

A Bit Too Far: Employee's Alleged Self-Defense Fails To Sway NH Justices On His Wrongful Discharge Claim

[Todd M. Torres](#) | November 18, 2013

Could an employee be fired by his employer for actions he claimed were done in self-defense? In [Leeds v. BAE Systems](#), No. 2012-599 (November 5, 2013), the New Hampshire Supreme Court found that he could where the employee's actions went beyond what was reasonably necessary to potentially defend himself.

Lawrence Leeds, a former quality control inspector for BAE Systems in Hudson, New Hampshire, was driving to work in April 2009 when he passed a fellow motorist as the roads the two were driving on merged into one lane. The other driver, visibly irate, proceeded to tailgate Leeds all the way to the BAE Systems parking lot even though she was not a BAE Systems employee. After parking her car perpendicular to Leeds's vehicle and between him and the BAE Systems entrance, the driver stuck her cell phone out of her driver's side window in order, she later claimed, to take a picture of Leeds's license plate. Leeds, however, mistook the cell phone for a weapon and swatted the device out of the driver's hand, causing some of it to break. Leeds and the other driver then engaged in a 30 second exchange of obscenities and threats, after which Leeds was able to get around the other driver's vehicle and into the BAE Systems facility.

After investigating the incident, BAE Systems discharged Leeds for using "abusive or threatening language" against an individual on the company's premises. In reaching its decision to fire Leeds, BAE Systems took account of Leeds's prior conduct that occurred only three months before the April incident during which Leeds had used obscenities and pointed his finger at a fellow employee who he believed was underperforming. BAE Systems issued Leeds a written warning after that incident.

Leeds contested his firing and eventually filed suit against BAE Systems for wrongful discharge. He alleged that he acted in self-defense in the parking lot and that New Hampshire public policy encourages such actions. In New Hampshire, as in many other states, an employee can sue his or her former employer for wrongful discharge if the firing was motivated by bad faith or retaliation for engaging in an activity encouraged by public policy. In the past, New Hampshire employees have asserted successful wrongful discharge claims after being fired for refusing to lie for their employers or for protecting their fellow employees.

After losing on summary judgment twice in the trial court, Leeds brought his case to the New Hampshire Supreme Court. Leeds relied on RSA 627:4 of the New Hampshire criminal code, which provides that self-defense can serve as a justification for actions that would otherwise be criminal. He urged the Court to rule that New Hampshire public policy encourages employees to act in self-defense and that it was therefore unlawful for BAE Systems to fire him for having done so.

The Court, however, disagreed that Leeds's actions were justified by self-defense. Though Leeds's swatting of the cell phone may have been justified if he had reasonably believed that it was a weapon, the Court found that Leeds had no excuse for engaging in a heated exchange with the other motorist after swatting the cell phone away from her. Particularly in light of Leeds's previous written warning for the same sort of conduct, the Court found that BAE Systems had justifiable grounds to terminate his employment.

Because it ruled that Leeds did not act in complete self-defense, the Court left for another day the question of whether, under different circumstances, an employee acting in self-defense would be protected from termination on public policy grounds. At a time when concern over workplace violence is at an all-time high, the *Leeds* decision suggests that there could be limits to an employer's zero tolerance policy toward violence in the workplace. If, for example, all that Leeds had done to get fired was swat the angry motorist's phone, the Court may have concluded that his actions were justified by New Hampshire's public policy in favor of self-defense. It then would have been left to a jury to determine whether it was acceptable for BAE Systems to punish him for conduct that in almost any other circumstance would have been unacceptable and potentially dangerous.

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