

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

JOHN KARTHEISER, )  
 )  
 Plaintiff, ) CIVIL NO. 4-98-cv-30339  
 )  
 vs. ) INSTRUCTIONS TO THE JURY  
 )  
 AMERICAN NATIONAL CAN COMPANY),  
 )  
 Defendant. )

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

This is a civil case brought by plaintiff John Kartheiser against defendant American National Can Company. Plaintiff claims that under a supplemental compensation policy he is entitled to overtime pay which defendant has not paid. Plaintiff claims that defendant's failure to pay the additional compensation was intentional and that he is entitled to liquidated damages under the Iowa Wage Payment Collection Law.

Defendant disputes these allegations and claims that plaintiff was not entitled to the additional compensation which he seeks. Defendant further disputes plaintiff's claim that he is entitled to liquidated damages.

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 or by deposition;
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.

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. \_\_\_\_\_**

On plaintiff's claim under the Iowa Wage Payment Collection Law, your verdict must be for plaintiff and against defendant if all the following elements have been proved by the preponderance of the evidence.

1. Plaintiff was due wages in the form of supplemental compensation under an agreement with defendant or under a policy of the defendant.

2. Defendant failed to pay the supplemental compensation.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to recover on his Iowa Wage Payment claim. If the plaintiff has proved all of these propositions, then plaintiff is entitled to recover the amount of wages you find to be due.

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

In addition to wages he claims are due, plaintiff seeks an additional amount as liquidated damages.

In order to be entitled to liquidated damages, plaintiff must prove defendant intentionally failed to pay supplemental compensation due to plaintiff. Intent may be proved by showing defendant failed to pay the supplemental compensation knowing it was due. On the other hand, there is no intent if there was a good faith dispute between plaintiff and defendant over whether plaintiff is entitled to further compensation.

You will be asked to answer the following question on the special verdict form: Has plaintiff shown defendant intentionally failed to pay supplemental compensation due to him? The amount of liquidated damages is determined by statute, therefore, you will not be asked to determine the amount of liquidated damages.

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

The issue for you to determine is whether plaintiff is entitled to any overtime compensation under defendant's policies, not whether you disagree with those policies or believe them to be unfair. An employer has a right to set its own compensation policies and to make reasonable decisions concerning their implementation.

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

If you find in favor of plaintiff on his claim, then you must award plaintiff such sum as you find by the preponderance of the evidence represents the amount of unpaid supplemental compensation for overtime hours owed to plaintiff. Under the law plaintiff may recover such compensation only for the period from November 22, 1994 through August 17, 1996 when he resigned.

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

In determining the amount of any compensation owed plaintiff, you cannot arrive at a figure by taking down the estimate of each juror and agreeing in advance that the average of those estimates shall be the amount you find.

**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.

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

The verdict must represent the considered judgment of each juror. 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 verdict form in accordance with the directions contained therein, inform the jury officer outside the room. You will have the verdict signed only by one of your number whom you will have selected as your foreperson and return with it into court.

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

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ROSS A. WALTERS  
CHIEF UNITED STATES MAGISTRATE JUDGE