STATE OF MICHIGAN

COURT OF APPEALS

CHARLES H. ALBERS,

Plaintiff,

and

ALFRED HEARNS and WAYMON LASSITER,

Plaintiffs-Appellants,

v

CHRYSLER CORPORATION,

Defendant-Appellee.

UNPUBLISHED
March 18, 1997

No. 187985
Wayne Circuit Court
LC No. 93-306732

Before: Bandstra, P.J., and Neff and M.E. Dodge,* JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) on the basis that plaintiffs failed to establish that a genuine issue of material fact existed regarding defendant's breach of plaintiffs' employment contract, plaintiffs' legitimate expectations that they would keep their jobs because of their seniority, and plaintiffs' claim that they were laid off because of their age. We affirm.

Plaintiffs argue that the trial court erred in granting defendant's motion for summary disposition on plaintiffs' breach of contract claim. They contend that they presented sufficient evidence to allow a jury to find that defendant intended to be bound to an employment contract under which seniority was the primary criterion for laying off or recalling employees. We disagree.

The Michigan Supreme Court has held that contracts for permanent employment are for an indefinite period of time and are presumptively construed to provide employment at will. *Rowe v*

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* Circuit judge, sitting on the Court of Appeals by assignment.

Montgomery Ward & Co, Inc, 437 Mich 627, 636; 473 NW2d 268 (1991). As a result of this presumption, alleged oral contracts for an indefinite term will be recognized only where circumstances suggest both parties intended to be bound. *Id.* Oral statements must be clear and unequivocal to overcome the presumption of employment at will. *Id.* at 645. Claims that a party has assented to a contract are reviewed using an objective test that focuses on how a reasonable person in the position of the promisee would have interpreted the promisor's statements or conduct. *Rood v General Dynamics Corp,* 444 Mich 107, 119; 507 NW2d 591 (1993).

Plaintiffs were employed for an indefinite period and thus are presumed to be at will employees. They have presented no evidence of clear and unequivocal statements indicating defendant's intent to be contractually bound to a seniority-only layoff policy. Plaintiffs point to nothing more than their own vague observations and vague statements by Chrysler managers at and after the time that plaintiffs became supervisors that if plaintiffs did their jobs, they "wouldn't have to worry" and they would retain their seniority. Defendant's personnel policy, CPP-4-1075, which stated that layoffs would be based on seniority, also specified job ability as a layoff criterion. Moreover, this policy did not apply to plaintiffs because plaintiffs were not clerical, technical, or engineering employees.

The plant manager's statements at defendant's 1989 "Town Hall Meeting" regarding layoffs were also not clear and unequivocal statements of defendant's intent to be bound to a seniority-only layoff policy. These statements informed employees that they would be laid off in order of seniority and performance or ability, and that laid off workers might be rehired at plants other than the new Jefferson North facility. No statement was made regarding how performance (or ability) was to be determined. Looking at all the pleadings, affidavits, depositions, admissions, and other evidence in the light most favorable to plaintiffs, we conclude that plaintiffs failed to establish a genuine issue of material fact that defendant intended to be contractually bound to a seniority-only layoff policy. *Radtke v Everett,* 442 Mich 368, 374; 501 NW2d 155 (1993).

Plaintiffs also argue that the trial court erred in granting defendant's motion for summary disposition on plaintiffs' legitimate expectations of employment claim. Plaintiffs contend that they presented sufficient evidence to allow a jury to find that defendant created a legitimate expectation that, because seniority was the primary criterion for laying off employees, plaintiffs could expect to be rehired. We disagree.

Oral contracts of employment for an indefinite term are presumed to be terminable at the will of either party. *Snell v UACC Midwest, Inc,* 194 Mich App 511, 512; 487 NW2d 772 (1992). This presumption can be overcome, however, by the existence of an express agreement to the contrary, or by the employee's legitimate expectations of continued employment absent "just cause" for termination arising from the employer's established policies and procedures. *Id.* To infer that an employment contract provides for termination only for just cause, the employee must have an objective expectation of continued employment, not merely a subjective one. *Id.* at 512-513. Where employer policies regarding employee discharge are incapable of being interpreted as promises of just cause employment, then the trial court should dismiss the plaintiff's complaint on defendant's motion for summary disposition. *Rood, supra* at 140.

Applying these principles to the issue here, we conclude that plaintiffs have not produced evidence to show that defendant's policy to make layoffs correspond to seniority levels was sufficient to create the legitimate expectation that plaintiffs allege. Statements about the importance of seniority made by defendant to individual employees, rather than the work force in general are insufficient. *Nieves v Bell Industries, Inc*, 204 Mich App 459, 464; 517 NW2d 235 (1994).

Moreover, to the extent that a seniority-only policy had been in place, defendant changed its policy so that layoffs were made based on both seniority and performance. The change was made, and plaintiffs were notified of the change through the statements of the plant manager at the "Town Hall Meeting," long before plaintiffs were laid off. An employer's policy statements, which create legitimate expectations in an employee of just-cause employment, may be unilaterally modified provided that the employer gives affected employees reasonable notice of the change. *In re Certified Question*, 432 Mich 438, 441; 443 NW2d 112 (1989); *Lytle v Malady*, 209 Mich App 179, 197; 530 NW2d 135 (1995). Plaintiffs were aware of the policy change not only through the statements of the plant manager but also through their own observations. Plaintiffs knew that the Jefferson North plant would be highly automated and would require highly educated workers able to work under a team concept. Looking at all the pleadings, affidavits, depositions, admissions, and other evidence in the light most favorable to plaintiffs, we conclude that plaintiffs failed to establish a genuine issue of material fact that defendant intended to create or maintain legitimate expectations in plaintiffs that they would be laid off and rehired only by seniority. *Radtke, supra*.

Plaintiffs' final argument is that the trial court erred in granting defendant's motion for summary disposition on their age discrimination claim because plaintiffs presented sufficient evidence to establish a prima facie case. Again, we disagree. An age discrimination claim can be based on a theory of disparate treatment, which, in this case, requires a showing of a pattern of intentional discrimination against protected employees, i.e., employees aged forty to seventy years. *Lytle, supra* at 184-185. Where a plaintiff is discharged as a result of an employer's economically motivated reduction in force, a prima facie case of disparate treatment requires an initial showing, by a preponderance of the evidence, that (1) the plaintiff was within the protected class and was discharged or demoted, (2) the plaintiff was qualified to assume another position at the time of discharge or demotion, and (3) age was "a determining factor" in the employer's decision to discharge or demote the plaintiff. *Id.* at 185-186.

Plaintiffs have failed to establish a prima facie case of age discrimination because they have presented no evidence that age was "a determining factor" in defendant's decision to lay them off. Plaintiffs' statistical evidence is not strong enough to establish a pattern of discrimination against protected workers, nor have plaintiffs presented evidence that they had the skills and qualifications necessary for the facilitator and area coordinator positions as compared to the other retained employees in those positions. See *Featherly v Teledyne Industries, Inc*, 194 Mich App 352, 358, 360-361; 486 NW2d 361 (1992). Moreover, the statistical evidence is unsupported by other facts evidencing age discrimination. *Id.* at 361. Plaintiffs' own recollections of training younger workers who were subsequently retained during the wave of layoffs are too insubstantial and general to support plaintiffs' age discrimination claims. Looking at all the pleadings, affidavits, depositions, admissions and other evidence in the light most favorable to plaintiffs, we conclude that plaintiffs failed to present sufficient

evidence that age was "a determining factor" in their layoffs and failed to establish a sufficient prima facie case of age discrimination to survive defendant's motion for summary disposition *Radtke, supra*.

We affirm. Defendant, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Richard A. Bandstra
/s/ Janet T. Neff
/s/ Michael E. Dodge