

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

AMY E. TRAVIS,

Plaintiff,

v.

VULCAN MATERIALS COMPANY,

Defendant.

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Cause No. 3:03cv344

COURT'S FINAL JURY INSTRUCTIONS

Date: January 27, 2005

s/ Philip P. Simon
Philip P. Simon, Judge
United States District Court

Court's Instruction No. 1

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. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

You must perform these duties fairly and impartially. Do not allow sympathy for or prejudice against a particular party to influence you. 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.

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

Court's Instruction No. 2

As you all know by now, the Plaintiff in this case asserts that her former employer, Vulcan Materials Company, discriminated against her on the basis of her female gender. In a few minutes, I will give you instructions with the detailed legal rules that apply to her specific claims. Right now, however, I want to talk to you about some general rules that apply to your deliberations about the evidence.

Court's Instruction No. 3

In this case the Defendant, Vulcan Materials Company, is a corporation. All parties are equal before the law. A corporation is entitled to the same fair consideration that you would give any individual person.

Court's Instruction No. 4

The evidence consists of the testimony of the witnesses, and exhibits admitted in evidence. 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 I 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. The purpose of these 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.

Court's Instruction No. 5

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 often look to one fact and conclude from it that another fact exists. In law, we call this an "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.

Court's Instruction No. 6

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of something. Circumstantial evidence is proof of a fact, or a series of facts, which tend to show whether something is true.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

Court's Instruction No. 7

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.

Court's Instruction No. 8

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 other words, 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 evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

1. The ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
2. The witness's memory;
3. Any interests, bias, or prejudice the witness may have;
4. The witness's intelligence;
5. The manner of the witness while testifying;
6. And the reasonableness of the witness's testimony in light of all the evidence in the case.

Court's Instruction No. 9

You may consider statements given by the Plaintiff or any witness under oath before trial as evidence of the truth of what she said in the earlier statements, as well as in deciding what weight to give her testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath that is inconsistent with his testimony here in court, you may consider the earlier statement only in deciding whether his testimony here in court was true and what weight to give his testimony here in court.

In considering a prior inconsistent statement, you should consider whether it was simply an innocent error or intentional falsehood and whether it concerns an important fact or unimportant detail.

Court's Instruction No. 10

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.

Court's Instruction No. 11

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

Court's Instruction No. 12

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.

Court's Instruction No. 13

I am now ready to give you the law that applies to the specific claims you must decide. Plaintiff has alleged that she has been discriminated against on the basis of her gender. Gender refers to the quality of being male or female.

Court's Instruction No. 14

The law forbids an employer from discharging any individual or to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment, because of the individual's gender.

Court's Instruction No. 15

Plaintiff claims that she was demoted by Defendant because of her gender when her hours were reduced and her job duties were changed. To succeed in this claim, Plaintiff must prove by a preponderance of the evidence that defendant's reduction in hours and change in responsibilities was a "materially adverse employment action." Not everything that makes an employee unhappy is an adverse employment action. It must be something more than a minor or trivial inconvenience. For example, a materially adverse employment action exists when someone's pay or benefits are decreased; when her job is changed in a way that significantly reduces her career prospects; or when job conditions are changed in a way that significantly changes her work environment in an unfavorable way.

To determine that the reduction in hours and change in responsibilities was because of her female gender, you must decide that Defendant would not have reduced her hours and changed her responsibilities had she been a male, but everything else was the same. That is, plaintiff must prove by a preponderance of the evidence that her gender was a motivating factor in defendant's decision to reduce her hours and change her responsibilities. A motivating factor is something that contributed to or influenced the defendant's decision.

If you find that Plaintiff has proved by a preponderance of the evidence each of the things required of her, then you must find for Plaintiff. However, if you find that Plaintiff did not prove by a preponderance of the evidence each of the things required of her, then you must find for Defendant.

Court's Instruction No. 16

Plaintiff further claims that she was terminated by Defendant because of her female gender. To succeed in this claim, Plaintiff must prove by a preponderance of the evidence that she was terminated by Defendant because of her female gender. To determine that Plaintiff was terminated because of her female gender, you must decide that Defendant would not have terminated Plaintiff had she been a male, but everything else was the same. That is, plaintiff must prove by a preponderance of the evidence that her gender was a motivating factor in defendant's decision to terminate her employment. A motivating factor is something that contributed to or influenced the defendant's decision.

If you find that Plaintiff has proved by a preponderance of the evidence each of the things required of her, then you must find for Plaintiff. However, if you find that Plaintiff did not prove by a preponderance of the evidence each of the things required of her, then you must find for Defendant.

Court's Instruction No. 17

In deciding Plaintiff's claims that she was demoted because of her gender, you should not concern yourselves with whether Defendant's actions were wise, reasonable, or fair. Rather your concern is only whether Plaintiff has proven that her reduction in hours was an adverse employment action and if it was an adverse employment action whether it was taken by Defendant because of her female gender.

Court's Instruction No. 18

Similarly, in deciding Plaintiff's claim that she was terminated because of her female gender, you should not concern yourselves with whether Defendant's actions were wise, reasonable, or fair. Rather your concern is only whether Plaintiff has proven that Defendant terminated her because of her female gender.

Court's Instruction No. 19

If you find that Plaintiff has proved any of her claims against Defendant by a preponderance of all the evidence, then you must determine what amount of damages, if any, Plaintiff is entitled to recover. Plaintiff must prove her damages by a preponderance of the evidence.

If you find that Plaintiff has failed to prove all of her claims, then you must return a verdict in favor of Defendant and you will not consider the question of damages.

Court's Instruction No. 20

You should not interpret the fact that I am giving instructions about damages as an indication that I believe Plaintiff should or should not win on her claim. It is your task to decide whether Defendant is liable. I am instructing you on damages so that you will have guidance in the event that you decide Defendant is liable and that Plaintiff is entitled to recover money damages from Defendant.

Court's Instruction No. 21

Plaintiff must prove her damages by a preponderance of the evidence. Your work 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.

In calculating damages, you should not consider the issue of lost wages and benefits. The Court will calculate and determine any damages for past or future lost wages and benefits. You should consider the following types of compensatory damages, and no others:

1. The physical and emotional pain and suffering and loss of normal life that Plaintiff has experienced. No evidence of the dollar value of physical or emotional pain and suffering or loss of a normal life 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. You are to determine an amount that will fairly compensate Plaintiff for the injuries she has sustained.
2. Any reduction in Plaintiff's future earning capacity caused by damage to her reputation because of her termination.

Court's Instruction No. 22

If you find for Plaintiff, you may, but are not required to, assess punitive damages against Defendant. The purposes of punitive damages are to punish a Defendant for his conduct and to serve as an example or warning to Defendant and others not to engage in similar conduct in the future.

Plaintiff must prove by a preponderance of the evidence that punitive damages should be assessed against Defendant. You may assess punitive damages only if you find that Defendant's conduct was in reckless disregard of Plaintiff's rights. An action is in reckless disregard of Plaintiff's rights if taken with knowledge that it may violate the law.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward either party. In determining the amount of punitive damages, you should consider the following factors:

1. The reprehensibility of Defendant's conduct;
2. The impact of Defendant's conduct on Plaintiff;
3. The relationship between Plaintiff and Defendant;
4. The likelihood that Defendant would repeat the conduct if an award of punitive damages is not made;
5. The relationship of any award of punitive damages to the amount of actual harm the Plaintiff suffered.

Court's Instruction No. 23

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

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in the Verdict Form. Each juror should then date and sign the Verdict Form.

Court's Instruction No. 24

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 foreperson, 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.

Court's Instruction No. 25

The verdict must represent the considered judgment of each juror. Your verdict whether for or against the parties, 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 re-examine 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.