

A CASE OF WRONGFUL DISCHARGE OR EMPLOYER DISCRETION?

Arthur Wayne walked out of Sarah Bell's office on May 7 shocked and angry. It was hard for him to understand what had just happened. Bell, treasurer of Eco-Care, a large health insurance company located in Michigan, had just told Wayne of the decision to terminate his employment. She had requested his immediate resignation in return for a severance pay arrangement whereby he would continue receiving salary for six months or until he found other employment. Bell had told Wayne that Eco-Care was not satisfied with his administration of the company car program and that given the number of complaints about the program, 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 the past two years. During a meeting the day before with both Bell and the vice president of operations, George Finley, he'd tried to explain why there'd been so many complaints about the program. A personality clash with other employees who didn't appreciate how hard it is to run that kind of program, he explained. He left the meeting fearing that he had not been completely convincing, but he didn't expect that he'd be fired! How dare they fire him based simply on complaints from some disgruntled employees!

After the shock had settled a bit, Wayne requested that the decision to ask for his resignation be reviewed by the company president. Wayne felt that he had a contract for continued employment as long as his performance was satisfactory, and that the complaints of a few employees were not an adequate basis for firing him. He also felt that the process had been unfair to him.

The president of Eco-Care has asked you to give your recommendation regarding how to deal with Wayne's appeal. To assist you, he asked the HR Director to investigate the situation. HR's report is attached.

HR Department Investigation

In order to prepare this report we reviewed Wayne's personnel file, and also interviewed Wayne, Bell, and others involved in the case.

After seven years working at a local bank, Arthur Wayne was hired as an assistant to the company treasurer, Sarah Bell. His duties consisted primarily of analyzing and preparing certain financial reports under the direction of Bell. Two years ago he was given responsibility for managing the company car program.

According to Wayne, he felt that he had a "contract" with Eco-Care that was partly oral (Bell's statements during the job interview) and partly written. He said that 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 was ready to retire. He further indicated that he had been told by Bell that if he accepted the job at Eco-Care he wouldn't have to look for another job because she knew of no one who had ever been discharged. Wayne also reported that he'd been given a copy of the *Supervisory Manual* during his interview with Bell. He said that he specifically recalled reading the sections of the manual which pertain to discipline and termination procedures, and was impressed that the company had a policy of only terminating employees for good cause. As you know, the *Manual* is given to all managers as an aid in supervising persons in their charge, but is not considered declarative of the contract terms of an employee's hire. In practice, our policy has been to discharge for "just cause only" as long as the employee has completed their probationary period. (See excerpts below.)

During his five years as assistant treasurer, Wayne received above average performance ratings. Two years ago he was given the responsibility of administering the company car program. Within the last six months, employees had begun complaining to Bell and Finley about Wayne's handling of the program. Wayne indicated he had only a brief conversation with Bell about these complaints before the meeting of May 6.

We also spoke with Bell and Finley 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 she made that statement based on her understanding of our company's policies and that she did not intend her statement as a promise of a permanent job. She said her comment had been part of informal conversation following the more formal interview, and that she had thought it necessary to create a positive tone once she'd decided that she wanted to hire Wayne. But she also noted that there was no such promise in the offer letter made to Wayne, nor did the *Manual* promise "lifetime employment" if performance remained satisfactory. She felt that Wayne was reading far too much into an off-the-cuff remark.

Bell and Finley report that Wayne was fired because of continued problems with the car program. They reported that he was unable to work with other employees, many of whom accused him of favoritism in his assignment of cars to certain employees. Coworkers also complained of inefficiencies on his part, citing a number of cases in which requests

had been delayed. What really frustrated the other employees was that Wayne did not seem concerned about how these delays were affecting their work performance. Bell and Finley noted that the ability to work with others effectively was a critical part of managing a company car plan. Finally, and most seriously, there were allegations of odometer discrepancies on a number of the cars. A number of complaints suggested that employees who were friends of Wayne were using their company cars for their personal use and had a “deal” with Wayne to alter their records to cover this fact.

In response to these complaints, Bell and Finley requested that Wayne provide them with various reports and documents concerning these allegations, and in particular the allegation of odometer discrepancies. They called a meeting with Wayne on May 6 to hear his side of the story. Bell and Finley reported that Wayne was defensive and unable to provide any satisfactory answers to their questions. They also felt he was insubordinate, citing angry outbursts on his part where he told them that if they didn’t trust him they could “check the damn odometers themselves.” After he stormed out of the meeting, Bell and Finley concluded that it was in the best interest of the company for Wayne to resign. Bell called Wayne into her office the next day and asked for his resignation.

The section of the *Supervisory Manual* dealing with discipline states the following:

- A. All discipline shall be administered in a fair, consistent, and reasonable manner
- B. Discipline will be given only for cause. Moreover, the disciplinary action should fit the problem it is intended to correct.
- C. Discipline should be designed to encourage the employee to correct performance deficiencies. This would normally involve a series of warnings and coaching sessions, leading to suspension or termination if the performance does not improve.
- D. Serious misconduct may warrant immediate discharge. In most such cases, employees should be informed by their supervisor that they are suspended without pay and should leave the premises, and that they will be notified if and when they are to return to work. Reasons for immediate termination include:
 - a. Misconduct, such as fighting, gambling, or use of profane or abusive language toward others.
 - b. Furnishing proprietary company information to unauthorized persons
 - c. Refusal to obey direct orders from the immediate supervisor (insubordination)
 - d. Willful damage of company property
 - e. Failure to notify supervisor or manager during three successive working days of absence
 - f. Engaging in business likely to conflict with the business of the company without prior permission
 - g. Dishonesty, falsification of employee’s own or other employees’ timecards, company records, employment application, etc.
 - h. Illegal use or possession of alcohol, drugs, etc.