

The RIGHT Contract Between Club and Supt.

*Supts. at GCSA Conference Get Expert Advice
from a Green Chairman, USGA Official and Attorney-at-Law*

By JOHN CLOCK

THE subject of Employee-Employer Contracts pertains to the legal phases of the course superintendents in relationship with the country club, or golf course by whom you are employed.

Your legal relationship to the club employing you is, of course, that the club or golf course is your employer, and you are the employee. You are employed by the club, who is your principal or employer, to perform the particular services delegated to you either in your oral or written contract of employment. The employer controls and directs the services that you are to perform, and as an employee, you are required to perform those services, and although this service may call upon you to direct and control other persons working on the course under you, it does not in any way affect the basic relationship that exists between the club, your employer and you, the green superintendent, as employee.

The basic elements of a contract are, of course, two people competent to contract, who agree upon the terms and provisions of their contract. In other words, the terms of your employment, whether under an oral or written contract, must be definitely agreed upon, as without a definite meeting of the minds upon the terms of your employment, no contract will have been created.

Written Agreement Desirable

In considering whether you should have an oral or a written contract, I know that many of you have worked for years; and possibly all of the time that you have been employed as a green superintendent has been under an oral contract, so the natural thought arises: Why should there be a written contract? I cannot say that a written contract is by any means absolutely necessary, but as I will point out, I believe that it would constitute a better

and more satisfactory practice to both you and your club if at least written memorandum of the terms of your agreement were executed.

While your relationship under an oral contract has been lasting and satisfactory, it undoubtedly would have been just as lasting and successful with a written contract, because the pleasant relationship that you have had with the officers of the club, and the fact that in the maintenance of your course you have kept it in such shape that it has been satisfactory to not only the Green Committee, but the club members, is really the fundamental basis of that success and the reason why your employment has been continued from year to year over such a long period of time.

The oral contract does not seem to offer any advantages over a written contract, because anything that has been agreed upon verbally can quite easily be reduced to writing and by reducing your oral contract to a written memorandum or agreement you thereby avoid any and all misunderstandings that can so easily arise where club officers change frequently, and their ideas of your oral contract may not agree with those of the former official on the terms and nature of your oral understanding. While it is quite easy to make a very short oral agreement which you bind with a handshake, it would be no trouble whatever for the club official to have the agreement written out and signed both by the club and the green superintendent.

Then you would each have something in writing to rely upon. The club auditor would know definitely the nature of your duties and responsibilities in connection with the purchase of equipment, supplies or material, and if there were any questions as to your authority to make the purchase, you could promptly have it rectified by obtaining authorization from the

proper club official. This would remove any question that your action had been improper and one for which there might attach some personal responsibility in the event the club did not approve the action that you had taken.

Oral Contract Time Limit

A further disadvantage of an oral contract is a very vital and important one. An oral contract that a course superintendent may enter into with a club is not enforceable if the term is for more than a period of one year. By this I mean that if you had come to an oral agreement with the club to work at a fixed term of five years with a fixed salary, and accordingly, thought that you were settled on the job for that length of time, you would have no recourse against the club if after the first year you were given notice, or if your oral contract provided that if you remained in your employment for a period of years you would be paid a bonus for staying a certain number of years, this, likewise, would be unenforceable by you.

The reason is that in this state (California) and in most of the states in this country, we have a law that an oral employment contract, which contemplates a period of more than a year for the performance of its conditions and obligations, is unenforceable. Accordingly, an employment agreement which has as its object the creation of an employment for a period in excess of a year, must be evidenced by an instrument in writing. This law is considered a beneficial enactment intended to be used as a shield and not as a sword. This does not mean that those of you who have been employed for many years under an oral agreement were employed under an illegal contract, because it is not in itself illegal, but merely is not enforceable, and also, because your oral contract was good for a year, and, of course, has been extended year by year with the mutual consent of both you and your employer.

Some might consider that an oral contract, if only good for one year, would be more advantageous to you, because you would be free at the end of the year to look for another position at possibly an increase in salary. In an area where there might be a shortage of superintendents, this might seem advantageous, but it would be very simple to provide in your written memorandum that possibly you or the club would have the privilege of terminat-

ing the contract at the end of the season, or upon the giving of such notice as might be adequate.

So, as I have stated, it would not seem that an oral contract has any advantages over a written one, because whatever has been agreed upon orally can, with very little effort, be reduced to writing, and regardless of whether the employer or the employee wants it for merely one season with an option to renew for another season, this as well as anything else, can be written out very easily and both parties have removed the chances of controversy over the terms of your employment.

Contract Suggestions

The written contract, therefore, seems to have many advantages over an oral, one of the first and most important advantages being that the written contract covering your type of employment is valid and enforceable by both you and the employer. This written contract does not necessarily have to embody all of the form of a strictly formal written agreement, but it would be adequate if it were a written memorandum outlining the terms of your employment. If you are entering into a written contract, these are a few suggestions as to provisions that would seem appropriate:

(1) The term of your employment, that is, whether it is for one year or several years, and a statement defining your job position, that is, that you are being employed as a green superintendent, and if any other duties of any kind were to be included they should likewise be stated.

(a) A provision setting forth the basis upon which either you or the club may terminate the contract if such a provision is desired by both parties. If a provision for terminating the contract is not desired, naturally, it would not have to be stated, as there are undoubtedly many instances when both you and the club would want the term of your employment to be for a fixed term; or it is possible to provide for a termination.

(2) The salary that you are to receive and how and when it is to be paid;

(a) Any other considerations which you might receive, either in the way of a bonus, furnishing of a house, how many meals, gasoline for your car, whatever expenses or privileges, if any, over and above your salary that you are to receive, including the payment of expenses of a trip to turf association meetings or such other

meetings as you and the club might deem it advisable to attend.

(3) Your duties and responsibilities, which should provide that the superintendent is to do the job and have the responsibility of carrying on the course maintenance within the limits of an approved budget and in accordance with the policy developed by the Green committee. To keep the turf and the course in the very best condition for golf that you can with the assistance of the person or persons working under your orders. It would hardly seem advisable to try to specify in detail in this memorandum the routine operations of maintenance, but if it were so desired, the memorandum could refer to a maintenance program such as Mr. Ferguson, USGA Green Section Southwestern Director and National Research Coordinator, listed in the August issue of the USGA Journal. These specifications of routine operations of maintenance were prepared by Everett Queen, Supt., Wichita (Ks.) CC.

(4) To look after and keep in good repair all of the equipment and implements belonging to the club and used by you in maintaining the course. To specify just what your authority is in making purchases; whether you are to make purchases within limits specified in the budget, or whether purchases must first be approved by some club official.

(5) To provide from whom you are to receive instructions, as it would certainly seem advisable that your instructions should come from only one source. It is, of course, a customary practice for those instructions to come from the chairman of the green committee. It would certainly seem advisable to have this stated for your own good, so that there would be no confusion in this respect.

(6) Naturally, to obey orders consistent with your knowledge of turf culture and devote your whole time to the job and to honestly and in good faith carry out and direct the work to the best of your ability.

(7) Whether you are to furnish reports and if so, what kind and how often? How long a vacation you will be entitled to and when it may be taken. Whether the club will pay your hospitalization in the event of an illness and any other details agreed upon in this connection. Whether either you or the club may renew the contract and if so, upon what terms; the working hours; and if in your state there

is not a compulsory workman's compensation law, whether the club should provide some insurance that would give you some protection for wages and medical expenses in the event of an extended period of disability, which would apply only to any disability or injuries received in the course of your employment.

(8) That the tournament chairman should furnish you with a schedule of the tournaments the club was going to hold during the year, so that you could coordinate your work with the tournament schedule, and so that you would not be topdressing the greens shortly before a tournament was to be played, as, of course, you naturally would desire to have the course in its best possible shape before these events were to be held.

(9) Whether either you or the club would want a provision concerning your relations with suppliers and whether you would be permitted to engage in any outside activities, such as advising other clubs and individuals on turf grass matters. In connection with your relations with suppliers, it would seem to me like a good suggestion for the golf course superintendents' association to adopt a code covering relations between you and suppliers.

Principal Considerations

These, as I have already stated, are merely suggestions, which both parties to a proposed agreement could consider and use as many of them as they deemed advisable and necessary, as they cover most of the principal items that should be considered in making such a contract, and if such of these suggestions as were satisfactory to both parties were embodied in a written memorandum, I am sure that it would give both the course superintendent and the club a greater feeling of security and would remove all element of doubt concerning the terms of your employment. There, of course, may be many other points that you would want to agree upon, which could be made a part of your contract.

I have already stated that a written contract is valid and enforceable, so now let us consider the remedies of the employee in the case of a wrongful discharge. As a general rule, the measure of damages that you would be entitled to recover in the event your contract was breached by the club, or you were wrongfully discharged, is the actual loss sustained by you by reason of your discharge, together with compensation for the services that you

had performed. Broadly speaking, this loss consists of the stipulated wages for the unexpired term of your employment, less whatever you may have earned, or with reasonable diligence might have earned from other employment for the balance of the term.

In California, any payments that an employee receives from the State Unemployment Compensation Fund are not deductible as compensation received from other employment in mitigation of damages for the wrongful discharge of an employee, and in California, the employee is not required to accept employment from the same employer, unless the character of the work is similar and unless the offer of other employment is made in such a manner that acceptance of it will not amount to a modification of the employee's employment agreement. The same rule prevails in Kentucky, Iowa, Michigan, Arkansas, Alabama, Missouri, New York, Mass., Georgia, Illinois, Indiana, Louisiana, Mississippi, and Oklahoma. In other words, when a person is employed for a definite period of time at an agreed rate of wages and is wrongfully discharged before the expiration of the period for which he was employed, he may refuse his former employer's offer of reemployment at less wages than were stipulated in the original contract of employment when the acceptance of such an offer would amount to a modification of the original contract, or to waiver of his right to recover.

In New York it has been held that an employee wrongfully discharged before the expiration of his employment contract, was entitled to recover not only for the loss of his salary, but as well for the loss of his pension rights.

Club Has Rights, Too

The employer likewise has his remedy in the event that you should leave your employment in violation of the terms of your agreement. The employee is liable to the employer in damages as a result of leaving his employment in violation of his agreement, and the measure of damages recoverable by the employer is the difference between the salary contracted for, and the sum which the employer is required to pay someone else equally capable of filling the vacancy. In some jurisdictions the employer can recover damages also for injury to his property resulting from the employee's leaving and in some jurisdictions there is no recovery.

I would think that one of the most important things to a greens superintendent, in connection with his position, would be security. I know of no better way of achieving this security in your position than with a written contract, and I would think that the club likewise would welcome a written contract as a means of establishing a better and stronger relationship with its course superintendent.

The question has been asked, "What does a club expect under a contract that is general in nature?"

Supts' Functions Defined

Marvin Ferguson, in the Turf Management Section of the September 1955 U.S.G.A. Journal, reports on a canvass that was made of club officials throughout the country which, I think, would furnish a better answer to the above question than probably any one individual's opinion. While his question merely related to "comments on the functions of a superintendent", I would take it from that question that it would relate to a course superintendent's contract that was general in nature. Here are his comments:

"Obtain and train a competent maintenance crew. Schedule work. Maintain course. Supervise. Keep chairman advised of unusual problems."

"To employ course labor, buy supplies and carry out the planning of the Green Committee."

"Superintendent has full charge of maintenance, hiring and firing crew, fix compensation, subject to approval of green committee. Purchases, subject to green committee as to major items."

"Administration."

"He must be an expert on turf and in a club like . . . be able to handle a relatively considerable number of men efficiently, but of course, the main thing is to see that the golf course is kept in good condition."

"Should take care of regular cutting of greens and complete course maintenance, except construction work to improve the course. Also he should make regular inspection of the greens for disease and report it to the chairman of the green committee."

"The proper function of a golf course superintendent is to know his golf course thoroughly. Keep a chart of the operations and constantly keep a check on the condition of the soil and know when to make changes in types of fertilizer and other

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The 18th green of the PGA National Golf Club at Dunedin, Fla. during the annual PGA Seniors' week, was a delightful spot for taking it easy and watching the other fellow pray for a long putt to tumble in. The course has been improving in condition during the past few years, only occasionally suffering temporary setbacks.

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The Right Contract

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types of treatment to greens, tees and fairways. He also should work in complete harmony with the chairman of the green committee. He should keep abreast of the latest developments in the treatment of turf. Frankly, speaking, it is difficult to employ a superintendent today who will measure up to these specifications."

"Proper handling of help."

"Green superintendent should have full responsibility for the golf course."

I am sure that the club management and you will all agree that one of the most important functions of a superintendent is to provide a high standard of golf maintenance as efficiently and economically as possible and to keep abreast of new developments that would improve the golf course for the efficiency of his operations.

While there is little that can be added

to the responses above mentioned, I would like to add that in regard to the overall picture, where a greens superintendent is employed under a contract, whether oral or written, that is general in nature, that the superintendent will assume the responsibility of the job and carry on as best he can within the limits of a given budget, so that he can give the membership the very best turf that he possibly can on the money allotted.

That he would look after all of the physical equipment of the club and keep it in good repair.

That while weather conditions, disease, or mechanical difficulty may sometimes result in the turf being in poor condition, the club can only expect that the superintendent be alert and avoid, as far as it is possible, with his knowledge and with the help that is available to him from any and all greens sections organizations, the chances of the turf being injured by these adverse conditions.