

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

SHERI BARTLETT)	
(f/k/a CROWELL),)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:08-CV-00597
)	
NIBCO, INC.)	
)	
Defendant.)	

PROPOSED FINAL PRE-TRIAL ORDER

Pursuant to the Order of this Court, the attorneys for the parties to this action are to appear before The Honorable Philip P. Simon for the United States District Court for the Northern District of Indiana on February 11, 2011 at 9:30 a.m. C.S.T., for a Final Pretrial Conference pursuant to Rule 16 of the Federal Rules of Civil Procedure.

Plaintiff was represented by Aladean M. DeRose. Defendant was represented by Edward Sullivan and Amy Steketee, of the firm of Baker & Daniels.

Thereupon, the following proceedings were had and the following engagements and undertakings arrived at:

A. **JURISDICTION.**

Federal question jurisdiction was conceded by counsel and found by the Court to be present.

B. **ISSUES.**

The case is at issue on Plaintiff's Complaint and Defendant's Answer.

C. **PENDING MOTIONS.**

There are no pending Motions before the Court. Counsel anticipates filing Motions in Limine by the deadline previously established by this Court's Order for the filing of such motions. Said deadline is February 15, 2011.

D. **PLAINTIFF'S CONTENTIONS.**

Sheri Bartlett contends that on January 21, 2008, she was fired by NIBCO because eleven days earlier, she had disclosed to her supervisor, Bill Geers, that upper level managers had been and were engaging in sexual harassment, and that sexual harassment training should be done. This is a violation of the law which prohibits an employer from discriminating against an employee because the employee has opposed an unlawful practice such as sexual harassment, 42 U.S.C. 2000e-3(a). At the time she was fired, Bartlett was told there was no job she could have at NIBCO.

As a consequence, Sheri Bartlett has been earning at least \$20,000 per year less than when she worked at NIBCO. She believes she is entitled to back pay, front pay because her overall lost income will continue in the future, lost benefits, prejudgment interest, damages for emotional distress, punitive damages, and attorney fees.

E. **DEFENDANT'S CONTENTIONS.**

1. NIBCO denies that it retaliated against Sheri Bartlett in any way. NIBCO eliminated Sheri Bartlett's position solely due to an economic condition. Thus, all of NIBCO's actions were based on legitimate, non-retaliatory, business reasons.

2. At the time of Bartlett's termination, she was employed as the Associate Product Manager – General Applications Plastics for NIBCO's plastics products, which are primarily used in the residential construction industry.

3. Bartlett's supervisor was Bill Geers, who was (and still is) NIBCO's Director of Marketing and a member of NIBCO's Operating Committee.

4. When Geers became NIBCO's Director of Marketing in September 2007, he was encouraged by NIBCO's President and Chief Operating Officer Steve Malm to evaluate the organization and staffing of the Marketing Department.

5. During the fall of 2007, Malm, Geers, and others at NIBCO became concerned with the steep decline in NIBCO's sales of plastics products and the severe decline in residential construction that had occurred and was forecasted to continue.

6. Specifically, between 2005 and the beginning of 2008, NIBCO's production of General Applications plastics products dropped by 36 million pounds and housing starts for 2008 were projected to be 1.1 million units, which was down 47% from their 2006 peak of 2.07 million units.

7. These factors along with other overall market conditions prompted Malm to prepare a memorandum dated November 15, 2007 entitled "Cyclical" discussing current conditions and projections and proposing measures to be put in place to respond to those projections by cutting costs.

8. This memorandum was distributed to members of NIBCO's Operating Committee and was discussed by the Committee.

9. Among other things, the memorandum encouraged members of the Operating Committee to take a belt-tightening response to the down market, to "right size," "[r]educe non-value added activity," and to "[l]ook closely at your organization and ask the question 'would I replace that function today if it was open?' If the answer is no, we should take action."

10. Malm expected NIBCO's managers to review all possible cost cutting measures and expected that job elimination would be among the strategies.

11. Upon receiving this memorandum and in light of his previous conversations with Malm, Geers reviewed the Marketing Department's organization and evaluated the current staffing in light of the business and economic conditions.

12. Geers considered each position in the Marketing Department in light of the current conditions and, in particular, the downward trend in residential construction.

13. Geers determined it would be financially prudent to scrutinize the marketing positions relating to residential products.

14. In November 2007, there were three marketing associates assigned to residential products, including Sheryl Hansen (Senior Product Manager – Residential Products), Brien Welsh (Product Manager – Copper Fittings), and Bartlett.

15. In light of the downturn in the residential market and the projections for 2008, Geers determined there was no business need to have three associates working to market residential products.

16. Because he believed that the essential functions of Welsh's position and Bartlett's position could be absorbed by Sheryl Hansen (and himself), Geers determined he could achieve a significant cost-savings in his budget by recommending the elimination of Welsh's position and Bartlett's position.

17. On January 8, 2008, Geers met with Tom Eisele, NIBCO's General Counsel, to discuss the elimination of Welsh's position and Bartlett's position.

18. After having consulted with Eisele and after having reviewed Welsh's personnel file and Bartlett's personnel file, Geers determined on January 9, 2008, that he would proceed with eliminating those two positions.

19. Geers then asked Bartlett's then-supervisor, Sheryl Hansen, to prepare a list of Bartlett's current projects.

20. On January 9, 2008, Hansen sent an email to Bartlett asking her to "make a list of the projects [she was] currently working on that [they] could review together."

21. On January 10, 2008, Bartlett asked to meet with Geers to discuss some concerns regarding Hansen.

22. During this meeting, Bartlett complained about feeling excessive pressure from Hansen regarding work and project commitments.

23. Bartlett also asked Geers whether something was going on in the Marketing Department and whether any changes were underway.

24. Although the decision to restructure the department and eliminate Welsh's and Bartlett's positions had already been made, Geers responded by simply telling Bartlett that NIBCO was always reviewing its organizational structure and that he could not say whether anything was happening.

25. After complaining about the pressure she felt from Hansen and asking about the changes in the Marketing Department, Bartlett told Geers about a situation she experienced involving her former supervisor, Bob Christiano, who left NIBCO in November 2007.

26. Bartlett explained that Christiano asked her to go out with him and that she had refused his requests.

27. Bartlett's allegations regarding Christiano were only that he had asked her out a few times and were nothing else.

28. Bartlett did suggest to Geers that it would be helpful for NIBCO to schedule some sort of training program or reminder of NIBCO's sexual harassment policy.

29. Despite having received information about NIBCO's anti-harassment and reporting policies and having received information about the Legal Hotline (which is an anonymous reporting hotline) as recently as one month before (November 13, 2007), Bartlett had not raised these concerns with Geers or anyone else at NIBCO prior to her conversation with Geers on January 10, 2008.

30. Geers explained to Bartlett that had she mentioned these concerns while Christiano was still employed with NIBCO, he would have immediately taken action and gone to NIBCO's Human Resources and Legal Departments for direction.

31. Bartlett asked Geers not to tell anyone about the concerns that she raised during this conversation.

32. Consistent with Bartlett's request, Geers did not tell anyone about the issues Bartlett raised until after Bartlett's employment was terminated.

33. On January 14, 2008, Geers met with Eisele and Malm to discuss the next steps related to the decision to reduce the headcount in the Marketing Department and specifically to eliminate Welsh's position and Bartlett's position.

34. Geers did not disclose any of the information that Bartlett had shared with him on January 10, 2008 regarding her complaints about Christiano or her request for additional training with either Eisele or Malm.

35. On January 14, 2008, Bartlett forwarded Geers email correspondence with her previous supervisor from February 2007 regarding the possibility of a pay increase.

36. On January 18, 2008, Geers met with Ron Kurz (NIBCO's Human Resources Manager) to discuss various logistical issues associated with the elimination of Welsh's position and Bartlett's position, such as timing, severance, and IT payout.

37. Geers and Kurz agreed they would notify Welsh and Bartlett of the decision on Monday, January 21, 2008.

38. On January 21, 2008, Geers and NIBCO's Human Resources Manager met first with Bartlett and then with Welsh to explain that their positions were being eliminated and that their employment with NIBCO was terminated.

39. Bartlett asked whether other positions were available at NIBCO, and Geers responded by saying that he was not aware of any positions available at the time.

40. It is NIBCO's stated policy to strive to maintain a bias-free, nondiscriminatory work environment that is free from harassment, discrimination, and retaliation.

41. NIBCO's anti-discrimination, anti-harassment, and anti-retaliation policy sets out procedures for employees to report behavior or conduct that violates NIBCO's policies.

42. In addition, NIBCO maintains its Legal Hotline, providing associates a means for reporting behavior or conduct that violates NIBCO's policies.

43. NIBCO provides regular and ongoing training to its employees to deter workplace harassment, especially sexual harassment, and discrimination and to notify its

employees of the anti-retaliation policy. Bartlett received such training and understood that NIBCO encouraged its employees to report incidents of harassment.

44. At the time Sheri Bartlett's job was terminated by NIBCO on January 21, 2008, her annual salary was \$50,373, or \$968.71 per week.

45. NIBCO believes that the issues of back pay and front pay are issues for the Court, not the jury.

46. NIBCO believes that any claims for compensatory and punitive damages have been waived by Bartlett because she did not identify any category of compensatory or punitive damages and did not provide any calculation (or any explanation of any calculation of) any category of such damages.

47. Further, Bartlett is not entitled to punitive damages because NIBCO made good faith efforts to comply with the law and because all of its actions were made in good faith and with a reasonable belief that they did not violate the law.

F. **ADMISSIONS.**

The following facts are established by admission of the pleadings or by stipulation of counsel:

1. NIBCO is a corporation organized under the laws of the state of Indiana.
2. NIBCO is an employer as defined in Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e.
3. NIBCO manufactures and sells metal and plastic fittings, valves and actuators, industrial plastics, pipe hangers, fabricated supports, seismic braces, and related accessories for sale to the residential and commercial construction industries.

4. NIBCO's plastic products are primarily used in the residential construction industry.

5. Sheri Bartlett was hired by NIBCO around April 8, 1996 as an administrative assistant for advertising and marketing. In October 1997, she was promoted to Price Administrator; in January 2000, she was promoted to Marketing Specialist. In January 2003, she was promoted to Market Analyst—Engineering. In January 2006, she was promoted to Pricing Analyst. Her last promotion at NIBCO was to Associate Product Manager—Plastics in March 2007.

6. On August 6, 2007, Bartlett's then supervisor, Bob Christiano, gave her an "A+" on her mid-year performance review.

7. In November 2007, NIBCO's President and Chief Operating Officer Steve Malm distributed a memorandum to NIBCO's Operating Committee, including Bill Geers, who was NIBCO's Director of Marketing and Bartlett's supervisor.

G. CONTESTED ISSUES OF FACT.

The contested issues of fact are:

1. Whether Bartlett was fired as a cost-cutting measure by NIBCO or because of a report she had made to her supervisor.
2. Whether Bartlett is entitled to the damages and remedies she seeks.

H. CONTESTED ISSUES OF LAW.

The issues of law are implicit in the facts, i.e., whether NIBCO violated the Civil Rights Act of 1964 (42 U.S.C. 2000e) when it terminated Sheri Bartlett's employment

and whether Bartlett is entitled to the damages she seeks. In addition, the parties contest the admissibility of the evidence challenged in the parties' objections and motions in limine.

I. **EVIDENCE.**

Plaintiff's exhibits may include any or all of the following:

1. All Pleadings in this action and all Exhibits contained in Plaintiff's Response to Motion for Summary Judgment.
2. Deposition of William Geers
3. All records of Sheri Bartlett's post-NIBCO wages for the years 2008 through present including but not limited to all Forms W-2 and paystubs from current employer.
4. Any documents contained in Sheri Bartlett's personnel file as maintained by NIBCO.
5. All documents contained in Brien Welsh's personnel file as maintained by NIBCO.
6. NIBCO Personnel Policy Manual.
7. NIBCO's Benefits Policy Manual.
8. Any materials from NIBCO's website.
9. Any document produced NIBCO in discovery of this case.
10. All of Defendant's Exhibits listed, whether or not used at trial.

Defendant's exhibits may include any or all of the following:

1. All Pleadings in this lawsuit.
2. All of Plaintiff's responses to discovery requests.
3. Plaintiff's Rule 26 disclosures and supplemented disclosures.
4. Deposition of Sheri Bartlett (May 20, 2009).

5. Position Description for Associate Product Manager – General Applications Plastic Fittings. (NIBCO 00138)
6. November 15, 2007 memorandum from Steve Malm to the NIBCO Operating Committee entitled "Cyclical." (NIBCO 000140-000142)
7. January 21, 2008 Bulletin "Brien Welsh leaves NIBCO." (NIBCO 00170)
8. Bill Geers' calendar entries. (NIBCO 00189-00193)
9. Appointment entry regarding meeting between Bill Geers and Sheri Bartlett on January 10, 2008. (NIBCO 00197)
10. Appointment entry regarding meeting between Bill Geers, Steve Malm, and Tom Eisele on January 14, 2008. (NIBCO 00202)
11. Timeline of events prepared by Bill Geers. (NIBCO 00203-00204)
12. Organizational Chart of NIBCO Marketing Department in January 2008. (NIBCO 00229)
13. NAHB Housing Data – 2008/2009 Forecast. (NIBCO 00230)
14. Email string between Sheri Bartlett and Brian Chamness dated December 12, 2007. (NIBCO 00246-00247)
15. Net Sales 2003 through 2008. (NIBCO 00384)
16. Marketing Headcount. (2005-2010) (NIBCO 000404)
17. Email from Gina Wakeman to Sheri Bartlett dated January 14, 2008. (NIBCO 000406)
18. Letter from Jim Lightner to Eduardo Lima dated January 15, 2008. (NIBCO 000410)

19. Email from Sheri Bartlett to Sheri Bartlett dated December 16, 2007 attaching resume. (NIBCO 000412-000417)
20. Excerpts from Operating Committee Meeting Minutes dated September 28, 2007. (NIBCO 000430)
21. Excerpts from Operating Committee Meeting Minutes dated January 4, 2008. (NIBCO 000431)
22. Email from Sheryl Hansen to Sheri Bartlett dated January 9, 2008. (NIBCO 000474)
23. Email from Steve Malm to Bill Geers and others dated November 12, 2007 regarding 2008 SG&A Final Pass. (NIBCO 000480-481)
24. Email from Steve Malm to Bill Geers dated December 5, 2007 regarding ASA Sponsorship. (NIBCO 482)
25. Bartlett's pay stubs, statement of earnings, W-2 Wage and Tax Statements, federal and state taxes, and other financial information for 2007, 2008, 2009, and 2010.
26. Documents relating to NIBCO's sales of plastic products, residential construction, and housing starts in 2006, 2007, and 2008.
27. Demonstrative exhibits to demonstrate decreasing sales of plastics products, residential construction statistics, and housing starts in 2006, 2007, and 2008.
28. Demonstrative exhibit listing jobs eliminated in 2008.
29. Demonstrative exhibit listing Bartlett's responsibilities as Associate Product Manager in January 2008.

30. Demonstrative exhibit on Marketing Department budget for 2008.
31. Demonstrative exhibit showing timeline of events.
32. All of Plaintiff's Exhibits listed, whether or not used at trial.

NIBCO may offer the following exhibits depending on the outcome of motions in limine:

1. NIBCO Associate Handbook (revised April 1998). (NIBCO 00251-00265)
2. NIBCO Associate Handbook (revised August 2002) and subsequent revisions.
(NIBCO 00207-00228)
3. NIBCO's Code of Ethics & Business Conduct and subsequent revisions.
(NIBCO 000387-000401)
4. Sheri Bartlett's acknowledgment of having received NIBCO Associate Handbook dated September 4, 1998. (NIBCO 000074)
5. Sheri Bartlett's acknowledgment of having received Code of Ethics & Business Conduct dated January 19, 2007. (NIBCO 000062)
6. Bulletin regarding Code of Ethics Informational Session dated January 10, 2008. (NIBCO 000407)
7. Bulletin regarding Code of Ethics Informational Session dated January 16, 2007. (NIBCO 000408)

NIBCO reserves the right to use at trial enlargements of (and/or excerpts from) any of the exhibits listed in the Exhibit List.

J. **WITNESSES.**

Plaintiff's witnesses may include any or all of the following:

1. Plaintiff Sheri Bartlett
3926 Harrison Creek Court
Mishawaka, IN 46544

2. Brian Bartlett
Same Address as Above
3. William Geers
2870 Winding Waters Lane
Elkhart, IN
4. Gina Wakeman

5. Any witness listed by Defendant, whether or not they are actually called to testify.
6. Any witness used for rebuttal/impeachment.
7. Any witness used for document authentication.

Defendant's witnesses may include any or all of the following:

1. William Geers
2870 Winding Waters Lane
Elkhart, IN
3. Tom Eisele
1516 Middlebury Street
Elkhart, Indiana 46516
4. Steve Malm
1516 Middlebury Street
Elkhart, Indiana 46516
5. Ron Kurz
1516 Middlebury Street
Elkhart, Indiana 46516
6. Sheryl Hanson
1516 Middlebury Street
Elkhart, Indiana 46516
7. Marry Mullins
1516 Middlebury Street
Elkhart, Indiana 46516

8. Jeffrey Schwingendorf
1516 Middlebury Street
Elkhart, Indiana 46516
9. Jim Lightner
10. Any witness listed by Plaintiff, whether or not they are actually called to testify.
11. Any witness used for rebuttal/impeachment.
12. Any witness used for document authentication.

In the event there are other witnesses to be called at the trial, their names and addresses and the general subject matter of their testimony will be reported to opposing counsel, with copy to the Court, at least ten (10) days prior to trial. Such witnesses may be called at trial only upon leave of the Court. This restriction shall not apply to rebuttal or impeachment witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial.

K. **JURY INSTRUCTIONS.**

Jury Instructions will be submitted in accordance with the Court's Order Controlling Case.

L. **AMENDMENTS.**

No amendments to the pleadings are contemplated.

M. **TRIAL BRIEFS.**

The parties do not anticipate submitting trial briefs at this time.

N. **PRETRIAL ORDER.**

This Pre-Trial Order has been formulated after a conference at which counsel for the respective parties have appeared. Reasonable opportunity has been afforded counsel for corrections or additions prior to signing by the Court. Hereafter, this Order will control the course of the trial and may not be amended except by consent of the parties and the Court or by order of the Court to prevent manifest injustice. The pleadings will be deemed merged herein, but may also be introduced as exhibits at trial.

O. **SETTLEMENT.**

The parties have discussed settlement, but have been unable to reach agreement. They will continue to negotiate and advise the Court immediately if settlement is reached.

P. **TRIAL.**

The probable length of the trial is three days. The case is set before The Honorable Philip Simon in South Bend, IN on March 7 through March 9, 2011 at 8:30 a.m. E.S.T.

ENTERED this ____ day of _____, 2011.

Philip P. Simon, Chief Judge, U.S. District Court

APPROVED:

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