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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-536 / 89-128

349

WILLIAM SMITH,

Plaintiff-Appellant,

vs.

FAREWAY STORES, INC.,

Defendant-Appellee.

Appeal from the Iowa District Court for Humboldt County, Gary L. McMinimee, Judge.

Smith filed this action for breach of contract based on his discharge from employment with defendant. The jury found in favor of defendant. **AFFIRMED.**

James E. Fitzgerald and Tito Trevino of Trevino Law Office, Fort Dodge, for plaintiff-appellant.

Kirke C. Quinn of Doran, Courter, Quinn & Doran, Boone, for defendant-appellee.

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

PER CURIAM

Smith was employed by defendant Fareway Stores, Inc. as the manager of the meat department of a grocery store in Humboldt, Iowa. Smith was discharged from his employment on November 6, 1985. He filed this suit alleging breach of contract, wrongful discharge, and emotional distress based on his termination.

Smith claimed an Employee Handbook of defendant's constituted a contract of employment between himself and defendant, and defendant had violated certain portions of this purported contract. The jury found this Employee Handbook was not a part of the employment contract between Smith and defendant. During the course of the trial the trial court permitted defendant to introduce into evidence a Manager's Handbook distributed by defendant to its managers. This was timely objected to by Smith. The admission into evidence of the Manager's Handbook is the sole issue on appeal.

Our scope of review is for errors at law. Iowa R. App. P. 4.

The Manager's Handbook also contained the Employee Handbook within its documents and information. It is a three-ring loose leaf binder containing an accumulation of letters, instruction sheets, and forms which the defendant had sent to its managers over a period of many years. This Manager's Handbook was marked and introduced into evidence by defendant as exhibit "K."

Defendant, through its president, F.W. Beckwith, offered testimony exhibit "K" had as its first loose-leaf sheet a copy of his letter. The pertinent portion of this letter contained the following information:

> This handbook does not constitute an employment contract between Fareway Stores, Inc. and any of its employees. No bulletin, communique, whether written or spoken, nor any combination thereof shall be construed to change the "employment at will" concept under which all persons work for Fareway. Each employee is free at any time to terminate their employment with Fareway for any reason whatsoever; in a like manner, Fareway is free to terminate any of its employees at any time and for any reason.

Smith acknowledged he received the Manager's Handbook but claims it did not contain a copy of this letter. Beckwith testified he directed the letter be included in exhibit "K" and he knew it was in other Manager's Handbooks as well as his own.

We set forth Smith's objection as follows:

> [W]e are going to object to the exhibit for--as to the foundation and the lack of showing as that it has any relevancy as it relates to the knowledge of the plaintiff, the actual receipt of the plaintiff, and the inability to define with any specificity the date of the first report of the first letter in Exhibit K.

The trial court initially sustained Smith's objection but after defendant made an offer of proof, reversed itself and permitted the Manager's Handbook be admitted. The offer of proof showed it was completed January 18, 1985, it went out on the next company truck to Smith's store in Humboldt on January 21 or 23, 1985, and Smith's Manager's Handbook was

in his department on the date he was terminated with the same cover/binding as sent out in January 1985.

During his testimony, Smith stated he had received a copy of the Manager's Handbook (defendant's exhibit "K"). He contends a copy of F.W. Beckwith's letter was not with it. This is not a case of Smith's not receiving a copy of defendant's exhibit K. It is a question of whether a copy of Beckwith's letter was in it. This is an issue of credibility of witnesses. It is for the jury to decide. See Burger v. Omaha & C.B. St. Ry. Co., 139 Iowa 645, 656, 117 N.W. 35, 38 (1908).

The cases cited by Smith in his brief are of no help. They are cases of foundation for sending and receipt of articles through U.S. mail. There is nothing in this case indicating exhibit K was ever sent by mail to Smith. He has not cited us any case or authority to support the issue before us on this appeal.

Smith stated on the witness stand he had received a three-ring binder like the one identified as defendant's exhibit K. Therefore, a showing of a signed receipt by Smith is not necessary for it to be admitted into evidence. It is not lacking in foundation in this respect. We affirm the trial court on Smith's general foundation objection.

Smith also intimated in his objection exhibit K was not relevant. Iowa Rules of Evidence define relevancy as follows:

> Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Relevancy is for the trial court's discretion. Carson v. Mulnix, 263 N.W.2d 701, 706 (Iowa 1978). The trial court did not abuse its discretion on relevancy grounds in admitting exhibit K into evidence.

Based upon Smith's objection made to the introduction of defendant's exhibit K into evidence, we affirm the trial court.

AFFIRMED.