

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

KENNETH REBER,)
)
 Plaintiff,) CIVIL NO. 4-98-CV-10487
)
 vs.)
) INSTRUCTIONS TO THE JURY
 OTTUMWA COMMUNITY SCHOOL DISTRICT,))
)
 Defendant.)

MEMBERS OF THE JURY, THE COURT NOW GIVES YOU THE
FOLLOWING INSTRUCTIONS:

This is a civil case involving claims of disability discrimination and retaliation by plaintiff Ken Reber against his employer, defendant Ottumwa Community School District. Mr. Reber was continuously employed as a full-time custodian by the District from November 17, 1994, through his resignation on October 18, 1999.

Mr. Reber alleges that he was disabled, and that Ottumwa Community School District discriminated against him because of his disability by taking various actions against him during the course of his employment. He also alleges that the District retaliated against him for objecting to discrimination and for pursuing his civil rights claims. Mr. Reber seeks money damages on his discrimination and retaliation claims.

Ottumwa Community School District denies both of Mr. Reber's claims. The District contends that Reber was not disabled

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and denies that its employees ever retaliated against him. The defendant District also contends that it made a good faith effort and consulted with Mr. Reber to accommodate his claimed physical impairments. The District further denies that any conduct by it caused damages to Mr. Reber.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

INSTRUCTION NO. _____

Members of the jury, the instructions I gave at the beginning of 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 the trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed. In considering the instructions, you will attach no importance or significance whatever to the order in which they are given.

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.

You must follow the instructions now given you

regardless of your opinion of what the law ought to be. You
need not be concerned with the wisdom of any rule of law.

Finally, as judges of the facts your duty is to decide all fact questions. In doing so, do not be influenced by any personal likes or dislikes, sympathy, bias, prejudice or emotions.

INSTRUCTION NO. _____

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person;
2. Exhibits received by the Court.
3. Stipulations which are agreements between the parties. If the parties stipulate to a fact, you should treat that fact as having been proved.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

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 this 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, 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, age, intelligence, memory, and knowledge of the facts;
3. The witness' interest in the trial, their motive, candor, bias, and prejudice; and
4. Whether the witness said something different at an earlier time.

INSTRUCTION NO. _____

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 or preponderance of the evidence. To prove something by the greater weight or preponderance 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 or preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

INSTRUCTION NO. _____

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons stand equal before the law, and are to be dealt with as equals in a court of law.

INSTRUCTION NO. _____

A school district acts only through its agents or employees and any agent or employee of a school district may bind the school district by acts and statements made while acting within the scope of the authority delegated to the agent by the school district, or within the scope of his or her duties as an employee of the school district.

INSTRUCTION NO. _____

Plaintiff Kenneth Reber asserts two claims against defendant: (1) a failure to provide reasonable accommodations required by the Americans with Disabilities Act and Iowa law (which will be collectively referred to in these instructions as the Americans with Disabilities Act claim) and (2) retaliation for engaging in protected activity. You will consider each claim separately.

The Americans with Disabilities Act and Iowa law require an employer to provide reasonable accommodations to a person with a disability. It is unlawful under both federal and state law for an employer to retaliate against an employee because the employee engages in protected activity such as opposition to discrimination, filing a civil rights complaint or lawsuit.

INSTRUCTION NO. _____

On plaintiff's Americans with Disabilities Act claim, plaintiff must prove all of the following elements by the preponderance of the evidence:

1. Plaintiff had physical impairment(s) of his back, knee and/or foot; and

2. Such impairment(s) substantially limited a major life activity of plaintiff; and

3. Defendant knew of plaintiff's impairment(s); and

4. Plaintiff could have performed the essential functions of the custodian job in which he was employed or which he requested if plaintiff had been provided accommodations; and

5. Providing accommodations would have been reasonable; and

6. Defendant failed to provide any reasonable accommodations.

If any of the above elements has not been proved by the preponderance of the evidence, then your verdict must be for defendant. If plaintiff has proved all of the above elements then you shall consider defendant's defense of good faith effort and consultation as explained in Instruction No. _____.

INSTRUCTION NO. _____

A person with a disability is a person with a physical impairment which substantially limits one or more major life activities as explained in these instructions.

The phrase "substantially limited" as used in these instructions means an individual is unable to, or significantly restricted in, the ability to perform a major life activity. "Major life activity" means functions such as caring for oneself, performing manual tasks, walking, or working.

In determining whether the plaintiff's impairment substantially limits a major life activity of plaintiff, you should compare the plaintiff's abilities with those of the average person. In doing so, you should also consider: (1) the nature and severity of the impairment; (2) how long the impairment will last or is expected to last; and (3) the permanent or long-term impact, or expected impact, of the impairment. Impairments with little or no long-term impact are not sufficient.

A person is substantially limited in the major life activity of working if the person is significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person with comparable training, skills and abilities. Working does

not mean working at a particular job of the person's choice.

PAGE TWO OF INSTRUCTION NO. _____

It is not the name of an impairment or a condition that matters, but rather the effect of an impairment or condition on the life of a particular person.

INSTRUCTION NO. _____

The term "essential functions" means the fundamental job duties of the employment position the plaintiff holds or for which the plaintiff has applied. The term "essential functions" does not include the marginal functions of the position.

In determining whether a job function is essential, you should consider the following factors to the extent shown in the evidence: (1) The employer's judgment as to which functions of the job are essential; (2) written job descriptions; (3) the amount of time spent on the job performing the function in question; (4) consequences of not requiring the person to perform the function; (5) the terms of a collective bargaining agreement; (6) the work experience of persons who have held the job; (7) the current work experience of persons in similar jobs; (8) whether the reason the position exists is to perform the function; (9) whether there are a limited number of employees available among whom the performance of the function can be distributed; (10) whether the function is highly specialized and the individual in the position was hired for his or her expertise or ability to perform the function.

INSTRUCTION NO. _____

An employer does not have a duty to provide all accommodations requested by an employee with a disability. The duty is to provide "reasonable accommodations". The term "reasonable accommodations" as used in these instructions means modifications to the work environment, or to the manner or circumstances under which the position is customarily performed, 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 a similarly situated employee without a disability. A reasonable accommodation may include part-time or modified work schedules or reassignment to a vacant position. You must determine whether a suggested accommodation is reasonable in light of all the surrounding circumstances.

INSTRUCTION NO. _____

If you find in favor of plaintiff under Instruction ____, then you must answer the following question in the verdict form(s): Has it been proved by a preponderance of the evidence that the defendant made a good faith effort and consulted with the plaintiff to identify and make a reasonable accommodation? Defendant has the burden to prove this proposition. If you answer "yes," you may not award plaintiff any damages for back pay or mental or emotional pain and suffering described in Instruction No. ____, but may award nominal damages described in Instruction No. _____. This instruction pertains only to plaintiff's Americans with Disabilities Act claim.

INSTRUCTION NO. _____

In order to prevail on his claim of retaliation, plaintiff must prove all of the following elements by a preponderance of the evidence:

1. That plaintiff was engaged in a statutorily protected activity;
2. That plaintiff received adverse employment action;
3. That plaintiff's activity was a motivating factor in the adverse actions by defendant at issue in this case; and
4. Plaintiff was damaged as a result.

If any of these elements has not been proven by a preponderance of the evidence, your verdict must be for defendant. If plaintiff has proven these elements, then proceed to consider the question of damages.

INSTRUCTION NO. _____

A "statutorily protected activity" means a person has opposed any practice made unlawful by federal or state employment laws, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under those laws. The filing of a complaint with the Ottumwa Human Rights Commission or the Iowa Civil Rights Commission is a statutorily protected activity.

"Adverse employment action" means an action which has serious employment consequences. It includes, but is not limited to, such employment actions as discharge or termination, demotion, suspension, reduction of salary and/or benefits, negative personnel reports, or other actions which adversely affect or undermine an employee's position.

INSTRUCTION NO. _____

You may not return a verdict for plaintiff just because you might disagree with defendant's decisions or policies, or believe them to be harsh or unreasonable. An employer is entitled to make its own subjective personnel decisions and can make employment decisions for any reason that does not violate the law.

INSTRUCTION NO. _____

If you find in favor of plaintiff under either of his claims, then you must award plaintiff such sum as you find by the preponderance of the evidence will fairly and justly compensate him for any damages you find he sustained as a direct result of the defendant's actions referenced in the claim or claims in which you find in his favor. Plaintiff's claim for damages includes two types of damages, and you must consider them separately.

1. You must determine the amount of any wages and benefits plaintiff would have earned in his employment with defendant if his employment had not ceased on October 18, 1999, through the date of your verdict, minus the amount of earnings and benefits that plaintiff received from other employment during that time. This is called "back pay."

You have heard evidence about plaintiff's alleged loss of earning capacity in the future. The Court has determined that this presents an issue of "front pay" which under the law is for the Court to decide based on your answers to the questions in the verdict forms. Therefore, you will not be asked to determine the amount of any lost earning capacity or front pay.

2. You must determine the amount of mental or emotional pain and suffering sustained by plaintiff in the past

and future.

Mental or emotional pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

The amount, if any, you award for past and future emotional pain and suffering cannot be measured by an exact or mathematical standard; the determination of the amount must rest in the sound discretion of the jury. Such discretion must not be exercised arbitrarily or out of passion or sympathy or prejudice for or against the parties, but must be based on a fair, intelligent, dispassionate and impartial consideration of the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. _____

The parties dispute the circumstances under which plaintiff left his employment on October 18, 1999. Defendant contends that plaintiff voluntarily quit. If he voluntarily quit, he would not be entitled to an award of damages resulting from the termination of his employment. Plaintiff contends that as a result of defendant's failure to provide reasonable accommodations and retaliatory actions he was "constructively discharged." If he was constructively discharged, an award of back pay and other damages for the discharge is permissible.

A constructive discharge arises when an employer causes an employee's work conditions to be so difficult or unpleasant that a reasonable employee in a similar position would feel compelled to resign. An employee must, however, give his employer a reasonable opportunity to work out a problem.

In order for plaintiff to recover damages against the defendant resulting from a constructive discharge, he must prove by a preponderance of the evidence the following:

1. Defendant made plaintiff's working conditions intolerable, and;
2. That the intolerable working conditions were deliberately created by defendant with the intention of forcing plaintiff to quit; or plaintiff's decision to quit was a reasonably foreseeable consequence of the defendant's actions.

If either of these elements has not been proven by a preponderance of the evidence, plaintiff is not entitled to recover back pay or other damages resulting from the termination of his employment.

INSTRUCTION NO. _____

If you find in favor of 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 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. _____

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 or advocates. You are judges--judges of the facts. Your sole interest is to ascertain the truth and do justice.

INSTRUCTION NO. _____

The verdict must represent the considered judgment of each juror agreeing to it. Your verdict must be unanimous.

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.

Submitted to you with these instructions is the special verdict form. After you have agreed and appropriately signed the interrogatories in accordance with the directions contained therein, inform the jury officer outside the room. You will have the verdict form signed only by one of your number whom you will have selected as your foreperson and return with it into court.

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Dated this _____ day of April, 2000.

ROSS A. WALTERS
CHIEF UNITED STATES MAGISTRATE JUDGE