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Suggestion Box Systems

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"Suggestion Box" Systems

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THE EMPLOYEE "SUGGESTION BOX" has become a common feature of American enterprise. Its use is simple and beneficial. An employee writes an idea on a blank form conveniently made available in his work area and drops his suggestion into a box provided for such suggestions. Today there are at least 229 suggestion systems in operation,[1] covering approximately 5,000,000 employees, and a yearly average of $13,350,000.00 is being given out in awards.[2]

The employee with an idea for improvement of the complex productive or commercial process is encouraged by the prospect of objectively determined awards to submit his idea to management through the impersonal medium of a suggestion box.

The suggestion forms are collected periodically from the various departments, and decisions on the suggestions are made by management. For every idea accepted a cash award usually is made. If no cash value can be shown, the accepted suggestion wins a nominal award of perhaps $5 or $10. Where a saving in labor costs can be shown, the employee is usually paid a predetermined percentage of that saving. In some cases the payoffs are substantial: top awards in some companies can run into several thousand dollars.[3]

Many legal questions arise in connection with suggestion systems. But there has been little litigation in this field so far, probably because of the small scale nature of most of the claims which develop as a result of such suggestions. But with the rapid expansion of suggestion systems, more attention will be given to their legal aspects.

Before going into the specific problems of suggestion systems, the general area of ownership of employee ideas should be reviewed.

Common Law Ownership of Employee Ideas

The law governing employee ideas is fairly well settled. If an employee is hired to work on a specific invention or assigned to work on a particular problem, the employer has the right to complete ownership of the idea, including assignment to him.

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1 National Association of Suggestion Systems, Annual Statistical Report for 1959.

2 Id.

3 Whyte, Money and Motivation 170 (1955).

The reason is that the employee has only done what he was employed and paid to do.[4]

In the case of an employee not hired specifically to invent, if he conceives and perfects an invention during his working hours, using his employer's materials and facilities, the employer is entitled to a "shop right" in the invention. This is a non-exclusive right to make, sell or use the invention without paying the employee any royalties.[5] The reasoning is based on the equitable principle that the employer is entitled to that which embodies his own property. The employe retains the actual ownership of the idea and keeps all patent rights, unless, of course, he has previously contracted this right away.[6]

Under rules of estoppel and laches, courts have held that the employee cannot claim any right to compensation for his invention because a right similar to a shop right arises in the employer when the employee allows his employer to use his invention over a period of years, and to make serious changes in plant equipment to accommodate the invention, without ever intimating to the employer that he expects payment.[7]

In an Ohio case, the Court mentioned this extension of shop rights in ideas developed by an employee during his non-working hours, but also pointed out that an emplyee can protect himself from the accrual of such rights by contract.[8] An opinion in a later case further explained that an express agreement between employer and employee for the employer to compensate his employee for any ideas developed at home or at work is valid; and will supersede implied shop rights.[9] Actually this is just a statement of the freedom to contract away certain of one's common law rights as long as it is not against public policy.

Though this whole theory of the extension of shop rights into an employee's non-working hours is questionable, and seemingly in direct contradiction to the very definition of shop right, the fact that a contract can alter these relations has direct bearing on suggestion systems. For in suggestion systems isn't the employer, by soliciting *any* ideas developed by his employees without any reservation as to those developed at work, impliedly, if not expressly waiving any shop rights he may have in such ideas?

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[4] Marshall v. Colgate, 175 F. 2d 215 (3rd Cir. 1949); Blum v. Commissioner of Internal Revenue, 183 F. 2d 281 (3rd Cir. 1950); United States v. Dubilier Condenser Corp., 289 U. S. 178, 53 S. Ct. 554, 77 L. Ed. 1114 (1933).

[5] United States v. Dubilier, supra note 4.

[6] E. F. Drew & Co. v. Reinhard, 170 F. 2d 679 (2d Cir. 1948); Barlow & Sielig Mfg. Co. v. Patch, 232 Wis. 220, 286 N. W. 577 (1939).

[7] Dovel et al. v. Sloss-Sheffield Steel & Iron Co., 139 F. 2d 36, 38 (5th Cir. 1943).

[8] Gemco Co. v. Henderson, 151 Ohio St. 95, 94 N. E. 2d 596 (1949).

[9] Deye v. Quality Engraving Electrotype Co., 90 Ohio App. 324, 100 N. E. 2d 310 (1951). Mention of the right to contract away shop rights either expressly or impliedly is also made in Oliver v. Autographic Register Co., 119 N. J. Eq. 481, 183 A. 171 (1939).

A Contract for Ideas

Essentially a suggestion system is a continuing offer to a class of persons for the submission of ideas.[10] When the employee submits his idea on the blanks provided, he is accepting the company's offer to investigate the workability of his idea and if useful to pay for it. The immediate duty to pay is conditioned on the usefulness of the idea. The transaction comes within all the rules of unilateral contract.[11]

Once accepted, the terms and conditions control the legal relations of the employer and employee. These are specified either on the suggestion form itself or in the literature in the plant covering the rules and conditions of the suggestion system. Once the employee has submitted his suggestion the employer may not revoke his offer. He may only revoke his offer to those who have not yet accepted. After acceptance by an employee the employer cannot change any of the rules unless agreed to by the submitting employee. And if he does revoke or change any of the rules it must be with as much notice as when announcing the suggestion system.[12]

The consideration for the employer's promise to pay an award is the receipt of a useful and valuable suggestion. If the suggestion is not useful the consideration fails and the contract is not binding. Or it could be reasoned that submitting the idea is acceptance, but that the condition precedent of usefulness has not been complied with. In either case, by accepting the offer of the company and the conditions on which the offer is based, the employee is allowing himself to be bound by the decision of the company as to his idea's usefulness. The company's decision is strictly its own. It cannot be restricted to the standard of a reasonable person. The employer has the power to exercise his good faith judgment as to whether or not he will adopt the suggestion.[13]

The specific problem of contracts for ideas is dealt with in another article in this Symposium, but in relation to suggestion systems a few remarks should be made. Primarily, for an abstract idea to be protected, there must be a contract before its disclosure.[14] Under suggestion systems this is no problem, as the contract to pay for a valuable idea is made as soon as the employee submits his suggestion.

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[10] Williston, Contracts § 32 (Stud. ed. 1938); Restatement of Contracts § 28.

[11] Williston, op. cit. supra, note 10, at § 90A; Restatement, op. cit. supra § 70; Mass. Mutual Life Insurance Co. v. George & Co., 148 F. 2d 42 (8th Cir. 1945).

[12] Williston, op. cit. supra, note 10, at § 59; Shuey v. U. S., 92 U. S. 697, 23 L. Ed. 697 (1876).

[13] Furgule v. Disabled American Veterans Service Foundation, 117 F. Supp. 375 (S. D. N. Y. 1952); Ritz v. News Syndicate, 183 N. Y. S. 2d 850 (1959).

[14] Williamson v. N. Y. Central R. R., 258 App. Div. 226, 16 N. Y. S. 2d 217 (1939); Plus Promotions v. R. C. A. Mfg. Co., 49 F. Supp. 116 (S. D. N. Y. 1943); Bowen v. Yankee Network, 46 F. Supp. 62 (D. C. Mass. 1942).

For the idea to be a valid consideration it must not be universally known, and it must be new or novel to the recipient.[15] It could be disclosure of a public statute[16] or of information obtainable by anyone,[17] and still be valid, as long as the company had no previous knowledge of it. But if it is a common idea it must present a specific method for its use by the company.[18] None of these matters ordinarily raise problems for suggesters. Most suggestions are concrete proposals as to methods of production, and any that are accepted by the company are necessarily new and useful to them and thus constitute valid consideration.

The most serious problem in this area, for the employee, arises when he is told that the company had already been working on the same idea before he submitted it, though it is not yet in use. There is no clear solution to this problem from the employee's standpoint. The employee can ask for proof from the company and, depending on the system's procedure, he may or may not be satisfied. The employee's only alternative, if he thinks the idea is valuable enough and he is certain that the company has not supplied sufficient proof, is to go to court. Since this involves an issue of fact it is for a jury to decide.[19] Such extreme action is rarely if ever resorted to. The value of the suggestion usually would not justify court action, and secondly, an employee would rather keep his job and be somewhat disgruntled than have no job at all.

Each suggestion system is governed by its own rules and conditions. Most plans, however, provide for a release, making all adopted suggestions the property of the company. Some companies go further and make all ideas submitted under the plan their property, even if not adopted. It seems unfair for a company to insist on ownership of ideas it has turned down, especially if the suggester may be able to market the idea elsewhere.[20] Actually, such clauses tend to defeat one of the primary purposes of the suggestion system, that of developing better employee-employer relations.

Most systems also have a time limit after which an idea, if adopted, will not be paid for. The period varies from one to five years. Here too, though the clause is legally valid and binding, it would seem to defeat the system's purpose; for what difference does it make if a suggestion was given one year or five years ago? The company is still benefiting from the idea if it uses it, and should be obligated to pay for it.

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[15] Singer v. Karron, 294 N. Y. S. 566, 162 Misc. 809 (1937); Soule v. Bon Ami Co., 201 App. Div. 794, 195 N. Y. S. 574 (1922); Masline v. N. Y. N. H. & H. R. R. Co., 95 Conn. 702, 112 A. 639 (1921).

[16] High v. Trade Union Courier Pub. Corp., 69 N. Y. S. 2d 526 (1946).

[17] Keller v. American Chain, 255 N. Y. 94, 174 N. E. 74, 75 (1930).

[18] Haskins v. Ryan, 75 N. J. Eq. 623, 78 A. 566 (1908).

[19] Healy v. R. H. Macy & Co., 251 App. Div. 44, 29 N. Y. S. 165 (1937).

[20] Seinwerth, Getting Results from Suggestion Systems 27 (1948).

Payment

Under most plans the method of payment is prescribed in the offer. For those ideas on which the savings to the company can be ascertained, the employee is usually paid between 10 and 20% of the first year's savings. What is meant by savings varies with each system. Some base their figures on gross profits, some on net profits, while others will deduct a percentage of capital expenditures where the initial outlay exceeds a specified amount. Where the value of the idea is intangible, each company has its own method of arriving at a figure.

Some companies have a maximum award. The purpose of this is to protect the company from claims for awards that they feel are too high. Such a practice would tend to limit employee participation and enthusiasm. It would seem that an award based on a saving of ten or twenty percent for the first year sufficiently protects the company from paying awards out of line with their actual value.

While most companies clearly specify the method of payment, some do not. In situations where a promise of payment has been made, but the amount or method of ascertaining payment is not specified, the courts would probably apply the standard of reasonableness to determine the amount payable under the contract. They would imply a promise in fact to pay the reasonable value of the idea.[21]

Under some systems, payment is based on the company's discretion. In these situations, it is questionable if an actual contract exists, because the promise to pay would seem to be illusory. Under these terms, the company could decide to pay nothing. It is entirely within its power to decide its own performance. Here perhaps quasi-contract would apply. There is an expectation of payment on the part of the employee; it is clear he is not volunteering his services; and the company is aware of his expectation. Under these circumstances, the company by using the idea would seem to obligate itself to pay the reasonable value. At least one court has refused recovery in quasi-contract where payment was based on the company's discretion.[22] But in this case the idea was unsolicited and the court said that the plaintiff did not rely upon payment as a contractual obligation, but trusted the "fairness and liberality" of the defendant company. In a suggestion system the employee *is* relying upon a supposed contractual obligation. Realistically, the employee is not relying on the company's fairness and generosity, but is expecting to be paid the reasonable value of his idea.

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21 Brunner v. Stip, Baer & Fuller, 352 Mo. 1225, 181 S. W. 2d 643 (1944); Sabatini v. Hensley, 161 Cal. App. 2d 172, 326 P. 2d 622 (1958); Dysart et al. v. Remington Rand, 40 F. Supp. 596 (D. C. Conn. 1941); Cool v. Int'l Shoe Co., 142 F. 2d 318, 320 (8th Cir. 1944); Miller v. Int'l Harvester, 179 Kan. 711, 298 P. 2d 279 (1956); Sandeman v. Sayres, 50 Wash. 2d 539, 314 P. 2d 428 (1957); Williston, op. cit. supra note 10, at § 41.

22 Davis v. General Foods Corp., 21 F. Supp. 445 (S. D. N. Y. 1937).

In systems where nothing is said about payment, that is, where the company only states willingness to accept ideas, there would be no contract. Under these circumstances, for the employee to recover in quasi-contract, it would be essential to show that payment was expected, and that the idea was not gratuitously offered to the company.[23] Circumstances must exist that indicate that the employee intended to be compensated. Past plant practices of paying for adopted ideas, publicity in the plant, and general knowledge of awards paid under suggestion systems, would seem to justify the employee in expecting payment and spelling out a clear case for recovery in quasi-contract.

In one case[24] an employee was suing in quasi-contract for payment for an adopted idea. The court dismissed the complaint without prejudice because the employee might be able to amend the complaint to show that he construed the invitation and submitted the suggestion with the reasonable expectation of compensation. This specific case dealt with an idea conceived during working hours. The court said that in order to avoid the accrual of shop rights, there must be an agreement either express or implied for compensation. Did the court mean an agreement implied in fact or implied in law? Since the court does allow the complaint to be amended, and the action is one in quantum meruit, one must assume that the court meant that implied-in-law would be sufficient.

Conclusion

When the employee accepts the company offer, he is accepting its terms. And though there are areas in which the system may not seem fair, in many instances there is no legal remedy available to the employee. He is bound by the contract he willingly entered into. If he submits his suggestion he is bound by a maximum award limitation and a limitation period after which his idea will not be paid for; he must assign all his property rights to the company on all adopted or submitted ideas; he must be ready to believe the company if it says that it was working on his idea before he ever submitted it; he must be willing to accept its definition of savings, and the company method of determining payments. Of course, this is putting the suggestion systems' weaknesses in very strong terms, for very few, if any, systems have all these limitations.

Some companies have tried to protect the employee, to the greatest extent possible, by providing for review boards, and requiring tangible evidence from their engineering departments on engineering claims that the work was already in process be-

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[23] Ryan v. Century Brewing Assn., 185 Wash. 600, 55 P. 2d 1053 (1936); Woodruff v. New State Ice Co., 197 F. 2d 36 (10th Cir. 1952); Matarese v. Moore-McCormack Lines, 158 F. 2d 631 (2d Cir. 1946); Liggett & Meyer Tobacco Co. v. Meyer, 101 Ind. App. 420, 194 N. E. 206, 210 (1935).

[24] Wiles v. Union Wire Rope Corp., 134 F. Supp. 299, 301 (W. D. Mo. 1955).

fore the suggestion was submitted. In almost all plans the limitation period is considered to be necessary, in the company's view.

The fairness of a particular system depends primarily on the individual company's practical implementation of its rules. If a system's conditions and its actual functioning do not satisfy an employee, his alternative is to refrain from submitting his suggestion, and possibly to try to contract with the company on his own terms. Although individual contracting by an employee about his ideas for his employer's use is seemingly unrealistic, there have been instances where it was done.[25]

Basically, the suggestion system provides a means for the employee to get paid for ideas he otherwise would not be paid for. It offers him a means to supplement his income and express his ingenuity.

As for the company, the savings made possible by a properly run plan certainly more than pay the cost of administration; and the bettering of relations with his employees is a benefit the employer derives without any cost.

The company's best protection for running a smooth system is to have well defined rules, particularly in relation to payment, and to avoid those conditions, such as a maximum limit on awards, which tend to discourage employee participation.

The suggestion box is a two-way exchange, about which it can be said that: He who gives the most, gains the most.

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[25] Heywood-Wakefield Co. v. Small, 87 F. 2d 716 (1st Cir. 1937).