

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

BETH A. BAGLEY,

Plaintiff,

vs.

QUAD CITIES TELEPHONE
ANSWERING SERVICE *aka*
QUAD CITIES TAS, INC.

Defendant.

No. 3:07-cv-0057-JAJ

**FINAL
JURY INSTRUCTIONS**

INSTRUCTION NO. 1
INTRODUCTION / DUTIES / BURDEN

MEMBERS OF THE JURY:

Now that you have heard the evidence, it becomes my duty to give you the instructions of the Court as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find them from the evidence.

Counsel will quite properly refer to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you of course are to be governed by the instructions.

You are not to judge the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have 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; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law, as given in the instructions of the Court.

Whenever a party must prove something, they must do so by the preponderance of the evidence. 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.

The fact that one of the parties in this lawsuit is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 2
EVIDENCE

You shall base your verdict only upon the evidence and these instructions. Evidence is: (1) testimony in person and (2) exhibits received by the Court. Evidence may be direct or circumstantial. 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; and (3) anything you saw or heard about this case outside the courtroom.

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; but, 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, intelligence, memory and knowledge of the facts; (3) whether the witness has given statements in the past that are inconsistent with his or her testimony at trial; and (4) the witness' interest in the trial, their motive, candor, bias and prejudice.

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness' present testimony. If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

INSTRUCTION NO. 3
RETALIATION

In this case, the plaintiff sues the defendant, claiming the defendant terminated her employment in retaliation for plaintiff's complaint of gender discrimination to defendant's corporate headquarters and for filing a charge of gender discrimination against the defendant with the Iowa Civil Rights Commission.

In order to recover on the plaintiff's retaliation claim, she must prove all the elements of her claim by the preponderance of the evidence:

First, that the plaintiff complained of gender discrimination to the defendant's corporate headquarters or filed an Iowa Civil Rights Commission charge against the defendant alleging gender discrimination; and

Second, that the defendant terminated the plaintiff's employment; and

Third, that the plaintiff's complaint of gender discrimination to defendant's corporate headquarters or the plaintiff's filing of a claim against the defendant with the Iowa Civil Rights Commission was a determining factor in the defendant's decision to terminate the plaintiff's employment.

The plaintiff's complaint of gender discrimination or the plaintiff's filing of a claim with the Iowa Civil Rights Commission was a "determining factor" in the decision to terminate plaintiff's employment only if the defendant would not have terminated her employment but for the protected activities of the plaintiff. It does not require that the protected activity was the only reason for the decision made by the defendant. A factor is "determining" if it is the reason that tips the scales decisively one way or the other. You may find plaintiff's protected activity was a determining factor if you find the defendant's stated reason for its decision is not the real reason, but was a pretext to hide retaliation.

If all of the above elements have been proved by the preponderance of the evidence, then the plaintiff is entitled to a verdict in some amount.

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

INSTRUCTION NO. 4
COMPENSATORY DAMAGES

If you find in favor of the plaintiff, then you must award her such sum as you find by the preponderance of the evidence will fairly and justly compensate the plaintiff for any damages you find the plaintiff sustained as a direct result of the defendant's conduct. The plaintiff's claim for compensatory damages includes two distinctive types of damages and you must consider them separately:

First, you must determine the amount of any wages you find the plaintiff would have earned in her employment with defendant if she had not been retaliated against on December 16, 2005, through the date of your verdict, **minus** the amount of earnings that plaintiff received from other employment during that time. This is called "back pay."

Second, you must determine the amount of emotional distress damages sustained in the past as a result of the defendant's wrongful actions. Emotional distress may include anxiety, humiliation, loss of self-esteem and loss of enjoyment of life. The amount you assess for emotional distress damages cannot be measured by any exact or mathematical standard. You must use your sound judgment based on an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice, for or against the parties.

You are also instructed that plaintiff has a duty under law to "mitigate" her damages – that is, to exercise reasonable diligence under the circumstances to minimize her damages. Therefore, if you find that the defendant has proved by a preponderance of the evidence that the plaintiff failed to seek out or take advantage of any 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 or taken advantage of an opportunity.

INSTRUCTION NO. 5
DELIBERATIONS

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 court security officer, 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. Your 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 this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the court security officer that you are ready to return to the courtroom.

DATED this 14th day of November, 2008.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA

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Plaintiff,

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QUAD CITIES TAS, INC.

VERDICT FORM

Defendant.

QUESTION NO. 1. Did the plaintiff prove her claim of retaliation, as described in Instruction No. 3, by the preponderance of the evidence?

YES _____

NO _____

QUESTION NO. 2. If you answered “yes” to Question No. 1, then determine the amount of damages the plaintiff sustained for:

Back Pay \$ _____

Emotional Distress \$ _____

Date: _____

Foreperson

Juror

Juror

Juror

Juror

Juror

Juror

Juror