

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

TERESA DAILY,)	
)	
Plaintiff,)	Civil No. 4-99-CV-10622
)	
vs.)	
)	
WOODWARD GRANGER)	ORDER
COMMUNITY SCHOOL DISTRICT,)	
)	
Defendant.)	

MEMBERS OF THE JURY, THE COURT NOW GIVES YOU THE FOLLOWING
INSTRUCTIONS:

INSTRUCTION NO. _____

Now that you have heard the evidence, the time has come to instruct you as to the law governing this case. You are to consider all of the instructions together, apply them as a whole to the facts as you find them to have been established by the evidence, and return your verdict accordingly.

You as jurors are the sole judges of the facts. No language used by the court in these instructions and no statements, conduct, remarks, or rulings of the court during the progress of the trial should be considered by you as an indication that the court has any opinion as to the facts of the case or what your verdict should be.

You are to follow the instructions now given you in your deliberations. You are not to be concerned with the wisdom of any rule of law. Regardless of your opinion as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the court.

In considering these instructions, you will attach no importance or significance whatever to the order in which they are given.

INSTRUCTION NO. _____

This is a civil case brought by plaintiff, Teresa Daily, against defendant, Woodward Granger Community School District. Plaintiff was employed by defendant as a head custodian, and was terminated by defendant. Plaintiff contends her discharge from the defendant's employ was in retaliation for the fact that she had spoken to a reporter from the Des Moines Register about bus safety issues in the District, and because her comments to the reporter then resulted in a Des Moines Sunday Register article about those same issues. Plaintiff claims her discharge was in violation of her right to freedom of speech protected by the First Amendment to the United States Constitution. Defendant denies plaintiff's claim and alleges that plaintiff would have been fired for a legitimate reason even if she had not spoken to the press.

INSTRUCTION NO. _____

In this case, the plaintiff is an individual and the defendant, Woodward Granger Community School District, is a state entity. Each party has equal rights in court. This case should be determined by you with the same fairness and consideration as though it were a case between individuals, and no influence or presumption is to be drawn against the defendant that would be improper in a case between individuals. Both parties in this case are entitled to equal justice in your hands and to a fair and impartial consideration of the entire case.

INSTRUCTION NO. _____

During this trial, I permitted you to take notes. Many courts do not permit note-taking by jurors, and a word of caution is in order. There is always a tendency to attach undue importance to matters one has written down. Some testimony that is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial in light of all the evidence presented. Therefore, you are instructed that your notes are only a tool to aid your own individual memory and you should not compare your notes with other jurors in determining the context of any testimony or in evaluating the importance of any evidence. Your notes are not evidence, and are by no means a complete outline of all the proceedings or a list of the highlights of the trial. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case.

INSTRUCTION NO. _____

No party is required to call as witnesses all persons who may have been present at any time or place involved in this case, or who may appear to have some knowledge of the matters in issue at this trial; nor is a party required to produce as exhibits all papers and other things mentioned in this case.

INSTRUCTION NO. _____

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdict. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdicts, in the same condition as it was when received by you.

INSTRUCTION NO. _____

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide. The law makes no distinction between direct and circumstantial evidence, and either or both may be used by a party to prove a particular fact. The weight to be given any evidence is for you to decide.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I told you to disregard.

4. Anything you saw or heard about the case outside the courtroom.

INSTRUCTION NO. _____

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence so that all of it may be given weight. If you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part, or none of any witness' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witness' appearance, conduct, age, intelligence, memory and knowledge of the facts; and
3. The witness' interest in the trial, their motive, candor, bias, and prejudice.

INSTRUCTION NO. _____

Certain testimony has been received into evidence from deposition transcripts. This is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

INSTRUCTION NO. _____

You have heard evidence claiming certain witnesses made statements before this trial which were inconsistent with what the witness said in this trial.

If the witness made the earlier statements when they were under oath, such as at a deposition, you must treat the statements as if made in court.

If the witness did not make the earlier statements under oath, you may use the earlier statement only to help you decide if you believe the witness. You are to decide if an earlier statement of a witness was made and whether it was inconsistent with testimony given. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given, but you are not required to do so.

However, you should not disregard the testimony if other believable evidence supports it, or if for some other reason you believe it.

INSTRUCTION NO. _____

Whenever a party must prove something they must do so by the preponderance or greater weight of the evidence.

You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should therefore put it out of your minds.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Whenever in these instructions the words “prove,” “proven,” or “established” are used in connection with any matter, they shall be construed to mean that the matter referred to must be established by the preponderance of the evidence.

INSTRUCTION NO. _____

You are instructed that under the laws of the state of Iowa, defendant was authorized to: employ such bus drivers and other employees as may be necessary, prescribe their qualifications, and adopt rules for their conduct.

The laws of the state of Iowa also set forth that defendant is not to employ a bus driver applicant until defendant determines that the applicant: has an acceptable driving record, demonstrates the ability to safely operate a school bus, and is knowledgeable of traffic laws and regulations pertaining to the operation of a school bus.

INSTRUCTION NO. _____

Your verdict must be for plaintiff if the following elements have been proved by plaintiff by a preponderance of the evidence:

First, defendant discharged plaintiff; and

Second, the fact that plaintiff had spoken to a reporter from the Des Moines Register and an article was published in an issue of the Des Moines Sunday Register about bus safety concerns was a motivating factor in defendant's decision to discharge plaintiff.

However, your verdict must be for defendant if defendant has proven by the preponderance of the evidence that defendant would have discharged plaintiff regardless of speaking to

the press. You may not return a verdict for plaintiff just because you might disagree with defendant's decision or believe it to be harsh or unreasonable.

INSTRUCTION NO. _____

To prove that defendant terminated her in violation of her First Amendment rights, plaintiff must prove by the preponderance of the evidence that plaintiff's speech was a "motivating factor" in defendant's decision to terminate her.

The term "motivating factor" means a consideration that moved a defendant toward its decision or a factor that played a part in its decision. Plaintiff is not required to show that her speech was the sole or primary motive for the adverse action. There may have been more than one factor in defendant's decision to terminate plaintiff.

INSTRUCTION NO. _____

If you find in favor of plaintiff under Instruction _____, then you must award plaintiff such sum as you find by the preponderance of the evidence will fairly and justly compensate plaintiff for any actual damages you find plaintiff sustained as a direct result of defendant's conduct.

Actual damages include any wages or fringe benefits you find plaintiff would have earned in her employment with defendant if she had not been discharged, from August 18, 1999 until the date of this trial, *minus* the amount of earnings and benefits from other employment received by plaintiff during that time. Actual damages may also include any emotional distress, humiliation, or loss of

reputation. You are not to contemplate any future losses beyond this trial that plaintiff may sustain due to her firing by defendant.

You must enter separately the amounts for each type of damages awarded in the Verdict Form, and must not include the same items in more than one category.

You are also instructed that plaintiff has a duty under the law to mitigate her damages – that is, to exercise reasonable diligence under the circumstances to minimize her damages. Therefore, if you find by the preponderance of the evidence that plaintiff failed to seek out or take advantage of an opportunity that was reasonably available to her, without a reasonable explanation therefore, you must reduce her damages by the amount she reasonably could have avoided if she had sought out or taken advantage of such an opportunity.

INSTRUCTION NO. _____

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members foreperson of the jury. The person so elected is responsible for the orderly, proper and free discussion of the issues by any juror who wishes to express his or her views. The foreperson will supervise the balloting and sign the Verdict Form in accord with your decision and will also sign any written inquiries addressed to the court.

Requests regarding instructions are not encouraged. Experience teaches that questions regarding the law are normally covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the court.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion in a case or determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved, and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans. You are judges--judges of the facts. Your sole interest is to ascertain the truth.

INSTRUCTION NO. _____

The verdict must represent the considered judgment of each juror. The verdict you reach must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. An inconclusive trial is always undesirable. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if you become convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

INSTRUCTION NO. _____

Submitted to you with these instructions is a Verdict Form with questions. After you have agreed, answered the questions and appropriately signed the Verdict Form in accordance with the directions contained therein, inform the jury officer outside the room.

Dated this _____ day of February, 2001.

RONALD E. LONGSTAFF, JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

TERESA DAILY,)
)
 Plaintiff,) Civil No. 4-99-CV-10622
)
 vs.)
)
 WOODWARD-GRANGER) VERDICT FORM
 COMMUNITY SCHOOL DISTRICT,)
)
 Defendant.)

INTERROGATORY NO. 1: Has Plaintiff established her claim for a retaliatory discharge in violation of her free speech rights?
(As submitted in Instruction _____)

Please mark an "X" in the appropriate space.

Yes _____ No _____

If you answered "yes" to Interrogatory No. 1, proceed to also answer Interrogatory No. 2 below.
If you answered "no" to Interrogatory No. 1, do not answer Interrogatory No. 2.

INTERROGATORY NO. 2: We find plaintiff's damages as defined in Instruction _____ to be:

- A. Past Earnings Loss: \$ _____
- B. Past Fringe Benefit Loss: \$ _____
- C. Damages for Emotional Distress, Humiliation, and Reputation Loss \$ _____
- TOTAL AWARD: \$ _____

DATE

FOREPERSON