FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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JEANNE KRUSE,

Plaintiff-Appellant/ Cross-Appellee,

vs.

JDC UNISERV UNIT, INC., JOSEPH A. TOLLARI, and **RALPH E. PERILLO,**

Defendants-Appellees/ Cross-Appellants.

Filed August 29, 1985

5-301
84-1430

Appeal from the Iowa District Court for Dubuque County - T. H. Nelson, Judge.

Plaintiff-employee appeals and defendant-employer cross-appeals from the trial court's finding of breach of an employment contract. **AFFIRMED IN PART; REVERSED IN PART.**

William C. Fuerste of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for plaintiff-appellant/cross-appellee.

James L. Sayre and Gerald L. Hammond of Sayre & Gribble, P.C., Des Moines, for defendants-appellees/cross-appellants.

Considered by Donielson, P.J., and Snell and Hayden, JJ.

PER CURIAM

The plaintiff, Jeanne Kruse, was formerly employed by the defendant JDC Uniserv Unit, Inc., as a secretary and office manager. Kruse and JDC entered into a written employment contract for the period ending August 31, 1983. The contract provided for automatic renewal unless one party gave sixty days' notice prior to August 31, 1983 of the desire to reopen the agreement and negotiate over terms. Kruse testified that she had expected to remain with JDC indefinitely.

In early 1983, tensions arose between Kruse and her supervisors. On February 10, JDC sent Kruse a notice terminating her employment in accordance with her employment contract. A hearing was held by the Executive Board on March 5 on the grounds set out in the February 10 termination notice. Kruse was represented by counsel, presented evidence, and cross-examined witnesses. After the hearing, the board adopted a motion to retain Kruse in employment. Kruse was notified of this decision and told to report to work on March 14.

However, on March 7, the executive director of JDC called an informal meeting of the executive board at which the executive director presented additional grounds for Kruse's termination. Predicated upon information received from the executive director, the board called an official meeting on March 10. Kruse was not notified of the March 10 meeting. At this meeting, a motion to reconsider the action of March 5 was adopted. After receiving the president's comments, the board adopted a motion terminating Kruse's employment as of March 31 on the original grounds plus some additional ones. Kruse received another notice of termination informing her of her right to file a grievance or proceed directly to arbitration if she chose to do so. Kruse was also informed of the Board's intent to terminate and not renew the agreement as of August 31, 1983, under the "duration of agreement" provision of her contract, Article XVII.

Kruse responded by filing a petition in equity on March 17 seeking temporary and permanent injunctive relief and damages.

The trial court denied her specific performance on the ground her remedy at law was adequate. The trial court concluded that JDC had breached Kruse's employment contract by the procedures used in dismissing her; the court found she had been fired without adequate notice of the complaints against her and without an opportunity to confront her "accusers." The court awarded her damages of slightly over $3,600 to compensate her for lost wages between March 31, 1983, and August 31, 1983. The court held that Kruse had no enforceable right to employment after August 31, 1983.

Kruse has appealed from the trial court's ruling, and JDC has cross-appealed claiming no breach of contract or, in the alternative, a $1,755 credit for unemployment compensation Kruse received against damages awarded.

Appellant and appellees concede that our review is de novo in cases commenced and tried in equity without objection. Life Investors Ins. Co. of America v. Heline, 285 N.W.2d 31, 35 (Iowa 1979).

I.

Kruse contends that the trial court erred by finding she only had an enforceable right to employment until August 31, 1983. She argues that she had an enforceable right to employment until she reached retirement age. She asks for $170,000 as the present value of her lost wages for a forty-year period. The relevant provision in the employment contract is Article XVII.

ARTICLE XVII - Duration of Agreement

> This agreement shall commence September 1, 1982, and continue in full force until August 31, 1983. Such agreement will automatically be renewed and will continue in full force and effect for additional periods of one year unless either JDC or the employee gives written notice to the other not later than sixty (60) days prior to the expiration date or any anniversary date thereof of the desire to reopen this agreement and to negotiate

> over the terms of a successor agreement. By mutual consent of both parties, any of the provisions of this agreement may be amended at any time. (emphasis added)

Kruse, in essence, interprets her employment agreement as a lifetime contract.

Absent any consideration beyond the employee's promise to perform, a contract for permanent or lifetime employment is construed to be for an indefinite term, terminable at the will of either party. Laird v. Eagle Iron Works, 249 N.W.2d 646, 647 (Iowa 1977); Stauter v. Walnut Grove Products, 188 N.W.2d 305, 311 (Iowa 1971). This general rule was also aptly stated in Hanson v. Central Show Printing Co., Inc., 130 N.W.2d 654, 655-56 (Iowa 1964).

> [I]n the absence of additional express or implied stipulation as to the duration of the employment or of a good consideration additional to the services contracted to be rendered, a contract for permanent employment, for life employment, for as long as the employee chooses, or for other terms purporting permanent employment, is no more than an indefinite general hiring terminable at the will of either party.

In the present case we are unable to find any independent consideration from Kruse to support the assertion of lifetime employment. Kruse was not permanently employed by anyone before she began her work with JDC. She did not surrender a secure position to accept JDC's offer of employment. See Collins v. Parsons College, 203 N.W.2d 594, 599 (Iowa 1973) (surrender of tenured position as adequate consideration); Stauter, 188 N.W.2d at 312 (sale of business to new employer as additional consideration). Neither did Kruse make a capital as well as a labor investment in JDC's business.

When Kruse consented to work for JDC, she gave up nothing. Because independent consideration does not appear, we affirm the trial court's ruling that Kruse had no enforceable right to permanent employment with JDC.

Our conclusion is bolstered by the speculative nature of any damage award to Kruse for wages lost over the next forty years. "Under Iowa Law when a

contract has been breached the innocent party is generally entitled to be placed in a position he would have occupied had there been performance." Metropolitan Transfer v. Design Structures, 328 N.W.2d 532, 535-36 (Iowa Ct. App. 1982), citing Lakota Girl Scout Council, Inc. v. Harvey Fund-Raising Management, Inc., 519 F.2d 634, 639-40 (8th Cir. 1975).

> Where two parties have made a contract, which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be either such as may be fairly and reasonably be considered arising naturally—that is, according to the usual course of things—from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it. (Authorities)

Metropolitan, 328 N.W.2d at 536. In other words, plaintiff must establish the existence and amount of damages with reasonable certainty. Damages cannot be speculative. Restatement (Second) of Contracts § 352.

The President and the Executive Director of JDC both testified that they did not contemplate Kruse would remain with JDC for the next forty years at the time her contract of employment was entered into. This was because the prior young secretaries JDC had employed stayed no longer than three years. Furthermore, Kruse's anticipated wage loss over the next forty years could not be ascertained without resort to surmise in Kruse's own unprompted words:

> Q. Are you anticipating a career lasting to what age, 70, perhaps, retirement age? A. I haven't thought that far ahead yet. Probably as long as I'm able to work, I will work.
>
> Q. So what you are telling me is over the next — you are how old, 24? A. Twenty-four.
>
> Q. Over the next 45 years, if a more attractive job opportunity came along, you would have considered that job and considered changing employment? A. I would have considered it, not necessarily accepted.
>
> Q. Well, obviously — A. It's pure speculation.

> Q. Okay. It's speculation as to whether you would have taken a new job, and it's equally speculation that you would remain with JDC for the next 45 years? A. Correct.
>
> * * *
>
> Q. What are your current intentions with regard to your employment with Dr. Duehr? Do you intend to make a career of that? A. There is a possibility.
>
> Q. As with JDC and your career opportunities there, is it equally possible that if a better paying job or job providing better opportunities comes along, you'll consider leaving Dr. Duehr? A. Again, it would be considered, but maybe I wouldn't accept. It's speculation again.
>
> Q. So it's speculation as to whether you'd stay and whether you would leave? It would depend on what circumstances arose in the future? A. That's right.

We conclude that it was not forseeable that Kruse would have been employed with JDC permanently and any recovery on that basis would be purely speculative.

II.

Defendant JDC asserts on cross-appeal that the trial court erred in finding that JDC breached Kruse's employment contract. JDC contends there was good cause for Kruse's termination and the procedures used to dismiss her complied with the provisions of her contract. Kruse counters that JDC breached the contract by not affording her the due process rights guaranteed by her contract before employment.

When we are asked to interpret a contract which the parties made for themselves, the object is to ascertain the meaning and intention of the parties as expressed in the language used. Allen v. Highway Equipment Co., 239 N.W.2d 135, 138 (Iowa 1976); Kinney v. Capitol-Strauss, Inc., 207 N.W.2d 574, 576-77 (Iowa 1973); State v. Starzinger, 179 N.W.2d 761, 764 (Iowa 1970). "It is the court's duty to give effect to the language of the entire contract in accordance

with its commonly accepted and ordinary meaning, and not make a new contract for the parties by arbitrary judicial construction." Starzinger, 179 N.W.2d at 764. Contract construction is the process of giving legal effect to the intent of the parties and is always a matter of law to be decided by the court. Mikesh v. Peters, 284 N.W.2d 215, 220 (Iowa 1979); Allen, 239 N.W.2d at 139.

The provision in Kruse's employment contract which comes into play for the resolution of the present dispute is Article XIII - Dismissal and Discipline:

> A. Just Cause
>
> The employee shall not be dismissed or disciplined except for just cause.
>
> B. Dismissal
>
> 1. The employer agrees to provide a 15-working-day notice of termination to the employee. Such notice shall detail reasons for termination and shall be signed by the President of the JDC UniServ Unit.
>
> 2. If the employee does not agree with the action taken she may file a grievance as outlined in ARTICLE XV, Section B of this contract.
>
> 3. Due process shall include the right to:
>
> a. Face the accusers and cross examine them.
> b. Reasonable time to prepare a defense.
> c. Continue salary and fringe benefits during any suspension or dismissal proceeding until the time of the final Board action.

After a careful reading of this provision, we can only conclude that JDC complied with the contractual procedures necessary to terminate Kruse's employment.

On March 10, 1983, JDC provided a 21-working-day notice of termination to Kruse. This notice detailed the reasons for her termination as insubordination, breach of confidentiality, and deterioration of working attitude. The notice

was also signed by the President of JDC. This fulfilled the requirements of Article XIII B(1).

It was after the issuance of this notice of termination when Kruse's due process rights come into play. The contract did not afford Kruse the right to participate in the deliberations of her employer which resulted in the issuance of the March 10 termination notice.

Furthermore, Kruse cannot argue that she was unaware of when and how her due process rights were to be satisfied. The March 10 notice of termination was identical in form to the February 10 notice which she received. Kruse's response to the February 10 notice was to participate in a hearing before the Executive Board. At that time Kruse discovered the benefit of the contractual process—by making her side of the story known she was reinstated. However, Kruse did not request a hearing after receiving the March 10 notice. She did not take the opportunity to present evidence in her defense which JDC was willing to afford. Therefore, as expressly provided in her employment contract, her termination became final on March 31, the date specified in the March 10 notice.

The employment contract allowed for unilateral termination by JDC if Kruse did not demand a hearing. Furthermore, the contract did not limit the number of termination proceedings which could be brought against Kruse nor did it specify how much time must pass between such proceedings.

Because JDC complied with the contractual procedures for the termination of Kruse, JDC cannot be held in breach of contract. Plaintiff's petition is dismissed.

JDC's cross-appeal requesting a credit against damages is moot.

AFFIRMED IN PART; REVERSED IN PART.