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Working Life (High and Low)

By STEVEN GREENHOUSE

WHEN Jean Capobianco was diagnosed for the second time with breast cancer, her doctors ordered a mastectomy. She first contracted the disease three years earlier and suffered through seven months of chemotherapy. After her cancer came back, her husband walked out on her. “He told me he wasn’t sexually attracted to me anymore,” she said.

For more than a decade, Jean and her husband had been a truck-driving team, driving hazardous waste. Now, with husband and truck gone, her career as a long-haul driver was gone as well.

After she recovered, Jean started looking for work. She spotted a help-wanted ad from Roadway Package Systems, which said it was looking for independent contractors to deliver packages.

“I needed a job,” said Jean. “They tell you, ‘You’ll make all this money working for yourself.’ ”

She soon discovered that her new employer had embraced a controversial strategy to squeeze down costs by millions of dollars each year: it insisted that Jean and the other drivers were independent contractors, not employees. The I.R.S., New York and many other states are investigating this strategy, convinced that many companies use it to cheat their workers and cheat on taxes.

Jean arrived at the Roadway terminal in Brockton, Mass., at 6 each morning and spent the next 90 minutes loading 100 to 140 packages into her truck. She usually left the terminal around 7:30 a.m. and returned after 6 p.m.

Jean had to leave her job for two years when she suffered a severe back injury while lifting a package. Before she could return to work, FedEx Ground, which had acquired Roadway, required her to purchase a truck. The list price was $37,800, with Jean having to make 60 monthly installments of $781.12 and a final, one-time payment of $8,000.

In Jean’s view, it was ludicrous for Roadway and FedEx to call the drivers independent contractors.

“We’re told what to do, when to do it, how to do it, when to take time off,” Jean said. “You have to wear their uniform. You can’t wear your hair certain ways. You have to deliver every single thing they put on the truck.”

Jean called it “a great deal for FedEx. They don’t have to pay for trucks, for the insurance, for fuel, for maintenance, for tires,” she said. “We have to pay for all those things. And they don’t have to pay our Social Security.”

By some estimates, this arrangement saves FedEx $400 million a year, giving it a significant cost advantage over U.P.S., which treats its drivers as regular employees. Moreover, FedEx Ground has sought to rebuff a Teamster organizing drive by arguing that its 15,000 drivers have no right to unionize because they are independent contractors.

“These drivers are more like business people,” said Perry Colosimo, a FedEx Ground spokesman. “They can set their own hours. They can buy routes. They can develop their business.”

In 30 lawsuits, FedEx Ground drivers have argued that they are employees, not independent contractors, and that the company should therefore pay for their trucks, insurance, repairs, gas and tires. In one lawsuit, a California judge ruled that FedEx Ground was engaged in an elaborate ruse in which FedEx “has close to absolute control” over the drivers. Last December, FedEx acknowledged another setback: the I.R.S. ordered it to pay $319 million in taxes and penalties for 2002 for misclassifying employees as independent contractors. FedEx could face similar I.R.S. penalties for subsequent years. FedEx said it would appeal.

To attract drivers, FedEx Ground often runs ads claiming that its drivers earn $60,000 to $80,000 a year. Many drivers say those ads are deceiving. Gross income can exceed $60,000, but Jean, echoing many drivers, said she had to pay nearly $800 a month for her truck, $125 a week for gas, $55 a week for business equipment, $4,000 a year for insurance policies, plus outlays for tires, maintenance and repairs. Some years, Jean calculated, her net pay was just $32,000, amounting to $10.25 an hour.

Many drivers find it hard to walk away because they have invested so much in their trucks. If they leave, they might still be stuck with years of monthly payments and the final payment of $8,000.

One morning in August 2004, Jean doubled over in pain. Three days later, her doctor informed her she had ovarian cancer.

“The doctor told me to stop working immediately,” Jean said. She not only finished her route that Friday but worked the following Monday and Tuesday as she struggled to find someone to cover her route. Her terminal’s two replacement drivers demanded unrealistic amounts, she said. “They knew they had me over a barrel.”

On Aug. 21, 2004, surgeons removed a large, malignant tumor and did a hysterectomy. The next week the doctors told her she had Stage 4 cancer that had spread to her lungs. She would need chemotherapy through late December.

Jean had twice beaten breast cancer, and she was intent on beating this, too. She fully expected to return to her job in January, and called FedEx Ground’s headquarters to request a leave of absence. Weeks later, a letter arrived saying she was terminated.

“I was crazy with anger,” she said.

Fired and with no income, Jean stopped making payments on her truck. She had already paid more than $40,000 on it, but now she was powerless to prevent it from being repossessed.

“Ten years of beating my brains out for them, and they throw me away like I was a piece of garbage,” Jean said.

FedEx Ground officials said they had sympathy for Jean but had to terminate her under company rules, because she was no longer covering her route and she hadn’t found a replacement driver.

Company officials said they were free to terminate her because in FedEx’s view she was an independent contractor and therefore not protected by the Americans With Disabilities Act. That law requires companies to make reasonable accommodations to keep employees who have cancer or other disabilities. Jean has sued FedEx, asserting that it violated the act.

"To this day, I still can't understand how they can get away with it," Jean said. "You work for a company for 10 years and you give 150 percent. I used to go above and beyond. And then I get sick, something totally out of my control. And then to get fired."

Her voice dropped off, then tears streamed down her cheeks.

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Just inside the door of the men's room was a rack that held sweaty biking shirts, damp bathing suits and clammy running shoes. The aroma seemed to belong more to a high school locker room than to a corporate headquarters. But this was the house of Patagonia, the apparel company that prides itself on letting its employees take their play every bit as seriously as they take their work.

At lunchtime many days, Patagonia employees go surfing for two hours, while a half-dozen others take a 100-minute, 27-mile bike loop in the hills overlooking the Pacific.

One of the sweaty biking shirts belonged to Andy Welling, a sales manager at Patagonia's headquarters in Ventura, Calif. At 41, Welling is a fiend about staying in shape — he bikes several days a week at lunchtime, and joins Patagonia's weekly pick-up soccer game. He often makes up for his lunchtime cycling by working a few hours at home in the evening.

Patagonia is so mellow about flextime that the receptionist at headquarters, an 11-time world Frisbee champion, is allowed to take three months off each summer to run a surfing school. "I could make quite a bit more money working somewhere else," Welling said. "But to have the quality of life and to remain physically fit, by cycling or going surfing, you can't put a dollar amount on it."

Welling has taken advantage of another Patagonia offering: the child care center at headquarters. He drops off his two boys, 5 and 3, at 9 and often has lunch with them. "Being able to have my kids a few feet away from me all the time is fantastic," Welling said. "It is a bonding relationship I never would have had if I were working somewhere else."

Patagonia is not like anywhere else. With 1,300 workers and $275 million a year in sales, it donates 1 percent of its annual sales to environmental groups. Four days a week at lunchtime, the company offers yoga and Pilates sessions; there are also occasional classes on fly fishing. Each year Patagonia lets 40 employees take paid two-month internships with an environmental group. The best spots in the parking lot are reserved for the most fuel-efficient cars, and above dozens of parking spots are solar panels that supply all the power for one of Patagonia's administration buildings.

Patagonia has 900 applicants for every job opening at headquarters. It sponsors civil disobedience training for employees who want to participate in environmental protests. Its mission statement calls for making the best outdoor products while doing the least damage to the environment. Its Synchilla fleece vests are made from recycled plastic bottles.

At headquarters, 20 surfboards are tucked under the stairs to the second floor, and employees often work barefoot. “When you walk through the front door, we don’t want you to stop being the person you are,” said Lu Setnicka, Patagonia’s director of training.

This unusual blend of work, play, family and environmentalism grows out of the philosophy of Patagonia’s founder and principal owner, Yvon Chouinard. Born in Maine and raised in Burbank, he felt passionate about just one activity in high school: the Southern California Falconry Club. He learned how to rappel down cliffs to visit falcon nests, and out of that grew a lifelong passion for mountain climbing.

Dissatisfied with the era’s soft-iron pitons — small spikes that climbers drive into rock and attach ropes to — Chouinard set out to produce stronger ones. He bought an anvil, taught himself blacksmithing, and made his first pitons out of an old harvester blade. For several years, he lived on less than a dollar a day, selling pitons out of his car and pursuing his passions by climbing in Yosemite and Wyoming.

As demand for his pitons grew, Chouinard rented a metal shed in Ventura and hired a small staff. By 1970, his company had become the nation’s largest producer of climbing equipment. During an excursion to Scotland, he purchased a rugby shirt and concluded that the thick, sturdy shirt was ideal for rock climbing. When he returned to California, his climbing friends asked for shirts just like it, and soon Chouinard expanded into the apparel business, importing rugby shirts.

As the company grew, it had one unbending rule — the business closed whenever the waves in the Pacific were running six feet high, hot and glassy. “Since none of us wanted to be in business, we wanted to blur the distinctions between work and play,” Chouinard said. “That meant we had to break a lot of rules of business.”

Chouinard often jokes about his M.B.A. philosophy: management by absence. Many years he disappeared for six months to go ice climbing in the Alps or surfing, skiing and climbing in South America. His was the ultimate flextime.

Chouinard has a simple philosophy that he says ensures that employees don’t abuse their flextime. “Hire the people you trust, people who are passionate about their job, passionate about what they’re doing. Just leave them alone, and they’ll get the job done.”

Shannon Ellis, Patagonia’s vice president for human resources, says the unusual flextime policies yield increased productivity. “A lot of people recognize that what they have here is unique, and I don’t think they want to jeopardize that,” she said.

In addition to the child care center, Patagonia offers other family-friendly benefits like eight weeks of paid maternity and paternity leave. It also pays 100 percent of the health insurance premiums for its workers, even part-timers. Chouinard says this helps attract the gung-ho outdoors types Patagonia wants — workers who test the company’s products as they climb and surf and convey their expertise and enthusiasm to customers.

“All of these things I’m doing are not to have a socialist birth-till-death utopia here,” Chouinard said. “Every one of these things is good business.”

Lisa Pike, who oversees Patagonia’s environmental grants, said: “He’s proving Wall Street wrong. You can do the right thing and still have an extremely profitable company.”

This article is adapted from "The Big Squeeze: Tough Times for the American Worker," by Steven Greenhouse, a reporter for The New York Times. The book, published by Knopf last week, examines difficulties faced by workers at companies like Fed Ex and Wal-Mart, and points to Patagonia and Costco as models for corporate America.

Read Chapter One of the book.