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DAVENPORT, IOWA
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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

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

DARRYL SMITH,	*	
	*	
Plaintiff,	*	3-99-CV-10032
	*	
v.	*	
	*	
DAVENPORT COMMUNITY SCHOOL DISTRICT,	*	FINAL JURY INSTRUCTIONS
	*	
Defendant.	*	

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INSTRUCTION NO. 1

Ladies and gentlemen: I will take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions - both those I give you now and those I give you later - are equally binding on you and must be followed.

This is a civil case brought by Mr. Darryl Smith, the plaintiff, against the Davenport Community School District, the defendant. Mr. Smith alleges that the School District discriminated against him because of his race, and retaliated against him for testifying against the School District in a separate matter. The School District denies the allegations. It will be your duty to decide from the evidence whether Mr. Smith is entitled to a verdict against the School District. You will decide what the facts are from the evidence presented to you. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, or only part of it, or none of it. In deciding what testimony to believe, you may consider the witnesses' intelligence, their opportunity to have seen or heard the things they testify about, their memories, any motives they may have for testifying a certain way, their manner while testifying, whether they said something different at an earlier time, the general reasonableness of their testimony and the extent to which their testimony is consistent with other evidence that you believe.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

INSTRUCTION NO. 2

I have mentioned the word "evidence." "Evidence" includes the testimony of witnesses; documents and other things received as exhibits; and any facts that have been stipulated - that is, formally agreed to by the parties.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions and comments by lawyers are not evidence.

2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.

4. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I shall tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used. You should also pay particularly close attention to such an instruction, because it may not be available to you in writing later in the jury room.

Finally, some of you may have heard the terms "direct evidence" and "circumstantial evidence." You are instructed that you should not be concerned with those terms, since the law makes no distinction between the weight to be given to direct and circumstantial evidence.

INSTRUCTION NO. 3

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. 4

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it may not be practical for the court reporter to read back lengthy testimony. You must pay close attention to the testimony as it is given.

If you wish, however, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors begin deliberations at the end of the case. And do not let note-taking distract you so that you do not hear other answers by the witness.

When you leave at night, your notes will be secured and not read by anyone.

INSTRUCTION NO. 5

Finally, to insure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case - you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side - even if it is simply to pass the time of day - an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, remember it is because they are not supposed to talk or visit with you either.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it.

Sixth, do not do any research or make any investigation about the case on your own.

Seventh, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

INSTRUCTION NO. 6

The trial will proceed in the following manner:

First, the plaintiff's attorney may make an opening statement. Next, the defendant's attorney may make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The plaintiff will then present evidence and counsel for defendant may cross-examine. Following the plaintiff's case, the defendant may present evidence and plaintiff's counsel may cross-examine.

After presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. The court will instruct you further on the law. After that you will retire to deliberate on your verdict.

INSTRUCTION NO. 7

Neither in these instructions nor in any ruling, action or remark that I make during the course of this trial do I intend to give any opinion or suggestion as to what your verdicts should be.

During this trial I will occasionally ask questions of witnesses in order to bring out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions relate.

INSTRUCTION NO. 8

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider the witness' intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness' memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 9

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claim depends upon that fact. The party who has the burden of proving a fact must prove it by the greater weight of the evidence. To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved.

The greater weight of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

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.

INSTRUCTION NO. 10

This case should be considered by you as an action between persons of equal standing in the community. In this case, the defendant is a school district. All parties are equal before the law, and a school district is entitled to the same fair consideration as you would give an individual.

INSTRUCTION NO. 11

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.

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.

INSTRUCTION NO. 12

The plaintiff and the defendant have stipulated - that is, they have agreed - that certain facts are as counsel have stated. You should treat those facts as having been proved.

INSTRUCTION NO. 13

Your verdict must be for plaintiff Darryl Smith and against defendant Davenport Community School District on plaintiff's race discrimination claim if he proves the following elements by the greater weight of the evidence:

First, the existence of a continuing, widespread, persistent pattern of race discrimination in promotional decisions by defendant's employees;

Second, deliberate indifference to, or tacit authorization of, such conduct by the Davenport School Board after notice to the School Board of the misconduct; and

Third, that the plaintiff was injured by the misconduct.

INSTRUCTION NO. 14

If you find in favor of plaintiff under Instruction 13, then you must award plaintiff such sum as you find by the greater weight 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 as submitted in Instruction 13. Actual damages include any wages or fringe benefits you find plaintiff would have earned in his employment with defendant if he had been promoted on July 30, 1997, *minus* the amount of earnings and benefits received by plaintiff from his employment during that time.

Actual damages may also include amounts for emotional distress, humiliation, mental anguish, and other personal injuries suffered by the plaintiff.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award any damages by way of punishment or through sympathy.

INSTRUCTION NO. 15

Your verdict must be for the plaintiff Darryl Smith on his retaliation claim if he proves each of the following propositions by the greater weight of the evidence:

First, that the defendant took adverse employment action against the plaintiff for having engaged in the protected activity of testifying in the Harlee Miller trial; and

Second, that there is a causal connection between the protected activity and the adverse employment action.

INSTRUCTION NO. 16

Adverse employment actions may include actions less severe than outright discharge, such as reduction of duties, disciplinary actions, and negative reports or reprimands placed in a personnel file.

INSTRUCTION NO. 17

If you find in favor of plaintiff under Instruction 15, then you must award plaintiff such sum as you find by the greater weight 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 as submitted in Instruction 15. Actual damages on plaintiff's retaliation claim include amounts for emotional distress, humiliation, mental anguish, and other personal injuries suffered by the plaintiff.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture, and you must not award any damages by way of punishment or through sympathy.

INSTRUCTION NO. 18

If you find in favor of plaintiff under Instruction 13 or Instruction 15, but you find that plaintiff's damages have no monetary value, then you must return a verdict for plaintiff in the nominal amount of One Dollar ($1.00).

INSTRUCTION NO. 19

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 or bailiff, 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. You will take the verdict form to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

VERDICT

Note: Complete this form by writing in the names required by your verdict.

First, on plaintiff Darryl Smith's race discrimination claim against defendant Davenport Community School District as submitted in Instruction No. 13, we find in favor of

_____

Plaintiff Darryl Smith or Defendant Davenport Community School District

Note: Fill in the following paragraph only if the above finding is in favor of plaintiff. If the above finding is in favor of defendant, go to the second claim on the next page.

We find plaintiff Darryl Smith's damages as defined in Instruction 14 to be $_____ (stating the amount, or if you find that plaintiff's damages have no monetary value, set forth a nominal amount such as $1.00). That amount represents $_____ for wages/benefits and $ _____ for emotional distress.

Second, on plaintiff Darryl Smith's retaliation claim against defendant Davenport Community School District as submitted in Instruction No. 15, we find in favor of

_____

Plaintiff Darryl Smith or Defendant Davenport Community School District

Note: Fill in the following paragraph only if the above finding is in favor of plaintiff. If the above finding is in favor of defendant, have the foreperson sign and date this verdict form because you have finished your deliberations

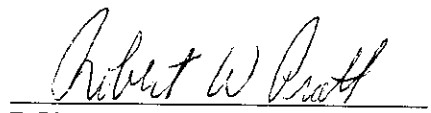
We find plaintiff Darryl Smith's damages as defined in Instruction 17 to be $_____ (stating the amount, or if you find that plaintiff's damages have no monetary value, set forth a nominal amount such as $1.00).

_____
Foreperson

_____
Date

The foregoing instructions were submitted by me to the jury on April 20, 2000.

Dated this 20th day of April, 2000.



ROBERT W. PRATT
U.S. DISTRICT JUDGE