

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

ROBERT L. BUGGS,
Plaintiff,

v.

BUFFINGTON HARBOR
RIVERBOATS, L.L.C.,
Defendant.

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No. 2:01-CV-416 PS

COURT'S FINAL JURY INSTRUCTIONS

Date: _____

Philip P. Simon, Judge
United States District Court

Court Instruction No. 1

Now that you have heard all of the evidence and the argument of counsel, it becomes my duty to give you instructions concerning the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply the law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. You are not to be concerned with the wisdom of any rule of law stated by me.

Neither by these instructions, nor by any ruling or remark I have made, do I mean to indicate any opinion as to the facts or as to what your verdict should be. You are the sole judges of the facts.

Court Instruction No. 2

Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the court, just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence in this case.

In deciding the facts of this case, you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the court, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to the same fair trial at your hands, and a corporate entity such as defendant Buffington Harbor is entitled to the same fair trial as an individual. The law respects all persons equally; all persons, including Robert Buggs and Buffington Harbor, stand equal before the law and are to be dealt with as equals in a court of justice.

Court Instruction No. 3

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term “evidence” includes sworn testimony of the witnesses, the exhibits admitted into evidence, evidence judicially noticed, and any stipulated facts. A stipulation is an agreed statement of facts between the parties, and you should regard such agreed statements as true. Any evidence to which I sustained an objection or that I ordered stricken must of course be disregarded. The only issues to be determined by you are those which I will set out in detail later in these instructions.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their respective sides of the case, and in so doing to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding on you.

So while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the testimony and evidence in the case.

In determining any fact in issue you may consider the testimony of all witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

Court Instruction No. 4

There are two types of evidence: direct and circumstantial. Direct evidence is the direct proof of a fact, such as the testimony of an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances that tend to show whether or not an asserted fact is true. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Court Instruction No. 5

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to his or her testimony. In weighing the testimony of a witness you should consider: the witness’s relationship to any of the parties; the witness’s interest, if any, in the outcome of the case; the witness’s manner of testifying; the witness’s opportunity to observe or acquire knowledge concerning the facts about which he or she testified; the witness’s candor, fairness and intelligence; and the extent to which the witness’s testimony has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary. The testimony of a single witness that produces in your minds a belief in the likelihood of its truth is sufficient for the proof of any fact, and would justify a verdict in accordance with such testimony, even though a number of witnesses may have testified to the contrary if, after consideration of all the evidence in the case, you hold greater belief in the accuracy and reliability of the one witness.

Similarly, the weight of the evidence is not necessarily determined by whether the evidence is in the form of a document or the oral testimony of a witness. It is for you to determine based upon the circumstances surrounding each document and each piece of testimony what weight to give to that evidence.

Court Instruction No. 6

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters at issue in this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned during this trial.

Court Instruction No. 7

A witness may be discredited or “impeached” by contradictory evidence, by 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, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

If you believe that any witness has been so impeached, then it remains your exclusive province to give testimony of that witness such credibility or weight, if any, that you think it deserves.

Court Instruction No. 8

The purpose of the attorneys' opening statements is to acquaint you in advance with the facts the attorneys expect the evidence to show. The purpose of the attorneys' closing arguments is to discuss the evidence actually presented. Opening statements, closing arguments and other statements of counsel should be disregarded to the extent that they are not supported by the evidence.

During the course of a trial it often becomes the duty of counsel to make objections and for me to rule on them in accordance with the law. The fact that an attorney made objections should not influence you in any way. Nor should the nature or manner of my ruling on any objection influence you in any way.

Whenever I have sustained an objection to a question addressed to a witness you must disregard the question entirely, and draw no inference from the wording of it, or speculate as to what the witness would have said if he or she had been permitted to answer the question. You should also disregard any answer the witness may have given prior to my ruling on the objection.

Court Instruction No. 9

In a civil lawsuit like this one, the burden is on the Plaintiff to prove every essential element of his or her claim by a “preponderance of the evidence.”

A preponderance of the evidence simply means evidence that persuades you that the Plaintiff’s claim is more likely true than not true. When I say “if you find” or “if you decide” I mean if you find or if you decide by a preponderance of the evidence.

Court Instruction No. 10

During the trial, certain testimony was presented to you by the reading of a deposition. This testimony is entitled to the same consideration you would give it had the witness personally appeared in court.

Court Instruction No. 11

The defendant Buffington Harbor Riverboats, L.L.C. (“Buffington Harbor”) employed the individuals responsible for the actions challenged in this case. Therefore, if you find in favor of the plaintiff, Robert Buggs, then Buffington Harbor would be liable for the actions of these individuals.

Court Instruction No. 12

Title VII of the Civil Rights Act of 1964, as later amended by Congress, makes it unlawful for an employer to discriminate against an employee because he has opposed any practice made unlawful under the Act.

The plaintiff, Robert Buggs, claims that the defendant, Buffington Harbor, discharged him in retaliation for complaining about discrimination by making internal complaints of race discrimination, complaining to the Indiana Gaming Commission about race discrimination, and by filing a race discrimination charge with the Equal Employment Opportunity Commission (“EEOC”) in November 2000, all in violation of Title VII.

Buffington Harbor denies that it retaliated against Buggs and contends that Buggs was discharged for a legitimate non-retaliatory reason – that he violated Buffington Harbor policy by displaying rude and discourteous behavior.

Court Instruction No. 13

Buggs has the burden of proving that Buffington Harbor retaliated against him.

In order to prevail on his retaliation claim against Buffington Harbor, Buggs must prove each of the following propositions by a preponderance of the evidence:

1. that Buggs engaged in conduct protected by Title VII;
2. that Buggs suffered an adverse employment action; and
3. that Buffington Harbor took the adverse employment action against Buggs, not because he violated Buffington Harbor policy by displaying rude and discourteous behavior, but because he engaged in protected conduct.

If you find from your consideration of all the evidence that each of these propositions has been proved by a preponderance of the evidence, then you must find in favor of Buggs.

If, on the other hand, you find from your consideration of all the evidence that any one of these propositions has not been proved by a preponderance of the evidence, then you must find in favor of Buffington Harbor.

Court Instruction No. 14

Conduct protected by Title VII includes filing internal grievances alleging race discrimination and filing complaints with the Indiana Gaming Commission and the EEOC alleging race discrimination.

Court Instruction No. 15

Termination of an employee is an adverse employment action.

Court Instruction No. 16

Title VII of the Civil Rights Act of 1964, as amended, prohibits a covered employer, such as Buffington Harbor, from retaliating against any employee because he engaged in protected conduct. Therefore, the fact that Buggs was an employee at will does not affect his claim against Buffington Harbor based on Title VII.

Court Instruction No. 17

If you decide that Buggs has proven his claim against Buffington Harbor, you must determine what amount of money damages, if any, that Buffington Harbor has caused to Buggs.

You should not interpret the fact that I am giving you instructions about damages as an indication in any way that I believe that Buggs should, or should not, win this case. It is up to you to decide that question. I am instructing you on damages only so that you will have guidance in the event that you decide that Buggs has proven his claim and is entitled to recover money from Buffington Harbor.

Court Instruction No. 18

It is the purpose of Title VII of the Civil Rights Act of 1964, as amended, to fully compensate persons for injuries and losses suffered as a result of a violation of the rights protected by this statute. Therefore, if you find that the defendant violated the rights of the plaintiff, protected by this statute, then you must enter your verdict in his favor and award him compensatory damages in an amount sufficient to compensate him for all of his injuries - including (a) the loss of wages and benefits from his employment, other losses resulting from his loss of wages; (b) prejudgment interest, and (c) mental anguish, emotional distress, stress, pain and suffering, humiliation and embarrassment - caused by the unlawful retaliation.

You may award damages only for injuries that the plaintiff proves were proximately caused by the defendant's wrongful conduct. The damages that you award must be fair compensation for all of his injuries and loss, no more and no less. You should not award damages for speculative injuries, but only for those injuries that the plaintiff has actually suffered. The law does not require that he prove the amount of his loss with mathematical precision, but only with as much accuracy as the circumstances permit. You must use sound discretion in fixing the award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances.

An injury is proximately caused by an act, or a failure to act, whenever it appears from the evidence that the act or omission played a substantial part in bringing about or actually causing the injury, and that the injury was either a direct result or a reasonably probable consequence of the act or omission.

Court Instruction No. 19

In this case, one of the category of damages sought by Buggs is back pay. I will now define this type of damages.

Back Pay

You may award Buggs as compensatory damages an amount that reasonably compensates him for any lost wages resulting from his termination. This is referred to as ‘back pay.’ The purpose of back pay is to make the plaintiff whole for any wages that he lost as a result of a discriminatory employment decision.

Court Instruction No. 20

Duty to mitigate damages

A plaintiff is required to make every reasonable effort to minimize his damages. This is called the duty to mitigate damages.

Buffington Harbor contends that Buggs failed to mitigate his damages by failing to find full-time employment after his termination. Buffington Harbor has the burden of proving that Buggs failed to mitigate his damages.

If you find that Buggs failed to mitigate his damages, you must reduce his compensatory damages by the amount that you find he could have avoided by using reasonable efforts from the time of the discrimination through the time of this trial.

Court Instruction No. 21

If you find in favor of Buggs, in addition to compensatory damages you must also consider whether to award punitive damages against Buffington Harbor. The purpose of such damages is to punish wrongdoers and to deter future violations of the rights of others. If Buggs, proved that Buffington Harbor acted with malice or with reckless indifference to his federally protected rights, then you may award punitive damages. You may award punitive damages even if you do not award compensatory damages.

The law does not require you to award punitive damages. However, if you decide to award such damages, you must use sound reason in setting the amount of damages. The amount of an award of punitive damages must not reflect bias, prejudice or sympathy toward any party. Rather, the award should be in an amount you believe necessary to fulfill the purpose of punitive damages - that is to punish the defendant for its deliberate indifference to the federally protected rights of the plaintiff and to deter the defendant and others from engaging in such illegal conduct in the future.

Court Instruction No. 22

Upon retiring to the jury room, you should first select one of your number to act as your foreperson. The foreperson will then preside over your deliberations and act as your spokesperson here in court.

You will take the verdict form with you to the jury room. When you reach unanimous agreement as to your verdict, the foreperson should fill in the verdict form, all of you should sign it, and then you should tell the court security officer to inform me that you have reached a verdict.

If, during deliberations, you should desire to communicate with the court, please reduce your message or question to writing and have the foreperson sign the note and include the date and time. Then, pass the note to the courtroom security officer, who will bring it to my attention. I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you in person.

With respect to any message or question that you provide to the court during your deliberations, please be advised of the following rules. First, do not state or specify your numerical division at any time; that is, do not inform the court or even hint at how many among you were or are in favor or against reaching any particular verdict. Also, please be advised that the court cannot supply you with transcripts of any of the trial testimony.

Court Instruction No. 23

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 view, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of the evidence solely because of the opinions of your fellow 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 seek the truth from the evidence on the case.