

The Importance of Reading Employment Contracts and Minutes - Tennessee

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In Tennessee, parties to a contract generally are free to agree to any provisions in a contract. Frequently, employment agreements contain provisions that are employer-friendly. Tennessee courts enforce these agreements unless the provision is illegal or violates public policy. Every once in a while, Tennessee courts are asked by the employer to invalidate an employment agreement. The case of *Hensley v. Cocke Farmer's Cooperative*, No. E2014-01775-COA-R3-CV (Tenn. Ct. App. Aug. 31, 2015), involved that situation.

In *Hensley*, the employer and its general manager entered into a severance agreement. That agreement provided that the employer would pay the employee a severance payment if the employer terminated the employee for reasons other than death, merger with a third party, disability or conviction of a crime. The agreement specified that the employee remained an "at will" employee, and his employment could be terminated at any time without cause. Significantly, the employer's board of directors approved the agreement. Within six (6) months of execution, the employer's board of directors voted to terminate the employee "without cause".

The employer asserted that the agreement was unenforceable because it was "vague, ambiguous and indefinite." In response, the court of appeals held that it was clear and concise.

Next, the employer asserted that there was not consideration for the agreement. This is a claim often asserted by employees attempting to avoid non-competition agreements. In response, the court of appeals held that the continuation of employment, even "at will" employment, represented consideration by the employee.

Third, the employer asserted that the severance amount was a "penalty". To this argument, the court stated that "severance payments" are amounts paid when an employee is dismissed through no fault of the employee. These payments are designed to offset the damages to the employee. To determine whether an amount is a severance payment or a penalty, Tennessee courts look at the language of the contract. Since the express language of the contract called the amounts "severance payments", the court refused to reclassify the payments as a penalty.

Fourth, the court of appeals held that an employee "at will" has no obligation to mitigate damages upon termination because the termination is not a breach of contract.

One additional defense was raised by the employer. The employer asserted that the minutes of its board of directors were wrong. Even though the minutes showed that the board approved the agreement and that it fired the employee “without cause”, in actuality the board fired the employee for cause and the board did not approve the agreement. To this position, the court of appeals noted the Tennessee Supreme Court’s decision in a companion case:

In Tennessee, a corporation speaks through the minutes of its board, and the “unofficial declarations” of members of the board cannot disprove the contents of the minutes.

Therefore, the court held that the minutes of the employer’s board conclusively establish the facts, and the employer cannot contradict its minutes with other proof.

This decision illustrates two principles of Tennessee law:

- Tennessee courts will enforce severance agreements using the same rules that apply to other contracts.
- A corporation is bound by its minutes even if those minutes are inaccurate.

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