

PATRICK G. DOWLING,

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER
CORPORATION, d/b/a AMTRAK

Defendant.

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 Amtrak is entitled to the same fair trial as an individual. The law respects all persons equally; all persons, including Patrick Dowling and Amtrak, 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

The burden of proof in this case is by a preponderance of the evidence, which means that you must be persuaded considering all of the evidence in the case, that the proposition on which the party has the burden of proof is more probably 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

An attorney has a right to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney and told him or her what he or she would testify to does not, by itself, reflect adversely on the truth of the testimony of the witness.

Court Instruction No. 11

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. 12

You have heard testimony of expert witnesses. This testimony is admissible where the subject matter involved requires knowledge, special study, training, or skill not within ordinary experience, and the witness is qualified to give an expert opinion.

However, the fact that an expert has given an opinion does not mean that it is binding on you or that you are obligated to accept the expert's opinion as to the facts. You should assess the weight to be given to the expert opinion in light of all the evidence in the case.

Court Instruction No. 13

Plaintiff Patrick Dowling claims damages under the Federal Employer's Liability Act for personal injuries suffered as a result of the negligence of defendant Amtrak.. Section 1 of the Federal Employer's Liability Act, 45 U.S.C.A. Section 51, under which plaintiff Dowling claims the right to recover damages in this action, provides in part that:

“Every common carrier by railroad while engaging in commerce between any of the several States . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce . . . for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier.”

The parties agree that, at the times and places alleged by plaintiff Dowling, defendant Amtrak was a common carrier by railroad, engaged in interstate commerce; that plaintiff Dowling was then an employee of defendant Amtrak, engaged in such commerce; and that plaintiff Dowling's right to recover in this case against defendant Amtrak is governed by the provisions of the Federal Employer's Liability Act.

Defendant Amtrak admits that plaintiff Dowling's injury resulted in whole or in part from its negligence. Defendant Amtrak disputes the nature and extent of plaintiff Dowling's injury and asserts that plaintiff Dowling has not taken reasonable steps to mitigate his claimed damages.

Court Instruction No. 14

Damages must be reasonable. You may award plaintiff Dowling only such damages as will reasonably compensate him for such injury and damages as you find, from a preponderance of the evidence in the case, that he has sustained as a result of the accident. In deciding these damages, you may consider the following elements:

- The nature and extent of the injuries and the effect of the injuries on the plaintiff Dowling's ability to function as a whole person.
- Whether the injuries are temporary or permanent.
- The physical pain and mental suffering experienced and reasonably certain to be experienced in the future due to the injuries.
- The value of lost earnings and loss or impairment of earning capacity.
- The aggravation of a previous injury, disease or condition.

Remember, throughout your deliberations you must not engage in any speculation, guess, or conjecture and you must not award any damages by way of punishment or through sympathy. You may not include in your award any sum for court costs or attorney fees.

Court's Instruction No. 15

You may compensate plaintiff Dowling for any bodily injury and any resulting pain and suffering, disability, and loss of capacity for the enjoyment of life experienced in the past and which you find from the evidence that he is reasonably certain to suffer in the future from the injury in question. No evidence of the value of such intangible things as mental or physical pain and suffering has been or need be introduced. In that respect it is not value you are trying to determine, but an amount that will fairly compensate the plaintiff for the damages he has suffered. There is no exact standard for fixing the compensation to be awarded on account of such elements of damage. Any such award should be fair and just in the light of the evidence.

Court Instruction No. 16

A person who has a condition or disability at the time of an accident is not entitled to recover damages for the pre-existing condition itself. However, he is entitled to recover damages for any aggravation of the pre-existing condition resulting from the injury. If you find that there was such an aggravation in this case, you should determine, if you can, what portion of plaintiff Dowling's condition resulted from the aggravation and make allowance in your verdict only for the aggravation. However, if you cannot make that determination or if it cannot be said that the condition would have existed apart from the injury, you should consider and make allowance in your verdict for the entire condition.

Court Instruction No. 17

If you find that plaintiff Dowling is reasonably certain to lose earnings in the future then you must determine the present value in dollars of such future damage, since the award of future damages necessarily requires that payment be made now in one lump sum and plaintiff Dowling will have the use of the money now for a loss that will not occur until some future date. You must decide what those future losses will be and then make a reasonable adjustment for the present value.

Present value means the sum of money needed now, which, when invested at a reasonable rate of return, will pay future damages at the time and in the amounts that you find the damages will be incurred. The rate of return to be applied in determining present value should be the interest rate that can be reasonably expected from safe investments that can be made by a person of ordinary prudence, who has ordinary financial experience and skill.

Court Instruction No. 18

Plaintiff Dowling will not be required to pay any federal or state income taxes on any amount that you award. Thus, when calculating his lost earnings, if any, you should use after tax earnings.

Court Instruction No. 19

It is the duty of any person who has been injured to use reasonable diligence and reasonable means under the circumstances to prevent the aggravation of such injuries and to effect a recovery from such injuries.

If you should find that defendant Amtrak has proved, by a preponderance of the evidence, that plaintiff Dowling, within the limitations of any disability you find the plaintiff sustained, failed to seek out or take advantage of a business or employment opportunity that was reasonably available to him under all the circumstances shown by the evidence, then you should reduce the amount of plaintiff Dowling's damages by the amount he could have reasonably realized if he had taken advantage of such opportunity.

Court Instruction No. 20

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. 21

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.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

HAMMOND DIVISION

PATRICK G. DOWLING,

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER
CORPORATION, d/b/a AMTRAK

Defendant.

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Cause No. 2:01CV644 PS

VERDICT FORM

We the undersigned jury find that the negligence of defendant Amtrak caused Plaintiff
Dowling damages in the amount of \$_____.

DATED: _____

Foreperson
