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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

CAROL L. ROBINSON

Plaintiff,

vs.

MEGAN J. BRENNAN,

Postmaster General,

Defendant.

CIV. 15-4095-KES

**FINAL
INSTRUCTIONS
TO THE JURY**

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VERDICT FORM

FINAL INSTRUCTION NO. 1 – INTRODUCTION AND DEFINITIONS

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during the trial are not repeated here.

The instructions I am about to give you now as well as those I gave you earlier are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my oral instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

FINAL INSTRUCTION NO. 2 – BURDEN OF PROOF

In civil actions, the party who has the burden of proving an issue must prove that issue by the greater convincing force of the evidence.

Greater convincing force means that after weighing the evidence on both sides there is enough evidence to convince you that something is more likely true than not true. In the event that the evidence is evenly balanced so that you are unable to say that the evidence on either side of an issue has the greater convincing force, then your finding upon the issue must be against the party who has the burden of proving it.

In determining whether or not an issue has been proved by the greater convincing force of the evidence, you should consider all of the evidence bearing upon that issue, regardless of who produced it.

You have probably heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than “more likely true than not true.” It applies in criminal cases, but not in this civil case; so put it out of your mind.

FINAL INSTRUCTION NO. 3 – IMPEACHMENT

In Preliminary Instruction No. 3, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness said or did something, or failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness’s testimony whatever weight you think it deserves.

FINAL INSTRUCTION NO. 4 – AGENCY

The United States Postal Service acts only through its agents or employees and any agent or employee of the Postal Service may bind it by acts and statements made while acting within the scope of the authority delegated to that agent by the Postal Service, or within the scope of the agent or employee's duties as an employee of the Postal Service.

FINAL INSTRUCTION NO. 5 – RETALIATION

Your verdict must be for plaintiff, Carol Robinson, and against defendant, United States Postal Service, on plaintiff's retaliation claim if all the following elements have been proved:

***First*, Robinson filed prior discrimination complaints against the United States Postal Service before she applied for the Complaints and Inquiry Clerk position; and**

The parties have agreed that this element has been proved.

***Second*, the United States Postal Service did not select Robinson for the Complaints and Inquiry Clerk position; and**

The parties have agreed that this element has been proved.

***Third*, the United States Postal Service would have selected Robinson for the Complaints and Inquiry Clerk position but-for Robinson's prior employment discrimination complaints against the United States Postal Service.**

If any of the above elements has not been proved, your verdict must be for the United States Postal Service and you need not proceed further in considering this claim.

"But-for" does not require that Robinson's prior employment discrimination complaints were the only reason for the decision made by the United States Postal Service. You may find that the United States Postal Service would have selected Robinson "but-for" Robinson's filing of prior discrimination complaints if it has been proved that the United States Postal

Service's stated reasons for its decision are not the real reasons, but are a pretext to hide retaliation.

FINAL INSTRUCTION NO. 6 – BUSINESS JUDGMENT

You may not return a verdict for Robinson just because you might disagree with the United States Postal Service's decision or believe it to be harsh or unreasonable.

FINAL INSTRUCTION NO. 7 – PRIOR DISCRIMINATION COMPLAINTS

You have heard evidence in this trial that Robinson brought prior discrimination complaints against the United States Postal Service. You can consider this evidence to provide context to the history between the two parties; however, you cannot consider it as proof or evidence that Robinson's claim in this trial has no merit. The results of prior discrimination complaints should have no bearing on your decision in this case.

FINAL INSTRUCTION NO. 8 – DAMAGES

If you find in favor of Robinson under Instruction No. 5, then you must award Robinson such sum as you find will fairly and justly compensate Robinson for any damages you find Robinson sustained as a direct result of the United States Postal Service's decision not to hire Robinson for the Complaints and Inquiry Clerk position.

First, in the event there is a finding for Robinson, the parties have calculated and agreed to the amount of Robinson's lost wages for the time period at issue in this case. The amount of lost wages is \$3,515.51. This agreement on the amount of lost wages at issue is not an admission of fault by the United States, but meant to streamline the introduction of evidence at trial.

Second, you must determine the amount of any other damages sustained by Robinson, such as emotional and physical anguish, suffering, embarrassment, humiliation, and anxiety.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award damages under this Instruction by way of punishment or through sympathy.

FINAL INSTRUCTION NO. 9 – DUTIES DURING DELIBERATIONS

In conducting deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

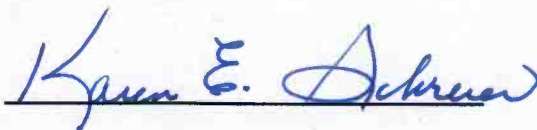
Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in

writing or orally in open court. **Remember that you should not tell anyone—including me—how your votes stand numerically.**

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Dated November 1, 2017.

A handwritten signature in blue ink that reads "Karen E. Schreier". The signature is written in a cursive style and is positioned above a horizontal line.

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE