

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

LARRY G. WYNNE,	)	
	)	
Plaintiff,	)	Civil No. 1-98-CV-10013
	)	
vs.	)	
	)	
IOWA INTERSTATE	)	ORDER
RAILROAD, LTD., a	)	
Delaware Corporation.	)	

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, Larry Wynne, against defendant, Iowa Interstate Railroad, Ltd., for disability and age discrimination in employment, and retaliation. Plaintiff alleges that defendant discriminated against him because of his age and / or disability when it choose not to train him to be an engineer and when it decided not to promote him to such a capacity beginning in September 1992. Plaintiff also alleges that defendant retaliated against him, beginning in March 1996, for filing claims of age and disability discrimination. Defendant denies the allegations. Defendant alleges it had legitimate non-discriminatory reasons for not training him to be an engineer and hiring him in such a capacity.

Iowa Interstate Railroad, Ltd., is a Delaware corporation which is authorized to do business in the State of Iowa.

Plaintiff was employed by defendant from March 23, 1989 through May 17, 1996. The only position plaintiff held was as a trainman / conductor.

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. \_\_\_\_\_

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudice or emotion.

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;

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 testimony from persons described as experts. Persons who have become experts in a field because of their education and experience on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all other evidence in the case.

INSTRUCTION NO. \_\_\_\_\_

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proven by the evidence, you should decide if that omission affects the value of the opinion.

INSTRUCTION NO. \_\_\_\_\_

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

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. \_\_\_\_\_

In this case, the plaintiff is an individual and the defendant, Iowa Interstate Railroad, Ltd., is a corporation. 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. \_\_\_\_\_

A corporation can act only through its officers, employees, or other agents. Any acts or omissions of an officer, employee, or agent of a corporation are held in the law to be the acts or omissions of the corporation, and these acts or omissions are chargeable to and imputed to the corporation. Whenever in these instructions reference is made to acts or omissions of any party to this lawsuit, such reference should be construed to refer to the acts or omissions, if any, of its officers, employees, or agents.

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. \_\_\_\_\_

You have heard evidence claiming certain witnesses made statements before this trial which were inconsistent with what the witness said in this trial. Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

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. \_\_\_\_\_

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. \_\_\_\_\_

It is unlawful under the Americans with Disabilities Act, or “ADA,” to discriminate against an individual who is “disabled” under the Act. You will be asked to determine whether plaintiff proved his claim of disability discrimination and certain issues pertaining to plaintiff’s damages claims. This is **the first claim** you are being asked to determine.

INSTRUCTION NO. \_\_\_\_\_

Your verdict must be for plaintiff and against defendant on plaintiff's claim of disability discrimination if all of the following elements have been proven by the preponderance of the evidence:

- 1) That he was disabled within the meaning of the ADA;
- 2) That he was "qualified," that is, with or without reasonable accommodation he was able to perform the essential functions of his job; and
- 3) That defendant refused to train him and promote him to the engineer position, in whole or in part, because of his disability.

However, your verdict must be for defendant if any of the above elements has not been proven by the preponderance of the evidence, or if it has been proven by the preponderance of the evidence that defendant would have discharged plaintiff regardless of his disability.

INSTRUCTION NO. \_\_\_\_\_

“Disability” is defined under the ADA as:

- 1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; or
- 2) being regarded as having such an impairment.

INSTRUCTION NO. \_\_\_\_\_

“Substantially limited” is defined as :

- 1) Unable to perform a major life activity that the average person in the general population can perform; or
- 2) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity.

Factors to consider in assessing whether an individual is substantially limited in a major life activity are:

- 1) The nature and severity of the impairment;
- 2) The duration or expected duration of the impairment;
- 3) The permanent or long term impact, or the expected long term impact of or resulting from the impairment.

In evaluating whether an individual is substantially limited in a major life activity, one must take into account whether treatments are available to relieve the condition, such as medicine or assistive devices.

INSTRUCTION NO. \_\_\_\_\_

“Major life activities” include caring for one’s self, performing manual tasks, walking, seeing, hearing, breathing, learning, and working. Sitting, standing, lifting, and reaching are also considered major life activities.

The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working. The factors to be considered include: the number and type of jobs from which the impaired individual is disqualified; the geographical area to which the individual has reasonable access; and the individual’s job training, experience and expectations.

INSTRUCTION NO. \_\_\_\_\_

Plaintiff can be found to be “disabled” even if you determine he does not have a physical or mental impairment that substantially limits one or more of his major life activities. You can find him to be “disabled” if you determine that plaintiff has a record of disability, or that defendant perceived plaintiff to be disabled; and, that either plaintiff’s record or defendant’s perception were a motivating factor in defendant’s decision to decline to train or promote plaintiff to the engineer position.

INSTRUCTION NO. \_\_\_\_\_

The term “essential functions” means the fundamental job duties. It does not include the marginal job duties. You should give consideration to, but are obviously not bound by, the employer’s judgment as to what functions of a job are essential.

If plaintiff cannot adequately perform the essential functions of the job he occupied at the time of his disability, even if reasonably accommodated, then you must find in favor of defendant and against plaintiff on plaintiff’s claim of disability discrimination.

INSTRUCTION NO. \_\_\_\_\_

The term “reasonable accommodation” as used in these instructions means modifications to the work place which allow a person with a disability to perform the essential functions of the job or allow a person with a disability to enjoy the same benefits and privileges as an employee without a disability. You must determine whether a suggested accommodation is reasonable in light of all the surrounding circumstances.

INSTRUCTION NO. \_\_\_\_\_

To prove that defendant refused to train him as an engineer, and hire him for this position in whole or in part because of his disability, plaintiff must prove by the preponderance of the evidence that the fact he was disabled was a “motivating factor” in defendant’s adverse action.

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 his disability was the sole or primary motive for the adverse action. There may have been more than one factor in defendant’s decision not to train plaintiff for, or promote plaintiff to, the engineer position.

INSTRUCTION NO. \_\_\_\_\_

Under the Age Discrimination in Employment Act, or “ADEA,” it is unlawful for an employer to discriminate against an individual because of his age when that individual is over 40 years old. You will be asked to determine whether plaintiff proved his claim of age discrimination and certain issues pertaining to plaintiff’s damages claims. This is **the second claim** you are being asked to determine.

INSTRUCTION NO. \_\_\_\_\_

Your verdict must be for plaintiff and against defendant on plaintiff's claim of age discrimination if all of the following elements have been proven by the preponderance of the evidence:

- 1) That defendant denied plaintiff the opportunity for training in defendant's engineer training program, and thereby denied plaintiff the opportunity to be promoted to the position of engineer; and
- 2) That plaintiff's age was a motivating factor in defendant's decision.

However, your verdict must be for defendant if any of the above elements has not been proven by the preponderance of the evidence, or if it has been proven by the preponderance of the evidence that defendant would not have given plaintiff the training to become an engineer, and promoted him to that position upon completion of the training, regardless of his age.

INSTRUCTION NO. \_\_\_\_\_

To prove that defendant refused to train him as an engineer, and hire him for this position in whole or in part because of his age, plaintiff must prove by the preponderance of the evidence that his age was a “motivating factor” in defendant’s adverse action.

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 his age was the sole or primary motive for the adverse action. There may have been more than one factor in defendant’s decision not to train plaintiff for, or promote plaintiff to, the engineer position.

INSTRUCTION NO. \_\_\_\_\_

**The third claim** by plaintiff which you must determine is for retaliation. Plaintiff alleges that after he filed an administrative complaint alleging that defendant was discriminating against him on the basis of his disability and age, defendant then retaliated against him.

It is unlawful under the Age Discrimination in Employment Act and the Americans with Disabilities Act to discriminate against an employee because he filed a complaint of either age or disability discrimination, or otherwise participated in protected activities.

INSTRUCTION NO. \_\_\_\_\_

Your verdict must be for plaintiff and against defendant on plaintiff's claim of retaliation if all of the following elements have been proven by the preponderance of the evidence:

1) That plaintiff filed a complaint with the Iowa Civil Rights Commission or the Equal Employment Opportunity Commission, or otherwise participated in protected activities; and

2) That plaintiff's protected activities were a motivating factor in defendant's decision not to train plaintiff for, or promote plaintiff to, the engineer position.

However, your verdict must be for defendant if any of the above elements has not been proven by the preponderance of the evidence, or if it has been proven by the preponderance of the evidence that defendant would not have given plaintiff the training to become an engineer, and promoted him to that position upon completion of the training, regardless of his age.

INSTRUCTION NO. \_\_\_\_\_

To prove that defendant refused to train him as an engineer, and hire him for this position in whole or in part because of retaliation for plaintiff's participation in protected activities, plaintiff must prove by the preponderance of the evidence that plaintiff's participation in the protected activities was a "motivating factor" in defendant's adverse action.

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 his participation in protected activities was the sole or primary motive for the adverse action. There may have been more than one factor in defendant's decision not to train plaintiff for, or promote plaintiff to, the engineer position.

INSTRUCTION NO. \_\_\_\_\_

If you find the plaintiff Larry Wynne has proved either:

Each of the elements of his claim for disability discrimination, as explained in Instruction Nos. \_\_\_\_ through \_\_\_\_\_, AND / OR

Each of the elements of his claim for age discrimination, as explained in Instruction Nos. \_\_\_\_ through \_\_\_\_\_, AND / OR

Each of the elements of his claim for retaliation, as explained in Instruction Nos. \_\_\_\_ through \_\_\_\_\_,

then you shall decide what amount will reasonably compensate the plaintiff for his actual damages, as proven by the preponderance of the evidence:

1) Backpay. You may award as actual damages any wages and fringe benefits you find plaintiff would have earned in his employment with defendant as an engineer if he had been trained and promoted as an engineer, minus the amount of earnings and benefits plaintiff received from other employment during that time. However, unemployment compensation should not be deducted from this amount.

You are also instructed that plaintiff has a duty under the law to “mitigate” his damages – that is, to exercise reasonable diligence under the circumstances to minimize his 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 him, you must reduce his damages by the amount of the

wages and fringe benefits he reasonably would have earned if he had sought out or taken advantage of such an opportunity.

2) Emotional Distress. You may also award as actual damages compensation for past and future emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life. A past loss is one occurring before the trial.

The amount you assess for these items cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice for or against the parties. The amount you assess must not exceed the amount caused by the defendant's unlawful discrimination or retaliation as proven by the evidence.

INSTRUCTION NO. \_\_\_\_\_

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

INSTRUCTION NO. \_\_\_\_\_

In arriving at an amount of damages you cannot arrive at a figure by taking down the estimate of each juror as to an amount of damages and agreeing in advance that the average of those estimates shall be your amount of damages.

INSTRUCTION NO. \_\_\_\_\_

In addition to actual damages, the law permits the jury under certain circumstances to award the injured person punitive damages in order to punish the defendant and to serve as an example or warning to others not to engage in such conduct.

If you find in favor of plaintiff and against defendant on any or all of plaintiff's three claims, and if you find by the preponderance of the evidence that defendant acted with malice or with reckless indifference to either:

plaintiff's right not to be discriminated against on the basis of his disability, and /or

plaintiff's right not to be discriminated against on the basis of his age, and / or

plaintiff's right not to be retaliated against for engaging in protected activities

then, in addition to any other damages to which you find plaintiff entitled, you may but are not required to, award plaintiff an additional amount as punitive damages. Such an award of punitive damages should only be made if you find it is appropriate to punish the defendant or deter the defendant and others from like conduct in the future.

However, when a company has made good faith efforts to comply with civil rights laws, it cannot be required to pay punitive damages for the discriminatory actions of managers who violate company policy.

Whether to award plaintiff punitive damages and the amount of those damages are within your sound discretion.

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 interrogatories that are 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.

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 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 several questions. After you have agreed and appropriately signed the interrogatories in accordance with the directions contained therein, inform the jury officer outside the room.

Dated this \_\_\_\_\_ day of September, 2000.

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RONALD E. LONGSTAFF, JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA