

## 15 CASE

### **The Broken Employment Contract?**

Arthur Wayne was shocked as he walked out of Sara Bell's office. It was hard for him to understand what had just transpired. Bell, treasurer of EcoCare, a large health insurance company located in Michigan, had just told Wayne of the decision to terminate his employment and had requested his immediate resignation in return for a severance pay arrangement whereby he would continue to receive his salary for six months or until he found other employment. As he looked at the date on his watch calendar, May 7, Wayne realized that he had been hired exactly five years ago by Bell. Bell had told Wayne that EcoCare was not satisfied with his administration of the company car program and that, given the number of complaints about the program from other employees, it was in the best interest of the company to ask for his immediate resignation. Wayne, assistant to the treasurer, had been in charge of the program for the past year. During a meeting the day before with both Bell and the vice president of operations, George Findlay, he had been unable to explain why there were so many complaints about the program. One such complaint had involved the claim that someone had set back the odometers on several company cars while the vehicles were under Wayne's control.

After his termination, Wayne requested that the decision to ask for his resignation be reviewed by the company president and the chairperson of the board of trustees of EcoCare. Wayne felt that he had been wrongfully discharged and had been under the impression that he had a contract for continued employment as long as his performance was satisfactory. He further maintained that his supervisor had not properly followed the termination policies and procedures of EcoCare.

In preparation for the review, the president asked the director of human resources, Chris Miller, to investigate the facts of the situation and the events leading up to Wayne's termination.

#### **HUMAN RESOURCE DEPARTMENT'S INVESTIGATION**

In order to prepare its report for the president, the human resource department decided not only to review Wayne's personnel file but also to interview Wayne, Bell, and others involved in the case. Two weeks later, Miller prepared the following summary of what had been learned.

*After seven years with a local bank in Michigan, Arthur Wayne sought the assistance of an employment agency to obtain a job that would give him more opportunities for advancement. Wayne had graduated with a degree in Business Administration and had completed 15 hours toward his MBA in Finance. The employment agency referred him to our company. After several pre-employment interviews and a psychological test, Wayne was hired as an assistant to the company treasurer, Sara Bell. His duties primarily consisted of analyzing and preparing certain financial reports under the direction of Bell. Wayne came to us with excellent work experience and admirable references from his previous employers.*

According to Wayne, he felt at the time of his employment that he had a contract with EcoCare that was partly oral (Bell's statements during the job interview) and partly written. Wayne told us that during his pre-employment interview with Bell, he had specifically asked about job security and was told that as long as he did his job, he could remain with the company until he reached retirement age. He further indicated that he had been told by Bell that if he came to EcoCare, he would not have to look for another job because she knew of no

one ever being discharged. Wayne also told us that a copy of the Supervisory Manual was handed to him during his interview with Bell. He said he specifically recalled reading through the sections of the manual that pertained to discipline and termination procedures at that time (see the Appendix for relevant sections).

At the end of that interview Bell made Wayne a job offer, which he accepted. The Manual is given to all management employees as an aid in supervising persons in their charge and not as a declarative of the contract terms of an employee's hire. Our personnel policy has always been to discharge for just cause only, pursuant to the procedures described in the manual. These procedures apply to all EcoCare employees who have completed their probationary period.

During his five years as assistant to the treasurer, Wayne received above average performance ratings. Last year, he was given the responsibility of administering the company car program. In April of this year, employees began complaining to Bell and Findlay about Wayne's handling of the program. Wayne indicated that he'd had only a brief conversation with Bell about these complaints before the meeting of May 6.

We also spoke with Bell and Findlay about Wayne's employment and subsequent termination. According to Bell, she did tell Wayne during the interview that he would have a job as long as his performance was satisfactory. Bell told us that she made that statement based on her understanding of our company's policies and did not intend her statement as a promise of a permanent job.

Bell and Findlay report that Wayne was fired because of continued personality conflicts with other employees. They report that he was unable to work with other employees and that this was an important job requirement for anyone managing the company car program. After receiving numerous complaints about Wayne's handling of the program, they finally requested from him various reports and documents concerning the odometer discrepancies. Ultimately, they called a meeting with Wayne in an attempt to resolve the problems. During the May 6 meeting, Wayne was reported to have been defensive and insubordinate and unable to provide any satisfactory answers to their questions. At the conclusion of the meeting, they both felt that it would be in the best interest of the company if Wayne were asked to resign. Bell called Wayne into her office the next day and asked for his resignation.

#### **APPENDIX**

##### **EXCERPTS FROM SUPERVISORY MANUAL**

##### **Section IV. Disciplinary Procedures**

(Note: If the unacceptable behavior is repeated between six months and one year, the last disciplinary action will be applied. If the behavior is repeated after one year, it will be treated as a new occurrence for disciplinary purposes.)

- A. All discipline shall be administered in a fair, consistent, and reasonable manner within EcoCare.
- B. Whenever the work performance or personal behavior of an employee is below department standards, a series of progressive, corrective steps will be taken. Before any of these steps are undertaken, however, the employee shall be counseled about his or her performance discrepancy, what he or she must do to improve the performance, and the action the supervisor will take if the performance is not corrected.
- C. Within our discipline system, discipline will be given only for cause. Furthermore, the disciplinary action should fit the problem it is intended to correct.

- D. All disciplinary action should be duly documented and reported by the supervisor on Form 29B. The form also requires the employee's signature.
- E. The following series of steps shall be followed in administering discipline within EcoCare:
1. Oral Warning: Supervisor should discuss the unacceptable behavior with the employee and document such by completing Section A of Form 29B and obtaining the employee's signature.
  2. Written Warning: A written warning should be issued if the unacceptable behavior continues. The supervisor completes Section B of Form 29B and gives the employee the blue copy. The human resource department receives the canary copy.
  3. Suspension: If the employee's behavior continues uncorrected, the employee shall be suspended for a given time without pay. Normally, suspension should not exceed five working days. Supervisors should consult with their immediate supervisor and the human resource department before implementing this action. The supervisor shall complete Section C of Form 29B and also include the date the employee should return to work.
  4. Discharge: If the employee's behavior is not corrected, the employee shall be terminated. Due to the serious nature of termination, it is recommended that the supervisor review the case with both his or her immediate supervisor and the human resource department before discharging the employee. Examples of reasons for termination without prior corrective discipline are covered in Section V. Note, however, that in such cases the employee should first be suspended according to the following procedures:

Suspension Pending Discharge: (This paragraph applies to all proposed discharges except those which are a result of application of the normal disciplinary procedures.)

- a. When an employee's misconduct warrants immediate discharge under Section V, the employee should be first suspended without pay.
- b. At the time of suspension, the employee should be informed by the supervisor to leave the premises and that he or she will be notified if and when he or she is to return to work.
- c. The supervisor should document the suspension by completing an Employee Discipline Report. The supervisor should consult with the Human Resource Department to determine the appropriate course of action.

#### **Section V. Termination**

*(Reasons for Immediate Termination.)*

1. Misconduct, such as fighting, gambling, or use of profane or abusive language toward others.
2. Furnishing proprietary company information to unauthorized agents or persons.
3. Refusal to obey direct orders from the immediate supervisor (insubordination).
4. Willful damage of company property.
5. Failure to notify supervisor or manager during three successive working days of absence.
6. Engaging in a business likely to conflict with the business of the company without prior permission.

7. Dishonesty, falsification of employee's own or other employee's time cards, company records, employment application, etc.
8. Illegal use or possession of alcohol, drugs, etc.
9. Reporting to work or engaging in company business under the influence of alcohol or drugs.

#### **QUESTIONS**

1. Did Wayne have an employment contract, either oral or written, with EcoCare? Why or why not?
2. What problems, if any, do you see with EcoCare's pre-employment process?
3. Can an employer's written human resource policies ever be construed as a contract between an employer and an employee?
4. Was Wayne terminated for just cause? Why or why not?
5. How can companies protect themselves against a claim of wrongful discharge?