

IN THE COURT OF APPEALS OF IOWA

No. 0-443 / 89-1639

FILED

JAN 29 1991

CLERK SUPREME COURT

NANCY DE LAY and ROY L. PITTMAN,

Appellees,

vs.

TEAMSTERS LOCAL 147 and WESTLEY MCDANIEL,

Appellants.

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Appeal from the Iowa District Court for Polk County,
Ray A. Fenton, Judge.

Local 147 appeals an adverse district court ruling finding it breached oral employment contracts with Pittman and De Lay by discharging them without just cause.
AFFIRMED IN PART AND REVERSED IN PART.

Neil A. Barrick, Des Moines, for appellants.

James J. Beery and Thomas D. McMillen Jr., Des Moines,
for appellees.

Considered by Oxberger, C.J., and Schlegel and Hayden,
JJ.

HAYDEN, J.

Teamsters Local 147 (Local 147) is a local labor union of the International Brotherhood of Teamsters (International). Local 147 is managed by an executive board which is governed by the constitution of International and the by-laws of Local 147.

Roy Pittman was hired as a bookkeeper by Local 147 in 1973. He was hired by the then principal officer of Local 147, Charles Kirschbaum. Nancy De Lay was hired as a secretary by Local 147 in 1983. She was hired by the then principal officer of Local 147, Vernon Bennett. Neither Pittman nor De Lay had a written contract of employment. Pittman and De Lay were dues-paying members of Local 147, but they were not subject to the collective bargaining agreement.

In August 1985 Local 147 was placed in trusteeship by International. In early 1986 Westley McDaniel was elected principal officer of Local 147 with his term of office to commence April 1, 1986. For several weeks before April 1, McDaniel worked with Pittman and De Lay during this transition period. McDaniel terminated Pittman and De Lay effective March 31, 1986.

Pittman and De Lay sent letters to Local 147 and International protesting their terminations and seeking reinstatement. No action was taken.

In October 1986 Pittman and De Lay sued Local 147 and McDaniel. They alleged defendants breached their oral

employment contract with them by discharging them without just cause or without a hearing. Following trial, the district court found Local 147 had entered into an oral employment contract with both Pittman and De Lay, which contract provided they would not be fired without just cause. The court then concluded Local 147 had breached the contracts. The court entered judgment in favor of Pittman for \$68,404.02 and in favor of De Lay for \$29,700. The court awarded interest from the date of judgment entry. The court dismissed the claims against McDaniel personally.

Local 147 appealed. It contends the trial court erred in finding it entered into an oral employment contract with either Pittman or De Lay. Local 147 further asserts Pittman and De Lay failed to exhaust internal remedies before commencing litigation.

Pittman and De Lay claim the trial court erred in its award of interest.

Our review on appeal is on assigned errors of law. Iowa R. App. P. 4. We are bound by the trial court's findings of facts in this law action if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

I. Employment Contract

A. Substantial Evidence of an Employment Contract

We consider first Local 147's contention the trial court's finding of an employment contract is not supported by substantial evidence.

In determining whether sufficient evidence existed to support the trial court's findings, we review the record in the light most favorable to the prevailing party. Pousen v. Russell, 300 N.W.2d 289, 294 (Iowa 1981); Winkler v. Patten, 175 N.W.2d 126, 129; Leaders v. Dreher, 169 N.W.2d 570, 573 (Iowa 1969).

"If there is substantial evidence in the record so that a reasonable trier of fact could find [as the jury did], the jury's verdict are binding on us." Pousen, 300 N.W.2d at 294. This case was tried to the trial court without a jury. "Findings of fact in jury-waived cases shall have the effect of a special verdict." Iowa R. App. P. 4. We are bound by the trial court's findings even if we would have found differently ourselves.

The findings of the trial court are broadly and liberally construed, rather than narrowly or technically. In case of doubt or ambiguity, findings will be construed to uphold, rather than defeat, the judgment.

Byers v. Contemporary Industries Midwest, Inc., 419 N.W.2d 396, 397 (Iowa 1988) (citations omitted).

The substantive issue argued by Local 147 is whether there was an oral employment contract. This is a question for the trier of fact.

[An employment] contract may be found to exist if this was the plaintiff's understanding and defendant had reason to suppose that plaintiff understood it in that light. See Iowa Code § 622.22 (1985). The issue of how these written personnel policies were perceived by plaintiff was, on the present record, an issue to be determined by the trier of fact.

Cannon v. National By-Products, Inc., 422 N.W.2d 638, 640 (Iowa 1988).

Here there is no actual "meeting of the minds"; and yet there may be a valid contract. Interpreting the elliptical expressions of the parties, the court may find that the expressions, interpreted in the light of the surrounding facts, made the understanding of one of the parties reasonable and made it unreasonable for the other party not to know that such would be the first party's understanding. In such a case, there is a contract in accordance with that understanding.

Wolfe v. Graether, 389 N.W.2d 643, 653-54 (Iowa 1986) (citing 3A A. Corbin, Contracts § 684, at 224 (1960)).

In the present case there are both written and oral communications and documents. Taken together, these could be construed to form an employment contract. See Canon, 422 N.W.2d at 642. We determine substantial evidence existed to support the trial court's findings of an oral employment contract.

We affirm the trial court on this issue.

B. Permanent or Lifetime Contract

Local 147 argues the trial court erred in finding the oral contract was a permanent contract. Local 147 cites Drake v. Block, 247 Iowa 517, 74 N.W.2d 577 (1956) in support of this proposition. In Drake, the Iowa Supreme Court held:

Where a contract of employment is indefinite as to time, the same lacks mutuality and may be terminated at will by either party without incurring liability.

Id. at 580.

However, the case law on employment contracts has continued its development since 1956. In 1986 the supreme court further refined the law surrounding permanent or lifetime employment contracts:

In a contract of employment which by its express terms is for a definite time or to last until a definite day, the employer may not discharge an employee prior to the stated time unless cause is shown based upon the employee's failure to perform in accordance with the contract for hire or there is some reason for discharge expressly provided in the contract. Contracts expressly offering life-time or permanent employment of which a trier of fact has interpreted as offering such employment based on extrinsic evidence will be interpreted as indefinite and terminable at will in the absence of some executed consideration in addition to the services to be rendered. The question of what constitutes sufficient additional consideration must be determined on a case-to-case basis.

Wolfe, 389 N.W.2d at 652-53 (citations omitted) (emphasis added).

In Wolfe the supreme court found the discharged employee's giving up of a partnership position in exchange for permanent employment could constitute the requisite additional consideration.

While the language of our cases does not always recognize the distinction, we believe the better view to be that the so-called "additional consideration" requirement applied in contracts of permanent employment is not truly a rule of consideration in the traditional sense, but rather an adjunct rule of interpretation. As such it is not strictly governed by those principles of contract law applicable to the sufficiency of consideration required to enforce a promise.

Id. at 654-55; see also Canon, 422 N.W.2d at 641 (reaffirming the principles of "additional consideration" discussed in Wolfe).

In the present case, both Pittman and De Lay appear to have expended considerable extra time and effort in their employment. They apparently worked long hours and on weekends. Apparently they were not compensated for much of this time. The record shows both employees served their employer with loyalty and dedication. The evidence supports a finding of "additional consideration" by the employees above and beyond what they were simply hired to perform. See Wolfe, 389 N.W.2d at 652.

Additionally, the trial court could have found, based on the evidence, Pittman gave up a promising career as an auditor with a Certified Public Accountant (CPA) firm to work for Local 147. These circumstances are analogous to the employee in Wolfe giving up the partnership position in exchange for permanent employment.

We determine sufficient evidence exists to support a finding of additional consideration for a permanent or lifetime employment contract. We affirm the trial court on this issue.

II. Exhaustion of Administrative Remedies

Local 147 also argues Pittman and De Lay were required to exhaust in-house administrative remedies before they may bring a court action based on wrongful discharge. It premises its arguments on language found in the labor union constitution.

The supreme court addressed the issue of exhaustion of in-house administrative remedies in Canon. That case stated in pertinent part:

In order to predicate the discharge of one of the contracting parties upon a breach of condition by the other, the party claiming discharge must show the condition breached constituted the entire agreed exchange by the other party, or was expressly recognized as a condition for his own performance. We do not interpret the personnel manual as mandating that the employees must follow the review procedures as a condition for receiving the benefits the agreement otherwise confers upon them.

The only prejudice which might arise on defendant's behalf as a result of plaintiff's failure to seek in-house review is the loss of an opportunity to avoid litigation. Plaintiff would have ultimately been entitled to seek relief through judicial action at some stage of the proceeding, and defendant, at no time, showed any inclination to modify its legal position. We conclude that prejudice has not been shown.

Canon, 422 N.W.2d at 642 (emphasis added).

In this case, Pittman and De Lay have written McDaniel, the local head of Local 147, and Jackie Presser, head of the International Brotherhood of Teamsters. Presser forwarded the inquiries to McDaniel to take "appropriate action." Nothing was done to indicate Local 147 was modifying its stance regarding its discharged employees. No prejudice, other than the opportunity to avoid litigation, has been shown.

Additionally, Local 147 is relying on the labor union constitution for its argument of the requirement of exhaustion of administrative remedies. However, this ground is not open to Local 147 in this instance. Here Local 147 is acting as an employer, not as a union. The union constitution, if it is considered a contract, is between the union and its members.

The few courts that have considered this question have held, almost unanimously, that the defense of failure to exhaust union remedies is not available to the employer. The reason is that the union constitution, which provides for the internal remedies, is a "contract" only between the union and its members, and the employer cannot avail himself of the union's contractual defense.

Winter v. Local Union No. 639, 569 F.2d 146, 150 (D.C. Cir. 1977) (emphasis in original).

We determine Pittman and De Lay were not required to exhaust Local 147's internal administrative remedies before bringing this action. We affirm the trial court on this issue.

III. Interest on Judgment

Pittman and De Lay claim the trial court erred in its award of interest. The trial court awarded interest from the date of judgment.

The law in Iowa provides interest on a judgment "shall accrue from the date of commencement of the action." Iowa Code § 535.3. However, an exception has been created in wrongful discharge cases because the damages are liquidated at the time of the termination. Chard v. Iowa Machinery & Supply Co., 446 N.W.2d 81, 84 (Iowa App. 1989). This is in accord with established Iowa law awarding interest from the date of the injury for liquidated damages. See Kuper v. Chicago & North Western Trans. Co., 290 N.W.2d 903, 910 (Iowa 1980). Chard states in pertinent part:

[T]hat a compensatory damage award for tortious interference with existing employment was for damages incurred before complaint was filed and

therefore, interest was appropriate on the entire amount of judgment, even though claim was made that damages were not sustained until after the complaint was filed.

Id. at 84 (citing IBP Confidential Business Documents Litigation, 755 F.2d 1300 (8th Cir. 1985), on rehearing, 797 F.2d 632) (emphasis added).

In the present case, as in Chard, Pittman and De Lay were wrongfully terminated in violation of the employment contract. Like Chard, the trial court here awarded severance pay and benefits equal to twelve months. The trial court also awarded accumulated vacation pay and benefits.

However, the trial court only awarded interest from the date of judgment. We determine interest is to accrue from the date of termination. The clerk of the district court is directed to enter judgment with statutory interest from the date of discharge, March 31, 1986.

We reverse the trial court on this issue.

The trial court is affirmed on all other issues.

Costs on appeal taxed to Local 147.

AFFIRMED IN PART AND REVERSED IN PART.