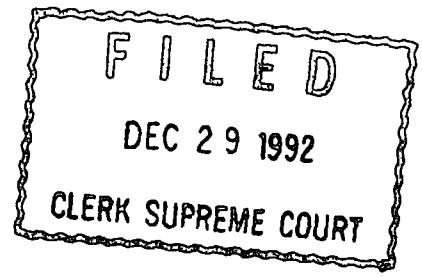
IN THE COURT OF APPEALS OF IOWA

No. 2-197 / 91-1615



FRED R. CURLER,

Appellant,

vs.

INTERNATIONAL BUSINESS MACHINES CORP.,

Appellee.

Appeal from the Iowa District Court for Dubuque County, Alan L. Pearson, Judge.

Both parties appeal the district court's partial grant of summary judgment to defendant on plaintiff's wrongful discharge action. **AFFIRMED IN PART AND REVERSED IN PART.**

Les Reddick of O'Connor & Thomas, P.C., Dubuque, for appellant.

Allan J. Carew, Stephen J. Juergens, and Gregg L. Owens of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellee.

Considered by Donielson, P.J., and Sackett and Habhab, JJ. Schlegel, J., takes no part.

HABHAB, J.

The plaintiff, Fred Curler, was employed by the defendant, International Business Machines (IBM), from August 17, 1981, until August 21, 1990. From 1981 to 1989, he worked with satisfactory evaluations and received a customer satisfaction award. However, he experienced problems when he began working with a new supervisor, C. William Dietrich, in 1989. Curler was terminated due to alleged customer dissatisfaction with his service.

Curler subsequently filed the present action on December 14, 1990. In Count I of his action he alleged breach of an oral contract. Curler maintained he was told by IBM at the time he was hired that he would not be laid off and would not be terminated without cause. In Count II, he alleged breach of a written contract, based on the terms of the IBM employee handbook. Count III was based on tortious interference with his employment contract. He claimed Dietrich wanted to get even with him because he complained about Dietrich to higher management. Count IV sought punitive damages.

IBM moved for summary judgment. Following a hearing, the district court found that Curler was an at-will employee of IBM and could be terminated at any time for any reason. The court then granted partial summary judgment, dismissing Counts I and III. The court declined to rule on the question of whether Curler had certain rights in the procedure of his termination under the employee handbook,

and thus refused to dismiss Counts II and IV. Curler voluntarily dismissed Counts II and IV without prejudice and filed his notice of appeal. IBM has filed a cross appeal.

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

In our review of a summary judgment, we first determine whether any genuine issues of material fact were in dispute. Hoefer v. Wisconsin Education Association Insurance Trust, 470 N.W.2d 336, 338 (Iowa 1991). If there are none, then we determine whether the trial court correctly decided that the moving party is entitled to judgment as a matter of law. Id. A fact question is generated if reasonable minds could differ on how the issue should be resolved. Id.

II. Curler first contends summary judgment was not proper in this case because there were genuine issues of material fact regarding whether or not he was an at-will employee. He claims the terms of the employee handbook, together with the statements made by IBM managers when he was hired, and the terms of a managers' manual should be considered to create an offer of continued employment, which he then accepted.

An employee policy manual distributed to employees may constitute an offer by the employer that is then accepted

by performance on the part of the employee. Hunter v. Board of Trustees, 481 N.W.2d 510, 513 (Iowa 1992). The consideration arises from the employee remaining on the job. Id. An at-will employee discharged in violation of the terms of such a handbook or policy manual may maintain a breach of contract action against an employer. Fogel v. Trustees of Iowa College, 446 N.W.2d 451, 455 (Iowa 1989).

The starting point of the unilateral contract theory is whether the terms of the handbook are sufficiently definite to constitute an offer of continued employment. Palmer v. Women's Christian Association, 485 N.W.2d 93, 96 (Iowa App. 1992). Claims premised on unilateral contract theory frequently fail because the handbook's dismissal or disciplinary provisions are not sufficiently definite to constitute an offer. Id. An employer's indefinite guidelines for dismissal merely reflect the terminable at-will status of its employees. Fogel, 446 N.W.2d at 456.

We agree with the district court's finding that the terms of the IBM handbook were too indefinite to create an employment contract. The handbook provided:

> Termination of Employment. IBM has not established any specific term of employment; therefore, termination may be initiated at any time by either an employee or by management. . . . Separation may also be initiated by management. Reasons for separation may include, but are not limited to: failing to meet IBM's performance, punctuality or attendance standards, engaging in misconduct or violating a company policy.

By stating that termination could be initiated at any time

by either an employee or by management, the employer was stating the nature of employment at-will.

Also, any oral statements made at the time Curler was hired at most show the employer's policy to terminate only for just cause. See Palmer, 485 N.W.2d at 96. An employer is free to set policy as he deems appropriate within the bounds of the law. Id. However, an employer is only bound by policy if it so contracts with another party. Id. We conclude IBM is not bound by any policy statements which may have been made at the time Curler was hired.

In addition, Curler has drawn our attention to the terms of a managers' manual. Curler has not claimed this manual was distributed to him. A personnel handbook distributed only to management, not to the employee bringing a wrongful discharge suit, can afford no protection to that employee. McBride v. City of Sioux City, 444 N.W.2d 85, 91 (Iowa 1989).

There is insufficient evidence of contract to create a jury question. Accordingly, we affirm the district court's grant of summary judgment to IBM on the question of whether Curler was an at-will employee.

III. Curler contends the district court should not have granted summary judgment to IBM on his claim of tortious interference. He claims his supervisor, Dietrich, terminated him only because he had made a complaint about Dietrich to higher management in the company.

In Springer v. Weeks & Leo Co., the supreme court recognized a cause of action for tortious interference with the contract of hire when the discharge serves to frustrate a well-recognized and definite public policy of the state. 429 N.W.2d 558, 560 (Iowa 1988). The court later stated that such claims should more properly be designated as retaliatory or wrongful discharge claims instead of tortious interference claims. Springer v. Weeks & Leo Co., 475 N.W.2d 630, 633 (Iowa 1991).

No matter how such claims are designated, a plaintiff must show his or her discharge frustrates or contravenes a well-recognized and definite public policy. Curler only alleges his discharge violated IBM's "speak up" policy, which encouraged employees to speak up if they had a problem with a supervisor. We conclude he has not shown his discharge violated a well-recognized and definite public policy. We affirm the district court's grant of summary judgment on this issue.

IV. In its cross appeal, IBM contends the district court should have dismissed Counts II and IV of Curler's petition. On appeal, the cross-appellee offers no resistance.

The "Certified Copy Of Docket And Calendar Entries" reveals these two counts were dismissed by the plaintiff without prejudice. The dismissal took place after the summary judgment ruling. We conclude we have jurisdiction

to rule on these two matters. We note the cross-appellee offers no resistance to the contrary.

We find merit in cross-appellee's argument and accordingly reverse the trial court and dismiss Counts II and IV of Curler's petition.

Conclusion. By our ruling, the four counts of plaintiff's petition stand dismissed. Since there are no other counts in the plaintiff's petition, his petition likewise is dismissed. Costs on appeal are assessed to the appellant.

AFFIRMED IN PART AND REVERSED IN PART.

Donielson, P.J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I dissent. I would reverse and remand for a trial on the merits.

This case comes to us after the trial court granted defendant summary judgment. The question is whether there is a genuine issue of material fact on whether plaintiff had an employment contract or was an employee at will and whether there was tortious interference with plaintiff's employment contract.

Plaintiff first contends a factual dispute exists because, considering all facts collectively, he has generated a fact question on an employment contract. I agree with plaintiff that there is evidence by way of plaintiff's own statements that he was told when he was hired that IBM does not lay off and the only way he would lose his job would be if he were terminated for cause. That this was company policy was buttressed by the manager's manual which I would consider relevant to corroborate this testimony.

Plaintiff testified he was discharged by his supervisor who had threatened to get even with him.

I would reverse the summary judgment. This is evidence to generate a fact question on the issue of an employment contract and tortious interference with employment.