Dillon v. Champion Jogbra
819 A. 2d 703 (Vt. 2002)

OPINION BY JUSTICE MORSE:

Plaintiff Linda Dillon appeals an order of the superior court granting summary judgment to defendant Champion Jogbra, Inc. in her action for wrongful termination. Dillon contends that the trial court erroneously concluded as a matter of law that Dillon's at-will employment status had not been modified by Jogbra's employment manual and employment practices, and that the undisputed material facts failed to give rise to a claim for promissory estoppel supporting a claim for wrongful discharge. We affirm with respect to Dillon's claim for promissory estoppel, but reverse and remand on her breach of contract claim. * * *

Jogbra has an employee manual that it distributes to all employees at the time of their employment. The first page of the manual states the following in capitalized print:

> *The policies and procedures contained in this manual constitute guidelines only. They do not constitute part of an employment contract, nor are they intended to make any commitment to any employee concerning how individual employment action can, should, or will be handled.*

Champion Jogbra offers no employment contracts nor does it guarantee any minimum length of employment. Champion Jogbra reserves the right to terminate any employee at any time "at will," with or without cause. During the period from 1996 to 1997, however, Jogbra developed what it termed a "Corrective Action Procedure." This procedure established a progressive discipline system for employees and different categories of disciplinary infractions. It states that it applies to all employees and will be carried out in "a fair and consistent manner." Much of the language in the section is mandatory in tone.

Linda Dillon . . . was hired on as a full-time employee in August 1997 in the position of "chargeback analyst." In the summer of 1998, the position of "sales administrator" was going to become vacant. Dillon was approached by Jogbra management about applying for the position. * * * In the course of interviewing for the position, Dillon recalls that she was told that she would receive "extensive training." More specifically, she was told by the human resources manager that she would overlap with her predecessor who would train her during those days. Originally, her predecessor was scheduled to leave August 15. In the course of Dillon's interview with the vice president of sales, who would be her immediate supervisor, he informed her that her predecessor was actually leaving earlier and would be available for only two days of training before Dillon started the job. He reassured her, though, that the predecessor would be brought back sometime thereafter for more training. Dillon also recalls that he told her that "it will take you four to six months to feel comfortable with [the] position," and not to be concerned about it. Dillon was offered and accepted the position. She spent most of her predecessor's remaining two days with her. Her predecessor then returned in early September for an additional two days of training. Dillon stated that she felt that, after the supplemental training, she had received sufficient training for the job.

On September 29, Dillon was called into her supervisor's office. The human resources manager was also present. They informed Dillon that things were not working out and that she was going to be reassigned to a temporary position, at the same pay and benefit level, that ended in December. She was told that she should apply for other jobs within the company, but if nothing suitable became available, she would be terminated at the end of December. According to Dillon, her supervisor stated that he had concluded within ten days of her starting that "it wasn't going to work out." Prior to the meeting, Dillon was never told her job was in jeopardy, nor did Jogbra follow the procedures laid out in its employee manual when terminating her. Dillon applied for one job that became available in the ensuing months, but was not selected for it. She left Jogbra in December when her temporary position terminated. * * *

In the implied contract context, we have noted . . . that . . . when an employer takes steps to give employees the impression of job security and enjoys the attendant benefits that such an atmosphere confers, it should not then be able to disregard its commitments at random. * * * [W]e have noted repeatedly that the presumption that employment for an indefinite term is an "at-will" agreement . . . "imposes no substantive limitation on the right of contracting parties to modify terms of their arrangement or to specify other terms that supersede the terminable-at-will [arrangement]." Additionally, an employer may modify an at-will employment agreement unilaterally. When determining whether an employer

has done so, we look to both the employer's written policies and its practices. An employer not only may implicitly bind itself to terminating only for cause through its manual and practices, but may also be bound by a commitment to use only certain procedures in doing so. * * *

When the terms of a manual are ambiguous . . . or send mixed messages regarding an employee's status, the question of whether the presumptive at-will status has been modified is properly left to the jury. This may be the case even if there is a disclaimer stating employment is at-will, as the presence of such a disclaimer is not dispositive in the determination. "The mere inclusion of boilerplate language providing that the employee relationship is at will cannot negate any implied contract and procedural protections created by an employee handbook." Furthermore, an employer's practices can provide context for and help inform the determination. * * *

In this case, we cannot agree with the trial court that the terms of Jogbra's manual are unambiguous such that, as a matter of law, Dillon's status was not modified, especially considered in light of the conflicting record before the court regarding Jogbra's employment practices. Notwithstanding the disclaimer contained on the first page of the manual quoted above, the manual goes on to establish in Policy No. 720 an elaborate system governing employee discipline and discharge. It states as its purpose: "To establish Champion Jogbra policy for all employees." It states that actions will be carried out "in a fair and consistent manner." It provides that "the Corrective Action Policy requires management to use training and employee counseling to achieve the desired actions of employees." It establishes three categories of violations of company policy and corresponding actions to be generally taken in each case. It delineates progressive steps to be taken for certain types of cases, including "unsatisfactory quality of work," and time periods governing things such as how long a reprimand is considered "active." All of these terms are inconsistent with the disclaimer at the beginning of the manual, in effect sending mixed messages to employees. Furthermore, these terms appear to be inconsistent with an at-will employment relationship, its classic formulation being that an employer can fire an employee "for good cause or for no cause, or even for bad cause."

With respect to the record before the court on Jogbra's employment practices, Dillon herself was aware of at least one employee whose termination was carried out pursuant to the terms set forth in the manual. She also testified in her deposition to conversations with the human resources manager, with whom she was friendly, in which the manager had described certain procedures used for firing employees. She stated that the manager had told her that Jogbra could not "just get rid of" people, but instead had to follow procedures. The human resources manager herself testified that, although the progressive discipline system was not generally applied to salaried employees, it was "historically" used for nonsalaried employees. She could only recall two instances in which the portion of the manual providing for documentation of progressive action was not followed, one of which resulted in a legal claim against the company and the other of which involved an employee stealing from the company. In fact, the manual specifically provides that stealing "will normally result in discharge on the first offense." Thus, it is not clear how that discharge deviated from the provisions of the manual.

In conclusion, the manual itself is at the very least ambiguous regarding employees' status, and Jogbra's employment practices appear from the record to be both consistent with the manual and inconsistent with an at-will employment arrangement. Therefore, summary judgment was not proper on Dillon's breach of implied contract claim.

Dillon also argues that the trial court's grant of summary judgment on her claim of promissory estoppel was erroneous. Dillon based her claim on two separate statements: the assurance that she would receive training and the assurance that it would take her four to six months to become comfortable with the sales administrator position. We have held that, even if an employee otherwise enjoys only at-will employment status, that employee may still be able to establish a claim for wrongful termination under a theory of promissory estoppel if that employee can demonstrate that the termination was in breach of a specific promise made by the employer that the employer should have reasonably expected to induce detrimental reliance on the part of the employee, and that the employee did in fact detrimentally rely on the promise. We agree with the trial court in this case, however, that essential elements of promissory estoppel are absent with regard to both statements.

With respect to Jogbra's promise to Dillon that she would receive training, Dillon specifically conceded that, upon her predecessor's return in September, she had received adequate training to perform the job. In other words, Jogbra had delivered on its promise. Furthermore, even assuming that Jogbra failed to provide the full extent of promised training, Dillon has failed to explain how, as a matter of law, the promise of training modified her at-will status. * * *

With respect to the assurance that it would take four to six months to become comfortable with the position, the statement cannot be reasonably relied upon as a promise of employment in the sales administrator position for a set period of time. Courts have generally required a promise of a specific and definite nature before holding an employer bound by it. An estimate of how long it would take a person to adjust to a job cannot be converted into a definite promise of employment for that period of time. Thus, the vague assurance given to Dillon is not sufficient to support her claim of promissory estoppel. * * *

CASE QUESTIONS

1. What were the legal issues in this case? What did the court decide?
2. What was the implied contract in this case? How did the employer breach it?
3. Why does the disclaimer in the employee manual not have the effect desired by the employer?
4. Why does Dillon's promissory estoppel claim fail?

Effect of Disclaimers Employment at will is a harsh arrangement. It is difficult to put a positive "spin" on the message that "We can fire you at any time for any reason not specifically prohibited by law and without even the most elementary procedural safeguards." Most employers prefer to gain the motivational and employee relations benefits that come from communicating the desire to treat employees fairly. Most employers probably also intend to treat employees fairly. But employers do not want to be bound by promises of fair treatment and liable for breaches. In short, most employers would like to have it both ways: basking in the warm glow of assurances of fair treatment and remaining entirely free to depart from any self-imposed limitations on the right to terminate at will.

Disclaimers are used to this end. **Disclaimers** are written statements incorporated into employee handbooks, employment applications, or other important documents that "disclaim" or deny that any statements in those documents create contractual rights binding on the employer. Language disclaiming the existence of a contract is typically combined with notification to employees in clear terms that their employment is at will. The statement (capitalized) on the first page of the employee manual in *Dillon* informing employees that the manual's provisions constituted guidelines only and that no commitment was being made to employees about how terminations and other decisions would be handled is a good example of a disclaimer. As another example, a bank included the following in its employee handbook:

> *[T]he contents of this handbook DO NOT CONSTITUTE THE TERMS OF A CONTRACT OF EMPLOYMENT. Nothing contained in this handbook should be construed as a guarantee of continued employment, but rather, employment with the bank is on an "at will" basis. This means that the employment relationship may be terminated at any time by either the employee or the Bank for any reason not expressly prohibited by law.*[16]

Disclaimers also frequently include language denying the contractual effect of any conflicting statements made elsewhere, reserving the right of the employer to modify policies, and placing that authority solely with designated individuals. For example:

> *[M]y employment and compensation can be terminated, with or without cause, and with or without notice, at any time, at the option of either the company or myself. I understand that no store manager or representative of Sears, Roebuck and Co., other than the*

[16]*Chambers v. Valley National Bank*, 721 F. Supp. 1128, 1131 (D. Ariz. 1988).