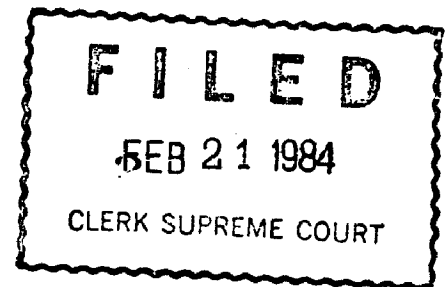


IN THE COURT OF APPEALS OF IOWA



WILLIAM A. FAHEY,)

Plaintiff-Appellee,)

vs.)

DUPACO EMPLOYEES CREDIT UNION,)

Defendant-Appellant.)

Filed February 21, 1984

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83-273

Appeal from the Iowa District Court for Dubuque County - William G. Klotzbach, Judge.

Defendant employer appeals from judgment for plaintiff in an action for breach of employment contract. REVERSED.

James L. Pillers, and G. Wylie Pillers, III, Pillers, Pillers & Pillers, Clinton, Iowa, for plaintiff-appellee.

Thomas W. McKay, and Donald R. Breitbach, Reynolds, Kenline, Breitbach, McCarthy, McKay & Nigg, Dubuque, Iowa, for defendant-appellant.

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

Defendant, Dupaco Employees Credit Union, appeals from a judgment for plaintiff in an action for breach of an employment contract.

Plaintiff Fahey was employed as general manager of defendant Dupaco in March of 1972. In August of 1980 he was fired. Fahey filed suit against Dupaco claiming that Dupaco had breached its employment contract with him and requesting judgment for compensatory damages.

The matter was tried to the court which, after hearing the evidence, found that the parties had intended that the initial contract be for one year. The court also found that the board's continuation of Fahey's employment after the first year at each annual reorganizational meeting constituted an implied renewal of the employment for another year, and that defendant's discharge of plaintiff was a breach of the employment contract. Judgment of \$16,483 was entered in plaintiff's favor.

Dupaco has appealed, contending: (1) that the trial court erred in concluding that plaintiff's initial hiring was for one year rather than at will; (2) that the trial court erred in concluding that the continuation of plaintiff's employment at subsequent annual reorganizational meetings constituted an implied renewal of employment for another year; and (3) that the trial court erred in concluding that there was no deficient performance on the part of the plaintiff that would constitute good cause or just cause for dismissal.

I. Scope of Review

Because this is a law action tried to the court it is reviewed for correction of errors at law. Iowa R. App. P. 4. The court's findings of fact have the force of a special verdict and are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). A finding of fact is supported by substantial evidence if the finding may reasonably be inferred from the evidence. Briggs Transportation Co.

v. Starr Sales Co., 262 N.W. 2d 805, 808 (Iowa 1978). The record is reviewed in the light most favorable to the judgment. Ambiguities are construed to uphold rather than defeat the judgment. Pillsbury Co. v. Ward, 250 N.W. 2d 35, 38 (Iowa 1977). The substantial evidence rule limiting review of a law action tried to the court, however, does not preclude inquiry into whether, conceding the truth of the findings of facts, the conclusions of law drawn therefrom are correct. Keith v. Community School District of Wilton in the Counties of Cedar and Muscatine, 262 N.W. 2d 249, 255 (Iowa 1978).

II. Annual Contract

Dupaco contends that the trial court erred in concluding that Fahey was hired on an annual basis rather than at will. We agree.

Fahey was hired as general manager of the Dupaco Employees Credit Union on March 8, 1972. The minutes of the board of directors meeting on that date provide:

VOTED: That we hire Mr. Fahey as Manager at the figure quoted—\$15,500 per year. Carried unanimously.

There is no evidence that these minutes were ever communicated to Fahey, and no written contract of employment was ever entered into between Fahey and Dupaco. Dupaco held annual reorganizational meetings. At each subsequent annual meeting the board acted on the manager's salary and Fahey received raises. The raises were specified as a weekly, as opposed to an annual, increase. Fahey was paid on a weekly basis.

At a special board meeting on July 28, 1980, the board voted to terminate Fahey's employment as manager. Fahey was subsequently placed on paid leave through August 17, 1980. We note that Fahey admitted, on cross-examination, that the manager of Dupaco serves at the will and pleasure of the board of directors. He further stated that, as he assessed his employment situation, as long as he was doing a good job he could stay on the job as general manager.

We must determine, after our review of the record, whether the trial court's finding that Fahey had a one-year contract with Dupaco was supported by substantial evidence. The case of Kitchen v. Stockman National Life Insurance Co., 192 N.W. 2d 796 (Iowa 1971), is instructive. In that case the supreme court, quoting the Restatement, Second, of Agency, section 442 (B), said:

Unless otherwise agreed, mutual promises by principal and agent to employ and to serve create obligations to employ and to serve which are terminable upon notice by either party; if neither party terminates the employment, it may terminate by lapse of time or by supervening events.

Id. at 801-02. The court continued:

The fact that a servant or other agent is employed under a contract which merely specified a salary proportionate to units of time which are commonly used for the purposes of accounting or payment, such as a month or a year, does not, of itself, indicate that the parties have agreed that the employment is to continue for the stated unit of time. Such a specification merely indicates the rate at which the salary is earned or is to be paid, and either party is privileged to terminate the relationship at any time unless further facts exist. However, the fact that payment is to be made in accordance with a time unit is evidence, in connection with other relevant facts, indicating that the agreement is for such unit.

Id. at 802. Such "other relevant facts" which may indicate that the agreement is for a specific period of time may include: the type of agency (as where a temporary appointment would not likely be made); an important change made by the employee in his general relations in order to accept the position (i.e. moving to a new location); or a sacrifice on the part of the employee of a position of some value in order to enter the employment. Id.

In Kitchen the employee was contacted by Stockman, while employed by another insurance company, regarding employment. On March 30, 1967, a "letter of understanding" from Stockman outlined the terms of the job offer, specifying:

Effective April 1, 1967, you are hereby appointed Branch Manager for our Company Office in Cedar Rapids, Iowa. The salary for this position of \$12,000.00 per year, plus 2% override on first year premiums produced by your full time men and received in cash at the Home Office.

Kitchen was also to receive an expense account, group insurance and other fringe benefits. The new job involved establishing and managing the branch office, developing suitable manpower, producing new business, servicing old business and achieving a reasonable production quota. On April 4, Kitchen opened the Cedar Rapids office, recruited salesmen and performed other tasks incident to the operation of the office. On April 17, Kitchen received an advance check from Stockman to aid in securing housing. On May 18 Kitchen moved his family from Michigan to Cedar Rapids. A day or two later he received a letter from Stockman informing him that the company had decided to close the Cedar Rapids office and that his employment with Stockman was terminated officially on May 31. The supreme court, applying the restatement rule, concluded that the trial court correctly determined that the initial period of employment as not temporary or at will, but rather for an initial period of one year.

Fahey, unlike Kitchen, did not make an "important change" in his "general relations" in order to accept the position with Dupaco. The new job was merely across the river, not across the country; there is no evidence that a move was required. There is no evidence in the record that Fahey gave up a "position of some value" in order to enter the employment with Dupaco. While Fahey testified that his previous title was "assistant vice-president in charge of installment lending," he testified further that the position entailed, among other things, assisting the teller when necessary. Fahey, unlike Kitchen, remained in his new position for approximately eight years.

In the instant case the record reveals that only the minutes of the board meeting setting Fahey's salary at the rate of \$15,500 per year even remotely support a finding of an annual contract. There is no evidence that an annual salary was ever communicated to Fahey. The fact that the minutes specify a salary proportionate to units of time which are commonly used for accounting purposes does not, of itself, support the trial court's finding. Furthermore, we

find no additional evidence which would indicate that an annual contract was envisioned by either party. The employment relationship between Fahey and Dupaco more closely resembles that of employment at will. "Generally, a contract for permanent (as opposed to temporary) employment that is indefinite as to time of duration, and one wherein the employee merely promises to perform services, is terminable at will by either party, with or without cause." Moody v. Bogue, 310 N.W. 2d 655, 658 (Iowa Ct. App. 1981).

Because we find that the trial court erred in finding that an annual employment contract existed, we reverse. In view of this determination, we need not discuss the remaining issues presented.

REVERSED.

OXBERGER, C.J., (dissenting)

I believe Kitchen v. Stockman Nall Life Ins. Co., 192 N.W.2d 796 (Iowa 1971), is controlling in this case. In Kitchen the court held that a contract of employment for one year was an unavoidable conclusion where Kitchen with the employer's knowledge, terminated his employment with another employer to accept the new position, moved from Michigan to Iowa, started work, and was terminated because of a newly revised management philosophy.

In the case at bar, Fahey, with Dupaco's knowledge, terminated his employment with the East Dubuque Savings Bank at East Dubuque, Illinois. He accepted the new position with Dupaco, moved to Iowa, started work, and was terminated because of revised management philosophy.

I would affirm the trial court.