

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ALONZO ECHOLS**

**APPELLANT,**

**v.  
THE CITY OF RIVERSIDE, MISSOURI**

**RESPONDENT.**

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DOCKET NUMBER WD71560

DATE: December 21, 2010

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Appeal From:

Platte County Circuit Court  
The Honorable Owens L. Hull, Jr., Judge

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Appellate Judges:

Division Four: Lisa White Hardwick, Chief Judge, Presiding, Gary D. Witt, Judge, and Keith Marquart, Special Judge

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Attorneys:

Mark P. Schloegel and Nicholas J. Porto, Kansas City, MO, for appellant.

John A. Vering III and Dione C. Greene, Kansas City, MO, for respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ALONZO ECHOLS,**

**APPELLANT,**

**v.**

**THE CITY OF RIVERSIDE, MISSOURI,**

**RESPONDENT.**

No. WD71560

Platte County

Before Division Four Judges: Lisa White Hardwick, Chief Judge, Presiding, Gary D. Witt, Judge, and Keith Marquart, Special Judge

Alonzo Echols ("Echols") was employed by the Respondent, City of Riverside ("City"), in September of 2004. Echols was fired by the City in October of 2007. He claims the City discharged him in retaliation for a complaint of discrimination that Echols made to the Missouri Human Rights Commission ("Commission"). After trial, the trial court entered a judgment based on the jury verdict of \$463.00 but reduced this award by the amount of unemployment benefits previously paid to Echols, which reduced his actual damages verdict to zero. Echols now appeals.

**AFFIRMED IN PART, REVERSED IN PART.**

**Division Four holds:**

In Point Three, Echols argues the trial court erred in reducing Echols's \$463.00 verdict to zero using unemployment benefits received as an offset or credit because an offset or credit is an affirmative defense that was waived by the City because it was not pled.

Credits and offsets are affirmative defenses that must be pled in an answer or they are deemed waived. To raise an affirmative defense it is necessary to aver the factual basis of the defense. Legal conclusions are insufficient.

The City also claims that the issue of credits and/or offsets was tried by implied consent. The only evidence that related to the affirmative defense of credit and/or offset was evidence of unemployment benefits received by Echols and received by the court as an offer of proof. An offer of proof, however, is not evidence admitted at trial and cannot serve as a basis for concluding that Echols impliedly consented to let the issue of unemployment benefits into trial. Accordingly, the trial court abused its discretion when it deducted unemployment benefits received from Echols's backpay award.

Even if the affirmative defense of credit and/or offset was properly raised at trial, public policy suggests that unemployment benefits received should not serve to mitigate a jury award for backpay where the employer is being punished for illegal conduct.

The trial court's offset of the actual damage award by the amount of unemployment benefits is reversed, and the jury's award of actual damages in the amount of \$463.00 is reinstated. In all other respects the judgment of the trial court is affirmed. A memorandum discussing the additional points raised but not covered in this opinion has been furnished to the parties pursuant to Rule 84.16(b).

**Opinion by: Gary D. Witt, Judge**

December 21, 2010

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