ORIGINAL

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

DEANNA CLAUSEN, Plaintiff, v. CITY OF DES MOINES, IOWA, Defendant.	*	4-98-CV-90229 STATEMENT OF THE ISSUES AND INSTRUCTIONS OF THE COURT

FILED
DES MOINES, IOWA
00 MAY 18 AM 10:15
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

Members of the Jury:

Plaintiff Deanna Clausen sues defendant City of Des Moines, Iowa, seeking to recover damages as a result of claimed sexual harassment and claimed discrimination on the basis of gender. Plaintiff, an employee of the defendant City alleges in her sexual harassment claim that while she was employed in the Traffic and Transportation Department, she was subjected to unwelcome and inappropriate sexual comments, sexually graphic pictures, and sexual innuendo by her co-workers which created a hostile work environment. Plaintiff alleges in her discriminatory demotion claim that she was discriminated against in that she was demoted from her position of Traffic Signal Maintenance Worker because of her gender.

Defendant denies those allegations. With respect to plaintiff's sexual harassment claim, defendant claims that the offensive behavior of plaintiff's co-workers, if it occurred at all, consisted of only isolated, sporadic incidents which do not create a hostile work environment. With respect to plaintiff's discriminatory demotion claim, defendant claims that plaintiff was not qualified for the position of Traffic Signal Maintenance Worker in the Traffic and Transportation Department because of lifting restrictions imposed upon her by her own physician, and that her inability to perform her job, and not her gender, was the reason for her demotion.

The foregoing is just a brief summary of the claims of the parties. You are now instructed as follows:

Pleading # 75.

INSTRUCTION NO. 1

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. 2

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 verdicts should be.

INSTRUCTION NO. 3

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. 4

In these instructions you are told that your verdicts depend on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claim or defense depends on 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.

INSTRUCTION NO. 5

The defendant City of Des Moines is a corporation. A corporation acts only through its agents or employees and any agent or employee of a corporation may bind the corporation by acts and statements made while acting within the scope of the authority delegated to the agent by the corporation, or within the scope of his or her duties as an employee of the corporation.

INSTRUCTION NO. 6

Your verdict must be for plaintiff Deanna Clausen and against defendant City of Des Moines on plaintiff's claim of sexual harassment if all of the following elements have been proved by the greater weight of the evidence:

First, plaintiff was subjected to sexually inappropriate or vulgar comments, sexually graphic pictures, sexual innuendo, and was ostracized by her co-workers; and

Second, such conduct was unwelcome; and

Third, such conduct was based on plaintiff's gender; and

Fourth, 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; and

Fifth, at the time such conduct occurred and as a result of such conduct, plaintiff believed her work environment to be hostile or abusive; and

Sixth, defendant knew or should have known of the sexual harassment of plaintiff; and

Seventh, defendant 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 defendant and you need not proceed further in considering this claim.

INSTRUCTION NO. 7

In determining whether a reasonable person in the plaintiff's circumstances would find the plaintiff's work environment to be hostile or abusive as discussed in Instruction 6, 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.

INSTRUCTION NO. 8

If you find in favor of plaintiff under Instruction 6, 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 sexual harassment by her co-workers.

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

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

INSTRUCTION NO. 9

If you find in favor of plaintiff under Instruction 6, 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. 10

Your verdict must be for plaintiff and against defendant on plaintiff's discriminatory demotion claim if all of the following elements have been proved by the greater weight of the evidence:

First, defendant demoted plaintiff; and

Second, plaintiff's gender was a motivating factor in defendant's decision.

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

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

INSTRUCTION NO. 11

If you find in favor of plaintiff under Instruction 10, then you must answer the following question: Has it been proved by the greater weight of the evidence that defendant would have demoted plaintiff regardless of her gender?

This question is in Verdict Form #4 in the attached verdict forms.

If you found in favor of the defendant under Instruction 10, then you need not use Verdict Forms # 4 & #5 in the attached verdict forms, and you need not proceed further in considering this claim.

INSTRUCTION NO. 12

If you find in favor of plaintiff under Instruction 10, and you answered "no" in response to the question posed in Instruction 11, 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 the defendant's decision to demote plaintiff. Plaintiff's claim for damages includes two distinct types of damages and you must consider them separately:

First, you must determine the amount of any wages and fringe benefits plaintiff would have earned in her employment with defendant if she had not been demoted in May 1993 through the date of your verdict, *minus* the amount of earnings and benefits that plaintiff received from other employment during that time.

Second, you must determine the amount of any other damages sustained by plaintiff, such as physical and emotional pain and suffering and reasonable and necessary medical expenses. You must enter separate amounts for each type of damages in the verdict form and must not include the same items in more than one category.

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

INSTRUCTION NO. 13

If you find in favor of plaintiff under Instruction 10, and if you answer "no" in response to the question posed in Instruction 11, 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. 14

The amount you assess for physical and mental pain and suffering, if any, 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 for any item of damages, if any, must not exceed the amount caused by the defendant as proved by the evidence.

INSTRUCTION NO. 15

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

INSTRUCTION NO. 16

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

Finally, the verdict forms are simply the written notice of the decision that you reach in this case. You will take the verdict forms 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 security officer that you are ready to return to the courtroom.

INSTRUCTION NO. 17

Submitted with these instructions are five verdict forms for your use. Verdict Forms #1 & #2 pertain to plaintiff's sexual harassment claim. You must use Verdict Form #1. Use Verdict Form #2 by inserting dollar amounts on the appropriate lines only in the event you found for plaintiff in Verdict Form #1. Verdict Forms #3 - #5 pertain to plaintiff's discriminatory demotion claim. You must use Verdict Form #3. Use Verdict Form #4 if, and only if, you have found for plaintiff in Verdict Form #3. Use Verdict Form #5 if, and only if, you have answered "no" in Verdict Form #4. Fill in the appropriate dollar amounts in Verdict Form #5 if, and only if, you have found for plaintiff in Verdict Form #3 and answered "no" in Verdict Form #4.

Your verdicts must be unanimous–that is, all of you must agree on the verdicts.

When you have reached your verdicts notify the security officer.

Robert W. Pratt

ROBERT W. PRATT
United States District Court Judge