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

FILED
DAVENPORT, IOWA
2002 JUL 10 A 10:
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

WANDA MORRISON,	*	
	*	3-01-CV-90034
Plaintiff,	*	
	*	
v.	*	
	*	
SELECT HOME IMPROVEMENT COMPANY and THE ACRI COMPANY,	*	
	*	FINAL JURY INSTRUCTIONS
Defendants.	*	
	*	

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FINAL INSTRUCTION NO. 1
EXPLANATORY

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of, and during, trial are not repeated here.

The instructions I am about to give you now as well as those I gave you earlier are in writing and will be available to you in the jury room. Again, all instructions, whenever given and whether in writing or not, must be followed.

FINAL INSTRUCTION NO. 2
JUDGE'S OPINION

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

During this trial I may have asked questions of witnesses or the lawyers in order to clarify certain matters. Do not assume that I hold any opinion on the matters to which my questions related.

FINAL INSTRUCTION NO. 3
ESSENTIAL ELEMENTS OF SEXUALLY HOSTILE WORK ENVIRONMENT CLAIM

Your verdict must be for the Plaintiff on her claim of sexually hostile work environment if all of the following elements have been proved by the greater weight of the evidence:

1. Plaintiff was subjected to degrading or intimidating acts or comments by her co-workers;

2. Such conduct was unwelcome;

3. Such conduct was based on Plaintiff's sex;

4. Such conduct was sufficiently severe or pervasive that a reasonable person in Plaintiff's position would find Plaintiff's work environment to be hostile or abusive;

5. At the time such conduct occurred and as a result of such conduct, Plaintiff believed her work environment to be hostile or abusive;

6. Defendants knew or should have known of the degrading or intimidating acts or comments by Plaintiff's co-workers; and

7. Defendants failed to take prompt and appropriate corrective action to end the harassment.

If any of the above elements has not been proved by the greater weight of the evidence, your verdict must be for the Defendants and you need not proceed further in considering this claim.

FINAL INSTRUCTION NO. 4
DEFINITION OF "UNWELCOME"

Conduct is "unwelcome" if the employee did not solicit or invite it and the employee regarded the conduct as undesirable or offensive.

FINAL INSTRUCTION NO. 5
DEFINITION OF "BASED ON SEX"

Whether conduct is based on the Plaintiff's sex is determined by inquiring whether members of one sex are exposed to conduct to which members of the other sex are not exposed. However, gender-based insults such as "bitch" may be based on sex. Also, harassment based on sex does not need to be explicitly sexual in nature. An employee does not have to be propositioned, touched offensively, or harassed by sexual innuendo in order to have been sexually harassed. Evidence that members of one sex were the primary targets of the harassment is sufficient to show the conduct was gender based.

FINAL INSTRUCTION NO. 6
DEFINITION OF "HOSTILE OR ABUSIVE"

In determining whether a reasonable person in the Plaintiff's circumstances would find the Plaintiff's work environment to be hostile or abusive, you must look at all the circumstances. The circumstances may include the frequency of the conduct complained of; its severity; whether it was physically threatening or humiliating, or merely offensive; whether it unreasonably interfered with the Plaintiff's work performance; and the effect on Plaintiff's psychological well-being. No single factor is required in order to find a work environment hostile or abusive.

FINAL INSTRUCTION NO. 7
ESSENTIAL ELEMENTS OF RETALIATION CLAIM

Your verdict must be for the Plaintiff on her retaliation claim if all of the following elements have been proved by the greater weight of the evidence:

1. Plaintiff complained about sexual harassment;

2. Plaintiff was terminated from her employment (this element is undisputed); and

3. Plaintiff's complaints about sexual harassment were a motivating factor in her termination.

If any of the above elements has not been proved by the greater weight of the evidence, your verdict must be for the Defendants and you need not proceed further in considering this claim.

FINAL INSTRUCTION NO. 8
DEFINITION OF "MOTIVATING FACTOR"

As used in these instructions, Plaintiff's complaints about sexual harassment were a "motivating factor" if they played a part in the Defendants' decision to terminate Plaintiff. However, Plaintiff's complaints about sexual harassment need not have been the only reason for Defendants' decision to terminate Plaintiff.

FINAL INSTRUCTION NO. 9
BUSINESS JUDGMENT

You may not return a verdict for Plaintiff just because you might disagree with Defendants' decision or believe it to be harsh or unreasonable.

FINAL INSTRUCTION NO. 10
ACTUAL DAMAGES

If you find in favor of the Plaintiff on one or both of her claims, then you must award Plaintiff such sum as you find by the greater weight of the evidence will fairly and justly compensate her for any damages you find she sustained as a direct result of Defendants' actions. I will now explain the damages that may be available to the Plaintiff for her two claims.

1. Sexually Hostile Work Environment Claim. If you find that Plaintiff has proved all of the essential elements of her sexually hostile work environment claim, then you may award the following type of damages:

   a. Past and future emotional pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life.

2. Retaliation Claim. If you find that Plaintiff has proved all of the essential elements of her retaliation claim, then you may award Plaintiff the following types of damages:

   a. The wages, bonuses, and benefits Plaintiff would have earned in her employment with Defendants if she had not been terminated on July 19, 2000, up through the date of your verdict, <u>minus</u> the amount of earnings that Plaintiff received from other employment during that time.

   b. Past and future emotional pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life.

I will now tell you some rules you must follow in determining the amount of damages. Those rules are as follows:

First, throughout your deliberations you must not engage in any speculation, guess, or conjecture. The amount you assess for damages must not exceed the amount caused by the Defendants as proved by the evidence.

Second, a party cannot recover duplicate damages. Do not allow amounts awarded under one item to be included in any amount awarded under another item of damage.

Third, in arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror and agreeing in advance that the average of those estimates will be your verdict.

Fourth, a plaintiff has a duty under the law to mitigate his or her damages–that is, to exercise reasonable diligence under the circumstances to minimize his or her damages. Therefore,

if you find that Defendants have proved by the greater weight of the evidence that Plaintiff failed to take advantage of an employment opportunity that was reasonably available to her, you must reduce her damages by the amount she reasonably could have avoided if she had sought out or taken advantage of such an employment opportunity.

FINAL INSTRUCTION NO. 11
NOMINAL DAMAGES

If you find in favor of the Plaintiff under either of her claims, but you find that Plaintiff's damages have no monetary value, then you must return a verdict for Plaintiff in the nominal amount of $1.00.

FINAL INSTRUCTION NO. 12
DUTY TO DELIBERATE

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

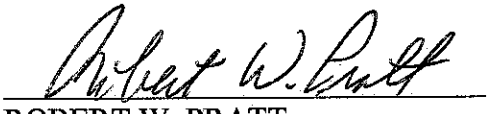
Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case.

Dated this 10th day of July, 2002.



ROBERT W. PRATT
U.S. DISTRICT JUDGE