FILED
MAY 31 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

EMI PARKER,	)	
Plaintiff-Appellant,	)	Filed May 31, 1988 203
vs.	)	
RICHE ASSOCIATES, INC.,	)	8-111 / 87-1190
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Polk County (No. CL69-40914), Thomas J. Renda, District Associate Judge.

Plaintiff appeals from a district court ruling which held that money paid to her by defendant former employer and then revoked by the employer was not severance pay but was instead a mere gratuity which the employer was free to revoke. **AFFIRMED.**

Blake Parker of Parker & Fors, Fort Dodge, for plaintiff-appellant.

Ralph R. Brown of McDonald, Brown & Kimple, Dallas Center, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

DONIELSON, J.

Plaintiff appeals from a district court ruling which held that money paid to her by defendant former employer and then revoked by the employer was not severance pay but was instead a mere gratuity which the employer was free to revoke. We affirm.

From 1984 to 1986 Emi Parker was employed as a bookkeeper and business manager by Riche Associates. In October 1986, Parker was discharged because of errors in her work. Company president Mary Riche initially gave Parker a check for $1,545.56. This check included unpaid wages and vacation pay to which Parker was entitled in an amount of $493.12. The check also included the sum of $1,052.44; Parker characterizes this sum as three weeks' worth of severance pay, while Riche characterizes the sum as a "settlement" in return for Parker's agreement not to seek unemployment compensation.

When Parker did seek unemployment compensation, Riche stopped payment on the $1,545.56 check and issued Parker a new check which did not include the disputed sum of $1,052.44. The new check included only Parker's undisputed vacation and back wage entitlements.

Parker later filed the present action under Iowa Code Chapter 91A, the Wage Payment Collection Law, seeking the disputed sum of $1,052.44; she characterizes that sum as severance pay for which she and Riche had contracted. (The petition erroneously alleged $1,153.86 was due and owing to Parker; the amount was later computed to be $1,052.44.)

Parker's action was initially scheduled for small claims court. However, after Parker amended her petition to seek liquidated damages as well as the controverted sum, the case was transferred to district court.

After a hearing, the district court rejected Parker's claim. The district court held that the company had no prior policy of granting severance pay,

that the parties had made no contract for severance pay, and that no such contract could be enforced in any event because waivers of unemployment compensation are declared void by statute. The court held that the alleged severance pay was not a wage subject to Chapter 91A and was instead "in the nature of a gratuity." The court held that Riche was entitled to withdraw the gratuity and stop payment on her check. Parker has appealed from the district court's ruling.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. Findings of fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

Parker contends the district court erred by holding that the disputed sum was not severance pay and was therefore not a "wage" subject to the provisions of Chapter 91A. She also contends the district court erred by likening this case to a contract action; she denies that a contract existed and asserts instead that she can make a valid claim under Chapter 91A simply because wages were initially paid and then revoked.

Iowa Code section 91A.2(4)(b) defines "wages" as:

> [C]ompensation owed by an employer for . . . severance payments which are due an employee under an agreement with the employer or under a policy of the employer.

A review of the record discloses that there was no policy of Riche to provide severance pay. Although there was an agreement between Riche and Parker for Parker to receive an additional $1,052.44, this agreement was based upon Riche's assumption that Parker would not file for unemployment benefits. Parker disputes such an agreement; she contends that at no time did she agree not to file for unemployment benefits. However, we find Parker's actions reveal otherwise. Parker, after initially opting to get fired, went to her attorney; upon his advice, she filed for unemployment compensation and the following

day informed Riche she wished to resign, at which time Riche gave her a check which included the disputed sum of $1,052.44. Parker testified she possibly told a coworker that she informed Riche she would be taking a settlement payment but that Riche did not know she would also be filing for unemployment. Parker further testified she knew Riche would be surprised upon learning she filed for unemployment.

Any agreement or waiver of unemployment benefits is void. Iowa Code § 96.15(1). Based on our review of the evidence, we find the $1,052.44 more likely represented a settlement figure. As such, the district court correctly concluded any agreement to pay the disputed sum in lieu of filing for unemployment benefits is void.

Accordingly, we affirm the district court and find defendant employer had a right to issue a stop payment order on the first check issued to Parker and that Parker had no basis for a claim under Chapter 91A for wages owing. Because of our ruling, we need not consider Parker's request for liquidated damages and attorney fees.

AFFIRMED.