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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

JUN 17 2005

JUDGE MATTHEW F. KENNELLY
UNITED STATES DISTRICT COURT

DELORES AMMONS-LEWIS,

Plaintiff,

vs.

METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO,

Defendant.

Case No. 03 C 885

INSTRUCTIONS GIVEN TO THE JURY

Date: June 20, 2005

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

In this case, one of the defendants is a governmental entity. A governmental entity is entitled to the same fair consideration that you would give any individual person.

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

During the trial, certain testimony was presented to you by the reading of a deposition. You should give this testimony the same consideration you would give it had the witness appeared and testified here in court.

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we sometimes look at one fact and conclude from it that another fact exists. In law we call this "inference." A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

You may have heard the phrases "direct evidence" and "circumstantial evidence." Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a the witness who says, "I was outside a minute ago and I saw it raining." Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

You are to consider both direct and circumstantial evidence. The law allows you to give equal weight to both types of evidence, but it is up to you to decide how much weight to give to any evidence in the case.

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

A witness may be discredited or “impeached” by contradictory evidence, by, among other things, a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something that is inconsistent with the witness’ testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness’s testimony in whole, in part, or not at all, and how much weight to give to that testimony.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

You have heard a witness give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

When I say a particular party must prove something by "a preponderance of the evidence," or when I use the expression "if you find," or "if you decide," this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

The plaintiff in this case is Delores Ammons-Lewis. I will refer to the plaintiff as “Ammons-Lewis.”

The defendant in this case is the Metropolitan Water Reclamation District of Greater Chicago. I will refer to the defendant as “the District.”

The claims

In this case, Ammons-Lewis claims that she was subjected to a hostile work environment based on her sex. To prevail, Ammons-Lewis must first prove the following five things by a preponderance of the evidence. In determining whether Ammons-Lewis has proved these things, you are to consider *both* the conduct of Ammons-Lewis' co-workers and her supervisors.

1. Ammons-Lewis was subjected to pornography, sexually-oriented drawings, sexually-oriented verbal comments, and physical contact that had a sexual character or purpose.
2. The conduct was unwelcome.
3. The conduct occurred because Ammons-Lewis was a woman.
4. At the time the conduct occurred, Ammons-Lewis believed that the conduct made her work environment hostile or abusive. To determine this, you must decide whether Ammons-Lewis she believed that the conduct altered her working conditions, in other words, whether she believed that it had an adverse impact on her and made it more difficult to do her job. This standard can be met even where job performance has not been tangibly affected.
5. The conduct was sufficiently severe or pervasive that a reasonable person in Ammons-Lewis's position would find her work environment to be hostile or abusive. To determine this, you must look at all the circumstances. These circumstances may include the frequency of the conduct; its severity; its duration; whether it was physically threatening or humiliating; and whether it unreasonably interfered with Ammons-Lewis. No single factor is required in order to find a work environment hostile or abusive.

Conduct that amounts only to the ordinary tribulations of the workplace, such as occasional horseplay, sexual flirtation, sporadic or occasional use of abusive language, gender

related jokes, and occasional teasing, does not constitute an abusive or hostile environment. You should consider all the circumstances and the social context in which the conduct occurred. Only conduct amounting to a material change in the terms and conditions of employment amounts to an abusive or hostile environment.

If you find that Ammons-Lewis has failed to prove any one of these five things by a preponderance of the evidence, then you must find in favor of the District on Ammons-Lewis's claims.

If, on the other hand, you find that Ammons-Lewis has proven each of these five things by a preponderance of the evidence, then you must go on to consider the question of whether the District is liable for the conduct of Ammons-Lewis's co-workers and/or supervisors. This question is addressed in the following pages of these instructions.

Employer liability - general

An employer's liability for a sexually hostile work environment depends on whether the person(s) who did the acts that created the hostile work environment were co-workers or supervisors of the plaintiff. For this reason, I will give you separate instructions relating to conduct by co-workers and conduct by supervisors. You may find the District liable on one, both, or none of these theories.

Ammons-Lewis contends that she was subjected to a sexually hostile work environment by co-workers and by Stephen Kelly, who she contends had supervisory responsibility over her. In this regard, you must decide whether Kelly had the authority to directly affect the terms and conditions of Ammons-Lewis's employment.

If you find that Ammons-Lewis has proved by a preponderance of the evidence that Kelly had supervisory responsibility over her, then you should consider the District's liability for Kelly's alleged conduct under the instruction entitled "Employer liability for supervisor conduct" (page 22), and should consider the District's liability for the alleged conduct of Ammons-Lewis's co-workers under the instruction entitled "Employer liability for co-worker conduct" (page 21).

If, on the other hand, you find that Ammons-Lewis has not proved by a preponderance of the evidence that Kelly had supervisory responsibility over her, then you should consider the District's liability for Kelly's alleged conduct, together with the alleged conduct of Ammons-Lewis's co-workers, under the instruction entitled "Employer liability for co-worker conduct" (page 21).

Employer liability for co-worker conduct

To hold the District responsible for harassment by Ammons-Lewis's co-workers, Ammons-Lewis must prove the following two things by a preponderance of the evidence:

1. The District knew or should have known about the conduct of Ammons-Lewis's co-workers. In determining whether the District should have known about the conduct of Ammons-Lewis's co-workers, an employer's knowledge may be presumed if the work environment is permeated with pervasive harassment.
2. The District did not take prompt and reasonable steps to correct the situation and prevent harassment from recurring. To determine this, you may consider, among other things, whether the District had a sexual harassment policy; whether it enforced that policy; whether it trained employees about sexual harassment; whether it investigated claims of sexual harassment; and whether it disciplined employees who engaged in sexual harassment.

If you find that Ammons-Lewis has proved each of these things by a preponderance of the evidence, then you must find for Ammons-Lewis on her claim relating to co-worker conduct.

If, however, you find that Ammons-Lewis has failed to prove any one of these things by a preponderance of the evidence, then you must find for the District on the claim relating to co-worker conduct.

Employer liability for supervisor conduct

Ammons-Lewis also claims that she was subjected to sexual harassment by a supervisor, Stephen Kelly. You should consider the instruction that begins on this page only if you find that Ammons-Lewis has proved by a preponderance of the evidence that Kelly had supervisory responsibility over her, as discussed on page 20 of these instructions.

If you find that Ammons-Lewis has failed to prove by a preponderance of the evidence that she was subjected to sexual harassment by Kelly, then you must find for the District on the claim relating to supervisor conduct. If, on the other hand, you find that Ammons-Lewis has proved by a preponderance of the evidence that she was subjected to sexual harassment by Kelly, then you must go on to consider whether the District is responsible for the Kelly's conduct.

To determine whether the District is responsible for harassment of Ammons-Lewis by Kelly, you must consider whether the District has proved the following two things by a preponderance of the evidence.

1. The District exercised reasonable care to prevent and correct sexually harassing conduct by Kelly in the workplace. To determine this, you may consider, among other things, whether the District had a sexual harassment policy; whether it enforced that policy; whether it trained employees about sexual harassment; whether it investigated claims of sexual harassment; and whether it disciplined employees who engaged in sexual harassment.

2. Ammons-Lewis unreasonably failed to take advantage of opportunities provided by the District to prevent or correct harassment by Kelly, or otherwise avoid harm. To determine this, you may consider whether Ammons-Lewis failed to use any complaint procedures provided by the District, and if so, whether the failure was unreasonable under the circumstances.

If you find that the District has proved each of these things by a preponderance of the evidence, then you must find for the District on the claim of supervisor conduct.

If, on the other hand, you find that the District has failed to prove either one of these things by a preponderance of the evidence, then you must find for Ammons-Lewis on the claim of supervisor conduct.

If you find that Ammons-Lewis has proved either of her claims, then you must determine what amount of damages, if any, Ammons-Lewis is entitled to recover.

If you find that Ammons-Lewis has failed to prove any of her claims, then you will not consider the question of damages.

You may award Ammons-Lewis compensatory damages only for injuries that she has proved by a preponderance of the evidence were directly caused by a hostile work environment. Compensatory damages are not allowed as a punishment and cannot be imposed or increased to penalize the defendant.

Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

You should consider only the following types of compensatory damages, and no others:

1. Any mental and emotional pain and suffering, inconvenience, humiliation, and loss of enjoyment of life that Ammons-Lewis has experienced and is reasonably certain to experience in the future. No evidence of the dollar value of these matters has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering, inconvenience, humiliation, or loss of enjoyment of life. You are to determine an amount that will fairly compensate Ammons-Lewis for any injury she has sustained.
2. The reasonable value of medical care that Ammons-Lewis reasonably needed and actually received.

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

A form of verdict has been prepared for you.

[Read the verdict form.]

Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in and date the form, and each of you will sign it.

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

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

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

Verdict Form

We, the jury, find as follows on Delores Ammons-Lewis' claims against the Metropolitan Water Reclamation District of Greater Chicago:

Claim 1 - hostile work environment / co-workers:

_____ for Ammons-Lewis

_____ for the District

Did Stephen Kelly have supervisory responsibility over Delores Ammons-Lewis (as defined on page 20 of these instructions)?

_____ yes

_____ no

If your answer is yes, then consider claim 2. If your answer is no, do not consider claim 2.

Claim 2 - hostile work environment / supervisors:

_____ for Ammons-Lewis

_____ for the District

Damages (to be considered only if you found in favor of Ammons-Lewis on one or both of her claims):

\$ _____ Mental and emotional pain and suffering, inconvenience, humiliation, and loss of enjoyment of life

\$ _____ Medical expenses

Presiding juror

Date: _____