

No. 27685 -- Bine v. Owens, et al.

FILED

January 12, 2001

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

January 17, 2001

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

McGraw, J., concurring in part and dissenting in part:

I concur that the lower court erred in granting summary judgment against the Bines on their claims of defamation, false light, and intentional infliction of emotional distress. However I disagree with the majority decision regarding the wrongful discharge and Wage Payment and Collection Act claims.

As for the Wage Payment and Collection Act claim, the majority notes that the copies of checks issued by Mr. Bine's employer are illegible and that therefore this Court cannot say that lower court erred.

As we have often noted: "The West Virginia Wage Payment and Collection Act is remedial legislation designed to protect working people and assist them in the collection of compensation wrongly withheld." Syllabus, *Mullins v. Venable*, 171 W. Va. 92, 297 S.E.2d 866 (1982); syl. pt. 3, *Jones v. Tri-County Growers, Inc.*, 179 W. Va. 218, 366 S.E.2d 726 (1988); syl. pt. 3, *Lipscomb v. Tucker County Com'n.*, 206 W. Va. 627, 527 S.E.2d 171 (1999). As such, the Act should be liberally construed to favor the worker. Thus I dissent to the majority's conclusion that the lack of evidence that the company violated the act should suffice for summary judgment; instead we should demand affirmative evidence that the company did not violate the Act.

As for Mr. Bine's claim of improper discharge from his employment, I disagree with the majority that the simple disclaimer in the front of a handbook may eviscerate the protections such a handbook affords an employee. Handbooks should not be rendered meaningless by mere caveat: "As we explained in *Cook v. Heck's Inc.*, 176 W. Va. 368, 342 S.E.2d 453 (1986)], promises made in employee handbooks may alter the 'at will' nature of employment, and create a binding unilateral contract." *Lipscomb v. Tucker County Com'n.*, 206 W. Va. 627, 630, 527 S.E.2d 171, 174 (1999).

The handbook describes the conduct expected of the employee, so that he or she may remain in the good graces of the employer. The handbook also sets forth the corresponding conduct expected of the employer. We have noted that the employer may maintain the right to change or alter the policies expressed in the handbook; but this does not mean that an employer should completely abandon its own avowed policies for the sake of convenience:

Retaining the right to make changes, however, does not necessarily mean promises explicitly or implicitly made by an employer through its handbook are not enforceable, at least until such time as they are in fact changed. It is, for example, a basic notion of due process of law that a governmental agency must abide by its own stated procedures even though it is under no constitutional obligation to provide the procedures in the first place and even though it can change the procedures at any time; so long as the procedures are in place, the agency must follow them. E.g., *United States v. Nixon*, 418 U.S. 683, 695-97, 94 S.Ct. 3090, 3101-02, 41 L.Ed.2d 1039, 1057-58 (1974); There is no reason why this basic principle of fairness should not also imbue our interpretation of employment contracts. Finally, we note our decision in *Dent, supra*, [*v. Fruth*, 192 W. Va. 506, 453 S.E.2d 340 (1994)] held that language substantially similar to the alleged disclaimer in this case was ineffective in relinquishing the employer from contractual liability.

Williams v. Precision Coil, Inc., 194 W. Va. 52, 65, 459 S.E.2d 329, 342 (1995)

(citations and footnote omitted). Because I feel the majority opinion undermines the importance of employee handbooks, and because of my aforementioned disagreement with the majority's conclusion regarding the Wage Payment and Collection Act, I respectfully dissent to those aspects of the majority opinion.