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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2010-2011

2070985

Anthony Rogers

v.

Penske Truck Leasing Co., L.P.

**Appeal from Montgomery Circuit Court
(CV-06-560)**

After Remand from the Alabama Supreme Court

THOMPSON, Presiding Judge.

On certiorari review in this case, the Alabama Supreme Court overruled Wal-Mart Stores, Inc. v. Hepp, 882 So. 2d 329 (Ala. 2003), Wal-Mart Stores, Inc. v. Smitherman, 743 So. 2d

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442 (Ala. 1999), and Department of Industrial Relations v. Jaco, 337 So. 2d 374 (Ala. Civ. App. 1976)--cases upon which this court relied in affirming the trial court's judgment--to the extent that they hold that, when an employer terminates an employee's job on the asserted basis of misconduct by the employee, the employee bears the burden of proof on the question whether he is disqualified from obtaining unemployment-compensation benefits. Ex parte Rogers, [Ms. 1080880, Dec. 30, 2010] ___ So. 3d ___, ___ (Ala. 2010). Based on the supreme court's opinion, the judgment of the trial court is hereby reversed and the cause remanded for further proceedings consistent with the Supreme Court's opinion.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Pittman, Bryan, Thomas, and Moore, JJ., concur.