FILED
OCT 2 3 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-402 / 89-1796

JAMES GROGAN,

Plaintiff-Appellant,

145

vs.

UNION PACIFIC RAILROAD COMPANY, A Corporation,

Defendant-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Glen M. McGee, Judge.

Plaintiff appeals a directed verdict in favor of the defendant. **AFFIRMED.**

Lloyd R. Bergantzel, Council Bluffs, for appellant.

Richard J. Hautzinger and Kathleen J. Ford, Union Pacific Railroad Company, Omaha, Nebraska, and Jack E. Ruesch of Telpner, Smith, Sawatzke & Reusch, Council Bluffs, for appellee.

Heard by Schlegel, P.J., and Sackett and Habhab, JJ.

146

SACKETT, J.

Plaintiff-appellant James Grogan filed a series of claims against his employer, defendant-appellee Union Pacific Railroad Company, including claims for violation of public policy and intentional infliction of emotional distress. The trial court sustained a motion to dismiss a number of plaintiff's claims, including his claim for violation of public policy. Plaintiff's claim for intentional infliction of emotional distress was tried but the trial court sustained defendant's motion for directed verdict at the close of plaintiff's evidence.

Plaintiff appeals claiming the trial court erred in dismissing his claims for violation of public policy during employment. Plaintiff also claims the trial court should not have dismissed his claim for intentional infliction of emotional distress. We affirm.

Plaintiff is employed by defendant as a machinist. Plaintiff's job was to check an electrical unit called the coded cab signal and make out a daily inspection report. These procedures were mandated by federal safety regulations. In order to check the coded cab signal the locomotive had to be placed on an electrified pit or a portable loop unit had to be used. There was evidence plaintiff never received training on how to use the portable loop unit, and the locomotives he was supposed to check were not always placed on the electrified pit.

Consequently, plaintiff testified he began falsifying the federal safety reports. Plaintiff testified he then approached his foreman regarding problems with the locomotives and his lack of training. Plaintiff testified the foreman told him to keep his mouth shut or he would get rid of him, just as he had gotten rid of some electricians a year earlier. After this conversation, a layoff notice was posted which would have resulted in the termination of plaintiff's employment. The layoff notice was later withdrawn. Plaintiff testified he believe this notice was a show of authority by the foreman, and therefore he continued to do his job as instructed. Plaintiff testified the stress of continually making out these false reports caused him to develop an alcohol problem and to verbally and physically abuse his wife and children.

The first question is whether the Iowa courts have jurisdiction to decide these matters. Defendant maintains federal law preempts state law in this action. It claims plaintiff's claim is a dispute under the Railway Labor Act, 45 U.S.C. § 151, and should be handled by a union grievance procedure.

We agree with the defendant and the trial court that plaintiff's claim for violation of public policy during employment is a dispute that is preempted by federal law. However, we, as did the trial court, determine we have jurisdiction to entertain plaintiff's action for

intentional infliction of emotional distress. The act does not preempt a state court's jurisdiction for claims of emotional distress that require a showing of outrageous conduct. See Farmer v. United Brotherhood of Carpenters and Joiners of American, Local 25, et al. 430 U.S. 290, 305, 97 S. Ct. 1056, 1066, 51 L. Ed. 2d 338, 358 (1977).

We therefore address plaintiff's claim that the trial court erred in directing a verdict on his claim for intentional infliction of emotional distress. In addressing this issue, we view the evidence in the light most favorable to plaintiff. Beitz v. Horak, 271 N.W.2d 755, 757 (Iowa 1978). The elements of intentional infliction of emotional distress are: (1) outrageous conduct by the defendant; (2) the defendant's intentional causing, or reckless disregard of the probability of causing emotional distress; (3) plaintiff has suffered severe or extreme emotional distress; and (4) actual proximate causation of the emotional distress by the defendant's outrageous conduct. Northrup v. Farmland Industries, Inc., 372 N.W.2d 193, 197 (Iowa 1985). To succeed on his claim, plaintiff must show there is substantial evidence in support of each element. Beitz, 271 N.W.2d at 757.

There is sufficient evidence of the first two elements. If the jury believes that when Grogan brought the problems with the inspection to the attention of his

supervisor and his supervisor told him to keep quiet or he would be fired, such conduct would support a finding of outrageous conduct. There is, however, insufficient evidence to support the third and fourth elements. To be substantial, the evidence must show extreme emotional distress so severe that no reasonable man or woman could be expected to endure it. See Bethgards v. Shivvers, Inc., 355 N.W.2d 39, 44 (Iowa 1984); Harsha v. State Savings Bank, 346 N.W.2d 791, 801 (Iowa 1984). We do not find the evidence here to meet the required standard. See Poulsen v. Russell, 300 N.W.2d 289, 297 (Iowa 1981).

Plaintiff has also raised several evidentiary issues which, given our holding, need not be addressed.

AFFIRMED.