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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ALBERT F. SCHAEFER, Plaintiff-Appellant,	)	Filed February 24, 1981
vs.	)	
DEERE & COMPANY, A Corporation, Defendant-Appellee.	)	0-429 2-63711

Appeal from Dubuque District Court - L. D. Lybbert, Judge.

Plaintiff employee appeals from trial court's order sustaining defendant employer's motion for summary judgment in plaintiff's action for wrongful discharge from employment. Plaintiff contends that a substantial issue of material fact regarding exhaustion of remedies remains thereby rendering summary judgment improper. AFFIRMED.

Douglas C. Pearce of Pfeiler & Pearce Law Office, Dubuque, for plaintiff-appellant.

J. Wilson McCallister and M. M. Cooney of Cooney, McCallister & Zwack, Dubuque, for defendant-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

Plaintiff employee, Albert F. Schaefer, appeals from trial court's order sustaining defendant employer's, Deere & Company's, motion for summary judgment in plaintiff's action for wrongful discharge from employment. Plaintiff contends that a substantial issue of material fact regarding exhaustion of remedies remains thereby rendering summary judgment improper. We affirm.

Plaintiff was employed by defendant from August 15, 1960, until October 18, 1973. On that date, defendant notified plaintiff that his employment was terminated because of unexcused absences from work for more than three consecutive days in violation of a provision of a collective bargaining agreement. On the following Monday, October 22, 1973, plaintiff took the matter up with his employer. Discussions were held between the company and union officials. Plaintiff did not meet personally with union officials at that time as he apparently concluded that the union had sided with the employer on the matter. He did not file a grievance or attempt to utilize the grievance procedure.

On March 12, 1974, at plaintiff's unemployment compensation hearing, benefits were denied. Sometime in June or July of 1974, plaintiff talked to union officials and was told that the union could not help him.

Plaintiff thereafter filed the instant action claiming wrongful discharge from employment and seeking back wages, fringe benefits and reinstatement. After answering, defendant filed a motion for summary judgment on the grounds that plaintiff failed to exhaust his remedies under the mandatory and exclusive grievance procedures of the collective bargaining agreement. Plaintiff resisted and attached a union official's affidavit of March 19, 1979, stating there was nothing further the union could do for plaintiff in the matter. Trial court granted defendant's motion for summary judgment on April 2, 1979. Plaintiff's appeal followed.

I. Scope of Review. Since this is an action at law, our review is on assigned error only. Iowa R. App. P. 4.

II. Summary Judgment. Plaintiff contends trial court erred in granting defendant's motion for summary judgment on the grounds that plaintiff failed to timely attempt to utilize the mandatory and exclusive grievance procedures of the collective bargaining agreement. Plaintiff argues that by affidavit from a union official he has shown that the union could do nothing more for him, thereby making futile further attempts at following the grievance procedures set forth in the union contract. We disagree.

A motion for summary judgment is properly granted when there is no genuine and material issue of fact remaining and summary judgment should be entered for defendant as a matter of law. Anita Valley, Inc. v. Bingley, 279 N.W.2d 37, 40 (Iowa 1979). When actions involving allegations of wrongful discharge are brought in state courts by employees who are protected by union contracts, the federal common law of labor-management relations governs. Local Lodge No. 1426, International Association of Machinists and Aero Space Workers, AFL-CIO v. Wilson Trailer Co., 289 N.W.2d 608, 610 (Iowa 1980). Under Republic Steel Corporation v. Maddox, 370 U.S. 650, 85 S. Ct. 614, 13 L. Ed. 2d 580 (1965), plaintiffs are required, as a general rule, to attempt to use the contract grievance procedure between the employer and the plaintiff's union prior to resorting to the court to resolve the conflict. 379 U.S. at 652, 85 S. Ct. at 616, 13 L. Ed. 2d at 583. Exceptions to the rule occur when the contract has a non-exclusive provision, Id. at 657-58, 85 S. Ct. at 619, 13 L. Ed. 2d at 586, or when the employee alleges and proves a breach of duty of fair representation on the part of the union representative. Vaca v. Sipes, 386 U.S. 171, 185-86, 87 S. Ct. 903, 914, 17 L. Ed. 2d 842, 855 (1967).

The issues here, therefore, are whether plaintiff exhausted his remedies under the union contract grievance provisions and, if not, whether an exception to the general rule requiring exhaustion of remedies applied to plaintiff, enabling him to bring this action in the district court.

The evidence clearly shows that plaintiff did not utilize the grievance procedures under his union contract. The contract did not have a non-exclusive provision; following the grievance procedures set forth in the contract therefore was mandatory. Plaintiff testified that after he took the matter up with the company, he "assumed they [the union] knew what was going on." He did not at any time file a grievance. The contract requires filing of a grievance within ten working days of the alleged violation. Plaintiff did not talk to union officials until sometime in June or July of 1974, yet his unemployment compensation hearing was held on March 12, 1974. Further, plaintiff's instant action does not allege any breach of duty of fair representation by the union.

We find plaintiff did not exhaust his remedies under the union contract grievance procedures. We also find that plaintiff has not demonstrated that an exception to the exhaustion requirement applies. We thus conclude that summary judgment was properly granted as a matter of law. Trial court's order is affirmed.

AFFIRMED.