RULON-MILLER v. INTERNATIONAL BUSINESS MACHINES CORPORATION
162 Cal.App.3d 241, 208 Cal.Rptr. 524 (1984)
Court of Appeal, First District, Division 1, California.

RUSHING, Associate Justice.

International Business Machines (IBM) appeals from the judgment entered against it after a jury awarded $100,000 compensatory and $200,000 punitive damages to respondent (Virginia Rulon-Miller) on claims of wrongful discharge and intentional infliction of emotional distress. Rulon-Miller was a low-level marketing manager at IBM in its office products division in San Francisco. Her termination as a marketing manager at IBM came about as a result of an accusation made by her immediate supervisor, defendant Callahan, of a romantic relationship with the manager of a rival office products firm, QYX.

FACTUAL BACKGROUND

. . . IBM is an employer traditionally thought to provide great security to its employees as well as an environment of openness and dignity. The company is organized into divisions, and each division is, to an extent, independent of others. The company prides itself on providing career opportunities to its employees, and respondent represents a good example of this. She started in 1967 as a receptionist in the Philadelphia Data Center. She was told that "career opportunities are available to [employees] as long as they are performing satisfactorily and are willing to accept new challenges." While she worked at the data center in Philadelphia, she attended night school and earned a baccalaureate degree. She was promoted to equipment scheduler and not long after received her first merit award. The company moved her to Atlanta, Georgia where she spent 15 months as a data processor. She was transferred to the office products division and was assigned the position of "marketing support representative" in San Francisco where she trained users (i.e., customers) of newly-purchased IBM equipment. Respondent was promoted to "product planner" in 1973 where her duties included overseeing the performance of new office products in the marketplace. As a product planner, she moved to Austin, Texas and later to Lexington, Kentucky. Thereafter, at the urging of her managers that she go into sales in the office products division, she enrolled at the IBM sales school in Dallas. After graduation, she was assigned to San Francisco.

Her territory was the financial district. She was given a performance plan by her management which set forth the company's expectations of her. She was from time to time thereafter graded against that plan on a scale of one through five with a grade of one being the highest. After her first year on the job, she was given a rating of one and was felt by her manager to be a person who rated at the top of IBM's scale.

A little over a year after she began in San Francisco, IBM reorganized its office products division into two separate functions, one called office systems and another called office

products. Respondent was assigned to office systems; again she was given ratings of one and while there received a series of congratulatory letters from her superiors and was promoted to marketing representative. She was one of the most successful sales persons in the office and received a number of prizes and awards for her sales efforts.[1] IBM's system of rewarding salespersons has a formalistic aspect about it that allows for subtle distinctions to be made while putting great emphasis on performance; respondent exercised that reward system to its fullest. She was a very successful seller of typewriters and other office equipment.

She was then put into a program called "Accelerated Career Development Program" which was a way of rewarding certain persons who were seen by their superiors as having management potential. IBM's prediction of her future came true and in 1978 she was named a marketing manager in the office products branch.

IBM knew about respondent's relationship with Matt Blum well before her appointment as a manager. Respondent met Blum in 1976 when he was an account manager for IBM. That they were dating was widely known within the organization. In 1977 Blum left IBM to join QYX, an IBM competitor, and was transferred to Philadelphia. When Blum returned to San Francisco in the summer of 1978, IBM personnel were aware that he and respondent began dating again. This seemed to present no problems to respondent's superiors, as Callahan confirmed when she was promoted to manager. Respondent testified: "Somewhat in passing, Phil said: I heard the other day you were dating Matt Blum, and I said: Oh. And he said, I don't have any problem with that. You're my number one pick. I just want to assure you that you are my selection." The relationship with Blum was also known to Regional Manager Gary Nelson who agreed with Callahan. Neither Callahan nor Nelson raised any issue of conflict of interest because of the Blum relationship.

Respondent flourished in her management position, and the company, apparently grateful for her efforts, gave her a $4,000 merit raise in 1979 and told her that she was doing a good job. A week later, her manager, Phillip Callahan, left a message that he wanted to see her.

When she walked into Callahan's office he confronted her with the question of whether she was dating Matt Blum. She wondered at the relevance of the inquiry and he said the dating constituted a "conflict of interest," and told her to stop dating Blum or lose her job and said she had a "couple of days to a week" to think about it. . . . The next day Callahan called her in again, told her "he had made up her mind for her," and when she protested,

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[1] In 1978 she fulfilled her annual sales quota in the fifth month of the year. She was given a "Golden Circle Award" in her third year of sales which is a recognition of superior sales by the company. She had been a member of the "100 Percent Club" for each of the years that she was in the San Francisco office.

dismissed her. . . .

DISCUSSION

Respondent's [Rulon-Miller] claims of wrongful discharge and intentional infliction of emotional distress were both submitted to the jury. Appellant [IBM] argues that the jury should not have been permitted to consider the issue of wrongful discharge because as a matter of law the offer of reassignment cannot be considered a wrongful discharge . . . . without any question there was substantial evidence to support the jury verdict that the respondent was wrongfully discharged rather than routinely reassigned.

The initial discussion between Callahan and respondent of her relationship with Blum is important. . . . When Callahan questioned her relationship with Blum, respondent invoked her right to privacy in her personal life relying on existing IBM policies. A threshold inquiry is thus presented whether respondent could reasonably rely on those policies for job protection. Any conflicting action by the company would be wrongful in that it would constitute a violation of her contract rights.

Under the common law rule codified in Labor Code . . . an employment contract of indefinite duration is, in general, terminable at "the will" of either party. This common law rule has been considerably altered by the recognition of the Supreme Court of California that implicit in any such relationship or contract is an underlying principle that requires the parties to deal openly and fairly with one another. This general requirement of fairness has been identified as the covenant of good faith and fair dealing. The covenant of good faith and fair dealing embraces a number of rights, obligations, and considerations implicit in contractual relations and certain other relationships. At least two of those considerations are relevant herein. The duty of fair dealing by an employer is, simply stated, a requirement that like cases be treated alike. Implied in this, of course, is that the company, if it has rules and regulations, apply those rules and regulations to its employees as well as affording its employees their protection.

As can be seen from an analysis of other cases, this is not in any substantial way a variation from general contract law in California, for if an employee has the right in an employment contract (as distinct from an implied covenant), the courts have routinely given her the benefit of that contract. Thus, the fair dealing portion of the covenant of good faith and fair dealing is at least the right of an employee to the benefit of rules and regulations adopted for his or her protection.

In this case, there is a close question of whether those rules or regulations permit IBM to inquire into the purely personal life of the employee. If so, an attendant question is whether such a policy was applied consistently, particularly as between men and women. The distinction is important because the right of privacy, a constitutional right in California . . . [and] could be

implicated by the IBM inquiry. Much of the testimony below concerned what those policies were. The evidence was conflicting on the meaning of certain IBM policies. We observe ambiguity in the application but not in the intent. The "Watson Memo" (so called because it was signed by a former chairman of IBM) provided as follows:

> "TO ALL IBM MANAGERS:
> "The line that separates an individual's on-the-job business life from his other life as a private citizen is at times well-defined and at other times indistinct. But the line does exist, and you and I, as managers in IBM, must be able to recognize that line.
> "I have seen instances where managers took disciplinary measures against employees for actions or conduct that are not rightfully the company's concern. These managers usually justified their decisions by citing their personal code of ethics and morals or by quoting some fragment of company policy that seemed to support their position. Both arguments proved unjust on close examination. What we need, in every case, is balanced judgment which weighs the needs of the business and the rights of the individual.
> "Our primary objective as IBM managers is to further the business of this company by leading our people properly and measuring quantity and quality of work and effectiveness on the job against clearly set standards of responsibility and compensation. This is performance--and performance is, in the final analysis, the one thing that the company can insist on from everyone.
> "We have concern with an employee's off-the-job behavior only when it reduces his ability to perform regular job assignments, interferes with the job performance of other employees, or if his outside behavior affects the reputation of the company in a major way. When on-the-job performance is acceptable, I can think of few situations in which outside activities could result in disciplinary action or dismissal.
> "When such situations do come to your attention, you should seek the advice and counsel of the next appropriate level of management and the personnel department in determining what action--if any--is called for. Action should be taken only when a legitimate interest of the company is injured or jeopardized. Furthermore the damage must be clear beyond reasonable doubt and not based on hasty decisions about what one person might think is good for the company.
> "IBM's first basic belief is respect for the individual, and the essence of this belief is a strict regard for his right to personal privacy. This idea should never be compromised easily or quickly.
> "/s/ Tom Watson, Jr."

It is clear that this company policy insures to the employee both the right of privacy and the right to hold a job even though "off-the-job behavior" might not be approved of by the employee's manager.

IBM had adopted policies governing employee conduct. Some of those policies were collected in a document known as the "Performance and Recognition" (PAR) Manual. IBM relies on the following portion of the PAR Manual:

> "A conflict of interest can arise when an employee is involved in activity for personal gain, which for any reason is in conflict with IBM's business interests. Generally speaking, 'moonlighting' is defined as working at some activity for personal gain outside of your IBM job. If you do perform outside work, you have a special responsibility to avoid any conflict with IBM's business interests.
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> "Obviously, you cannot solicit or perform in competition with IBM product or service offerings. Outside work cannot be performed on IBM time, including 'personal' time off. You cannot use IBM equipment, materials, resources, or 'inside' information for outside work. Nor should you solicit business or clients or perform outside work on IBM premises.
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> "Employees must be free of any significant investment or association of their own or of their immediate family's [sic], in competitors or suppliers, which might interfere or be thought to interfere with the independent exercise of their judgment in the best interests of IBM."

This policy of IBM is entitled "Gifts" and appears to be directed at "moonlighting" and soliciting outside business or clients on IBM premises. It prohibits "significant investment" in competitors or suppliers of IBM. It also prohibits "association" with such persons "which might interfere or be thought to interfere with the independent exercise of their judgment in the best interests of IBM."

Callahan based his action against respondent on a "conflict of interest." But the record shows that IBM did not interpret this policy to prohibit a romantic relationship. Callahan admitted that there was no company rule or policy requiring an employee to terminate friendships with fellow employees who leave and join competitors.[2] Gary Nelson, Callahan's superior, also confirmed that IBM had no policy against employees socializing with competitors.

This issue was hotly contested with respondent claiming that the "conflict of interest" claim was a pretext for her unjust termination. Whether it was presented a fact question for the jury.

Do the policies reflected in this record give IBM a right to terminate an employee for a conflict of interest? The answer must be yes, but whether respondent's conduct constituted such was for

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[2] An interesting side issue to this point is that Blum continued to play on an IBM softball team while working for QYX.

the jury. We observe that while respondent was successful, her primary job did not give her access to sensitive information which could have been useful to competitors. She was, after all, a seller of typewriters and office equipment. Respondent's brief makes much of the concession by IBM that there was no evidence whatever that respondent had given any information or help to IBM's competitor QYX. It really is no concession at all; she did not have the information or help to give. Even so, the question is one of substantial evidence. The evidence is abundant that there was no conflict of interest by respondent.

It does seem clear that an overall policy established by IBM chairman Watson was one of no company interest in the outside activities of an employee so long as the activities did not interfere with the work of the employee. Moreover, in the last analysis, it may be simply a question for the jury to decide whether, in the application of these policies, the right was conferred on IBM to inquire into the personal or romantic relationships its managers had with others. This is an important question because IBM, in attempting to reargue the facts to us, casts this argument in other terms, namely: that it had a right to inquire even if there was no evidence that such a relationship interfered with the discharge of the employee's duties because it had the effect of diminishing the morale of the employees answering to the manager. This is the "Caesar's wife" argument; it is merely a recast of the principal argument and asks the same question in different terms.[3] The same answer holds in both cases: there being no evidence to support the more direct argument, there is no evidence to support the indirect argument.

Moreover, the record shows that the evidence of rumor was not a basis for any decline in the morale of the employees reporting to respondent. Employees Mary Hrize and Wayne Fyvie, who reported to respondent's manager that she was seen at a tea dance at the Hyatt Regency with Matt Blum and also that she was not living at her residence in Marin, did not believe that those rumors in any way impaired her abilities as a manager. In the initial confrontation between respondent and her superior the assertion of the right to be free of inquiries concerning her personal life was based on substantive direct contract rights she had flowing to her from IBM policies. Further, there is no doubt that the jury could have so found and on this record we must assume that they did so find.

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[3] What we mean by that is that if you charge that an employee is passing confidential information to a competitor, the question remains whether the charge is true on the evidence available to the person deciding the issue, in this case, the respondent's managers at IBM. If you recast this argument in the form of the "Caesar's wife" argument attempted by IBM, it will be seen that exactly the same question arises, namely, "is it true?" Indeed, the import of the argument is that the rumor, or an unfounded allegation, could serve as a basis for the termination of the employee.

. . . In the case at bar, Callahan denied the employment rights asserted by respondent. At the second meeting he "stonewalled" respondent when she insisted on her rights and then fired her when she persisted. The conduct of the breaching party is the focus of the tort, particularly where there is an attempt to shield oneself from liability, in bad faith and without probable cause. Here, the "conflict of interest" charge was untrue and was used as a pretext to legitimate the termination. "Probable cause" would have been some reasonable basis for assuming that a significant company interest was at stake. There is no such evidence claimed by IBM. It is the admitted absence of any such evidence that leads us to conclude there was no probable cause here. Thus, the charge was made in bad faith and without probable cause. . . . The issue put to the jury was whether the conflict of interest charge was a pretext for firing respondent. This question required the jury to decide if Callahan had any belief in the existence of such a breach of company policy. On this record, the jury found that he did not. The evidence supports the jury verdict.

Intentional Infliction of Emotional Distress

The contract rights in an employment agreement or the covenant of good faith and fair dealing gives both employer and employee the right to breach and to respond in damages. Here, however, the question is whether if IBM elected to exercise that right it should also be liable for punitive damages, because of its intentional infliction of emotional distress. The issue is whether the conduct of the marketing manager of IBM was "extreme and outrageous," a question involving the objective facts of what happened in the confrontation between the employee and employer as well as the special susceptibility of suffering of the employee.

The general rule is that this tort, in essence, requires the defendant's conduct to be so extreme and outrageous as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community. . . . The question is reduced to the inquiry of whether Callahan's statements and conduct could be found by the jury to fall within doctrinal requirements. " 'It is for the court to determine whether on the evidence severe emotional distress can be found; it is for the jury to determine whether, on the evidence, it has in fact existed.' " . . . The finding on this cause of action as reflected herein is sufficient to support the award of punitive damages.

The jury was entitled to consider the evidence of extreme and outrageous conduct in light of the June 7 exchange followed by Callahan's conduct and pretextual statements, as well as in light of express corporate policy as manifested by the Watson memo. Indeed, the concern of the Watson memo is also a right protected by law. As we earlier noted "the right of privacy is unquestionably a 'fundamental interest of our society.'" It is guaranteed to all people by article I, section 1, of the state Constitution. So the question is whether the invasion of plaintiff's privacy rights by her employer, in the setting of this case, constitutes extreme and

outrageous conduct. The jury by special verdict so found.

To determine if Callahan's conduct could reach the level of extreme, outrageous, and atrocious conduct, requires detailed examination. First, there was a decided element of deception in Callahan acting as if the relationship with Blum was something new. The evidence was clear he knew of the involvement of respondent and Blum well before her promotion. Second, he acted in flagrant disregard of IBM policies prohibiting him from inquiring into respondent's "off job behavior." By giving respondent "a few days" to think about the choice between job and lover, he implied that if she gave up Blum she could have her job. He then acted without giving her "a few days to think about it" or giving her the right to choose.

So far the conduct is certainly unfair but not atrocious. What brings Callahan's conduct to an actionable level is the way he brought these several elements together in the second meeting with respondent. He said, after calling her in, "I'm making the decision for you." The implications of his statement were richly ambiguous, meaning she could not act or think for herself, or that he was acting in her best interest, or that she persisted in a romantic involvement inconsistent with her job. When she protested, he fired her.

The combination of statements and conduct would under any reasoned view tend to humiliate and degrade respondent. To be denied a right granted to all other employees for conduct unrelated to her work was to degrade her as a person. His unilateral action in purporting to remove any free choice on her part contrary to his earlier assurances also would support a conclusion that his conduct was intended to emphasize that she was powerless to do anything to assert her rights as an IBM employee. And such powerlessness is one of the most debilitating kinds of human oppression. The sum of such evidence clearly supports the jury finding of extreme and outrageous conduct.

Accordingly we conclude that the emotional distress cause of action was amply proved and supports the award of punitive damages.

The judgment is affirmed.