further stated that the employee wished to know the time that he had worked, the kind of work, whether his work was satisfactory, and why he was fired, was held to be a sufficient request. Thus, it is apparent that the employee's request must

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15. 356 Mo. 558, 202 S.W.2d 795 (1947).

16. 349 Mo. 1182, 164 S.W.2d 300 (1942).

17. 363 S.W.2d 571 (Mo. 1963).

18. *Id.* at 575.

19. 179 F.2d 355 (8th Cir. 1950).

be for something more than a mere letter of recommendation but need not use the exact words of the statute. An attorney who drafts a service letter request for his client's signature should, of course, adhere closely to the statutory elements.

#### IV. SUFFICIENCY OF THE LETTER

The three basic requirements which the letter must contain are specifically set forth in the statute.<sup>20</sup> They are (1) the nature and character of the service rendered by the employee; (2) the duration of such service; and (3) the true cause, if any, for the termination of the employment. These requirements seem simple enough, but the sufficiency of the letter has frequently been a question for the courts to decide.

Two of the earlier cases involving the same defendant illustrate grossly deficient service letters. In *Lyons v. St. Joseph Belt Ry.*<sup>21</sup> the letter merely stated in a general way that the plaintiff's services were unsatisfactory.<sup>22</sup> The letter gave no particulars. It did not give the length of time that the plaintiff had worked for the railroad, the kind of work performed by him, or the length of time given to different kinds of work performed; and it was not signed by the writer in his official capacity. It is not surprising that a jury returned a verdict for \$1.00 actual damages and for \$10,000.00 punitive damages. The latter was reduced by remittitur at the trial level to \$4,000.00, which was affirmed on appeal.

The second case, *Walker v. St. Joseph Belt Ry.*<sup>23</sup> was almost a carbon copy of the first.<sup>24</sup> Again, there was ample evidence justifying an award of punitive damages, this time in the amount of \$5,000.00. Both letters obviously failed to meet the requirements of the statute, and the action of the appellate court in affirming the judgments is not surprising.

In *Gerharter v. Mitchellhill Seed Co.*<sup>25</sup> the letter again was of a very summary nature.<sup>26</sup> The Kansas City Court of Appeals found that the

20. See statute quoted note 4 *supra*.

21. 232 Mo. App. 575, 84 S.W.2d 933 (K.C. Ct. App. 1935).

22. *Id.* at 578, 84 S.W.2d at 936. The letter is quoted as follows:

To Whom Concerned: J. H. Lyons entered the service of the St. Joseph Belt Ry. Co. of So. St. Joseph, Mo., on Sept. 8, 1902, as Round House Man; dismissed from the service of this company June 13, 1932, working as locomotive fireman. Service unsatisfactory.

W. H. Lawrenson.

23. 102 S.W.2d 718 (K.C. Mo. App. 1937).

24. The letter was very similar to the one given the plaintiff in the *Lyons* case and is set out verbatim at page 720.

25. 157 S.W.2d 577 (K.C. Mo. App. 1941).

26. *Id.* at 579.

letter failed to meet the requirements of the statute, although it did not specify its reasons for reaching this conclusion. Under the facts of the case it would seem that the letter did not set forth the nature of the plaintiff's services and failed to state the true reason for his discharge.

In the more recent case of *Williams v. Kansas City Transit, Inc.*<sup>27</sup> the sufficiency of the letter was again in issue. The letter stated in substance that the defendant's driver was discharged because an investigation appeared to give the defendant reasonable grounds for believing that the driver had mishandled fares. It further stated that reports furnished by investigators, which defendant believed, indicated the driver had not required each fare to be deposited by his passengers in the fare box, had not accounted to the defendant for such fares received but not deposited in the fare box, and had misappropriated fares. The Missouri Supreme Court found that this letter sufficiently complied with the statute.

## V. DAMAGES

### A. *Nominal Actual Damages*

It has been said that the law presumes nominal damages from the employer's failure to supply a proper service letter.<sup>28</sup> In other words, evidence that the discharged employee sought and was refused employment by reason of an improper service letter is unnecessary. Thus, the plaintiff can make a submissible case and is entitled to a verdict for nominal damages even though he fails to prove any actual damage.<sup>29</sup>

### B. *Substantial Actual Damages*

The law is equally clear that an award of substantial actual damages requires evidence that the plaintiff was injured in obtaining other employment by the defendant's refusal to give a service letter.<sup>30</sup> However, this rule is not quite as stringent as it might seem. The courts have said that lack of evidence that any particular prospective employer refused to employ the plaintiff because he had no service letter will not bar his

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27. 339 S.W.2d 792 (Mo. 1960).

28. *Bubke v. Allied Bldg. Credits, Inc.*, 380 S.W.2d 516 (St. L. Mo. App. 1964); *Heuer v. John R. Thompson Co.*, 251 S.W.2d 980 (St. L. Mo. App. 1952); *Cook v. Mid-Continent Petroleum Corp.*, 193 S.W.2d 66 (K.C. Mo. App. 1946).

29. It should be noted that the verdict directing instruction under § 23.08 of Mo. Approved Jury Instructions (1964) requires no proof of actual damage.

30. *Heuer v. John R. Thompson Co.*, *supra* note 28.

recovery of substantial actual damages if the evidence otherwise warrants a finding by the jury that the plaintiff was generally hindered and delayed in obtaining other employment by not having the letter.<sup>31</sup> In other words, proof on the issue of substantial actual damages may be of a circumstantial nature.<sup>32</sup>

### C. Punitive Damages

Liability for punitive damages is predicated upon either legal malice, which frequently has been defined as the intentional doing of a wrongful act without just cause or excuse, or actual malice, spite, or ill will on the part of the defendant.<sup>33</sup> Obviously, the propriety of submitting the issue of punitive damages to a jury will depend upon the facts of the particular case. As a practical matter, unless there is evidence to support an award of punitive damages, the plaintiff's cause of action will often have only a nominal settlement value.

### D. Amount of Damages

For obvious reasons the amount of damages awarded at the trial level and upheld on appeal varies from case to case, depending upon the particular facts and circumstances involved. Accordingly, no attempt will be made to compare the various cases on the basis of the damages awarded.<sup>34</sup>

The largest verdict in a service letter case reaching the appellate courts was an award of \$15,000.00 for punitive damages.<sup>35</sup> However, the trial court sustained a motion for new trial and this action was affirmed both

31. *Burens v. Wolfe Wear-U-Well Corp.*, 236 Mo. App. 892, 158 S.W.2d 175 (St. L. Ct. App. 1942).

32. Circumstantial evidence required to support an award of substantial actual damages must "sustain the inference to be drawn, and must rise above the level of mere guess and speculation." *Bubke v. Allied Bldg. Credits, Inc.*, *supra* note 28, at p. 521. It is obviously easier to state these general principles than it is to apply them to specific fact situations.

33. *Roberts v. Emerson Electric Mfg. Co.*, 338 S.W.2d 62 (Mo. 1960).

34. Some representative cases as to damages are as follows:

Case	Actual	Punitive
<i>Ackerman v. Thompson</i> , <i>supra</i> note 15.	\$5,000.00	\$4,000.00
<i>Burens v. Wolfe Wear-U-Well Corp.</i> , <i>supra</i> , note 31.	800.00	200.00
<i>Gerharter v. Mitchellhill Seed Co.</i> , <i>supra</i> note 25.	1.00	3,000.00
<i>Chrisman v. Terminal R.R. Ass'n of St. Louis</i> , <i>supra</i> note 14.	1.00	3,000.00
<i>Walker v. St. Joseph Belt Ry.</i> , <i>supra</i> note 23.	1.00	5,000.00

35. *Woods v. Kansas City Club*, 386 S.W.2d 62 (Mo. En Banc 1964).

by the Kansas City Court of Appeals and the Missouri Supreme Court.<sup>30</sup> The large verdict for punitive damages probably resulted, at least in part, from the fact that the defendant was a private club whose members' ability to pay substantial damages might well have influenced the jury.<sup>37</sup>

The highest award for actual damages affirmed on appeal appears to be \$5,000.00.<sup>38</sup> The highest award for punitive damages affirmed on appeal is likewise \$5,000.00.<sup>39</sup>

## VI. RECENT DEVELOPMENTS

Recent appellate decisions do not appear to reflect any unusual trend or change in the case law interpreting the Service Letter Statute. However, one recent case is of interest because of a novel defense urged by the defendant. In *Booth v. Quality Dairy Co.*<sup>40</sup> the plaintiff was employed by the defendant as a home delivery milk truck driver for approximately five years. He then voluntarily quit defendant's employment and did not ask for a service letter until 22 months later. The plaintiff filed suit 18 days after the request. The defendant answered plaintiff's request 13 days after the suit was filed. A jury awarded the plaintiff \$1,000.00 actual and \$3,000.00 punitive damages, the latter being reduced to \$1,000.00 by remittitur.

On appeal the defendant contended that the plaintiff must request a service letter within a reasonable time after the termination of his employment. The defendant relied on *Heuer v. John R. Thompson Co.*,<sup>41</sup> where the court said that the statute "being silent as to the time within which the employer must issue a service letter, the law supplies the deficiency and allows the employer a reasonable length of time after the discharged employee makes a proper request therefor within which to issue a service letter."<sup>42</sup> By analogy the defendant argued that the former

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36. The plaintiff voluntarily remitted \$1.00 of the award for punitive damages, thereby reducing the final judgment to one cent actual damages, and \$14,999.00 punitive damages. The trial court sustained defendant's motion for new trial and the plaintiff appealed to the Kansas City Court of Appeals. The court of appeals affirmed the order of the trial court but thereafter transferred the case to the supreme court. *Id.* at 63.

37. In closing argument counsel for plaintiff told the jury that defendant's members were among the wealthiest people in Kansas City. Respondent's supplemental brief, p. 27.

38. *Ackerman v. Thompson*, *supra* note 15.

39. *Walker v. St. Joseph Belt Ry.*, *supra* note 23.

40. 393 S.W.2d 845 (St. L. Mo. App. 1965).

41. 251 S.W.2d 980 (St. L. Mo. App. 1952).

42. *Id.* at 987.

employee should be required to make his request for a service letter within a reasonable time after his employment terminates.

The St. Louis Court of Appeals rejected this contention, stating that the former employee, if he is so inclined, may never request a service letter, in which event no duty arises upon the part of the employer to furnish one. The Court explained the decision in the *Hewer* case by pointing out that of necessity the employer must be given some time in which to fulfill his duty, for the employee should not be permitted to present his written demand one minute and file suit the next. However, the court saw no reason to judicially legislate a special statute of limitations within which the employee must request his letter.

The court, in effect, seems to say that the employee's cause of action does not arise until he actually makes his request for the letter. If this is true, it would seem that the employee might wait indefinitely, without regard to any statute of limitations that might otherwise be applicable, before requesting his letter. Under such an interpretation of the statute, it is not difficult to conceive injustices that might result to an employer whose records are no longer available when the request is finally made. The least that may be said is that the rationale of the *Booth* case, if carried to its logical conclusion, places a difficult burden on the employer who is called upon to respond with a service letter long after the employment is terminated.

## VII. SUGGESTED PROCEDURE IN HANDLING REQUEST FOR SERVICE LETTER

It is the author's experience that service letters prepared by laymen unfamiliar with the statute are apt to be poorly drawn and will simply invite litigation. Too often the person receiving the request assumes that the former employee is merely asking for a letter of recommendation or similar testimonial which the employer in its discretion may or may not choose to give. As a result, whatever response is made will almost certainly fail to meet the technical requirements of the statute.<sup>43</sup>

In order to insure full compliance with the statute, the corporate

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43. It should be noted that a service letter containing defamatory statements may give rise to a cause of action for libel. *Jacobs v. Transcontinental and Western Air, Inc.*, 205 S.W.2d 887 (K.C. Mo. App. 1947). Under the law of libel a service letter has been held to be a qualifiedly privileged communication. *Williams v. Kansas City Transit, Inc.*, 339 S.W.2d 792 (Mo. 1960). Causes of action based upon failure to give a proper service letter and libel might well be pleaded in separate counts of one petition.

client should be encouraged to refer the request to its attorney as promptly as possible. The attorney, after fully informing himself of the facts surrounding the discharge, will usually draft the letter for the signature of the manager, superintendent, or other proper official.

If possible, the service letter should be couched in language similar to that used by the defendant in *Williams v. Kansas City Transit, Inc.*,<sup>44</sup> so as to preclude, or at least minimize, any claim for punitive damages based upon an allegation that the employer acted with malice in furnishing the letter.<sup>45</sup>

### VIII. CONCLUSION

The Service Letter Statute was first enacted over sixty years ago at a time when the individual employee was often the victim of "blacklisting" or other unfair acts on the part of his employer. Today the employee is usually a member of a large and powerful labor union, and he is also the beneficiary of much legislation, such as the National Labor Relations

44. 339 S.W.2d 792 (Mo. 1960).

45. The following letter was furnished to the author by Mr. James P. Brown of the St. Louis Bar and was actually used by one employer under circumstances similar to those in the *Williams* case:

Dear Mr. [Smith]:

This will acknowledge receipt by the undersigned on [March 32, 1981], of your undated letter requesting a service letter setting forth the nature and character of the service previously rendered by you in your employment by the undersigned, the duration of such employment and the cause of your discharge from such employment.

According to our records you were employed by the undersigned, [X] Corporation, as a bus driver during the period [March 17, 1971] to [January 6, 1981], and in such capacity operated a passenger motor coach as part of the bus transit operation of the undersigned.

On [January 6, 1981] your employment was terminated by the undersigned for the following reasons:

1. The Company's determination that you were involved in a dispute with Mr. [John Q. Public] on Saturday, [December 31, 1980] on a public street;

2. The Company's determination that in connection with the [Public] incident referred to above, you violated Company rules by failing to report such incident, and that you further violated Company rules requiring that "The personal conduct and deportment of all employees must be such as to reflect credit upon themselves and the Company" and that "Polite and courteous treatment must be accorded to all, whoever they are or however unimportant their business may appear"; and

3. The Company's determination that you have in the past violated the Company's rules pertaining to the reporting of accidents and incidents and other matters.

Very truly yours,  
[X] CORPORATION  
[J. J. Jones]

Act, designed to protect the employee from unfair labor practices. In view of the marked change in employer-employee relationships, one may well wonder whether the need for a service letter statute still exists.

In any event, the statute is now well established as part of the law of Missouri, and any repeal or amendment of a significant nature seems unlikely.<sup>46</sup> It is a law with which corporate employers must continue to live, and it will be to their advantage to have some understanding of its requirements to the end that service letter requests will be properly handled by management and will preferably be referred to corporate counsel for reply.

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46. It is submitted that the penal portion of the statute following the semicolon is obsolete, unused, and might well be deleted.