

No. 98-0924. [9-187] GABELMANN v. NFO, INC.

Appeal from the Iowa District Court for Story County, Joel Swanson, Judge.
REVERSED AND REMANDED WITH INSTRUCTIONS. Heard by Sackett, C.J.,
and Vogel, J., and Schlegel, S.J. Opinion by Vogel, J. Dissent by Sackett, C.J.
(8 pages \$3.20)

Karl Gabelmann began working out of his home for NFO, Inc. in 1973. In 1975, Gabelmann's supervisor arranged to bring him to NFO's office in Corning, Iowa. NFO's president agreed to the transfer and further agreed to pay Gabelmann's moving expenses and an \$80 per month housing allowance. Gabelmann requested his moving expenses and housing allowance many times over the following years, but never received payment. Gabelmann filed suit in 1993 following his dismissal from NFO for breach of contract and wages under Iowa Code chapter 91A. A jury found in favor of Gabelmann; however, the court entered a judgment notwithstanding the verdict, finding that the claim was time-barred and unsupported by substantial evidence. On appeal, the Iowa Supreme Court reversed, finding that substantial evidence supported Gabelmann's claim, but that part of his claim was time-barred. The court remanded the case for further proceedings, from which Gabelmann now appeals. **OPINION HOLDS: I. Liquidated damages.** Gabelmann asserts the district court erred in finding that NFO did not intentionally fail to pay his housing allowance and therefore denying his claim for liquidated damages. However, the supreme court unequivocally found that a contract was formed in 1975 for the housing allowance, and that each monthly failure to pay constituted a breach. Although the current staff at NFO may not have known that Gabelmann's claim was valid, Brynolf Grahm, who originally made the offer, did. Over the years, when Gabelmann inquired about being paid, he was given various reasons why the company could not pay. There was no evidence that NFO disputed the claim until 1993. We conclude that Gabelmann should be awarded \$1,200 in liquidated damages pursuant to Iowa Code section 91A.8. **II. Subpoena for billing records.** Gabelmann asserts the court abused its discretion in failing to require NFO to produce its billing records with regard to this litigation. We agree that the records were relevant to the determination of Gabelmann's attorney fee claim. We remand to allow for discovery of the billing records and a new hearing on Gabelmann's claim for reasonable trial and appellate attorney fees. **DISSENT ASSERTS:** I dissent. I would affirm. There is substantial evidence to support the district court's finding the employer's failure to pay was not intentional. I would not award additional attorney fees.