

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION**

<p>LOREN AINSWORTH,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>RAPID CITY, PIERRE & EASTERN RAILROAD, INC., a Delaware Corporation,</p> <p style="text-align: right;">Defendant.</p>	<p style="text-align: center;">5:18-CV-05019-KES</p> <p style="text-align: center;">FINAL INSTRUCTIONS TO THE JURY</p>
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VERDICT FORM

FINAL INSTRUCTION NO. 1 – INTRODUCTION

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

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

FINAL INSTRUCTION NO. 2 – ALL EQUAL BEFORE THE LAW

This is a case between an individual, Loren Ainsworth, and a company, Rapid City, Pierre & Eastern Railroad, Inc. The case should be considered and decided by you as an action between persons of equal standing and worth in the community. A railroad is entitled to the same fair trial at your hands as a private individual. All persons, including corporations, partnerships, and other organizations, stand equal before the law, and are entitled to the same fair and impartial trial.

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 has said or done something, or has 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, if any, you think it deserves. If you believe that any witness testifying in this case has knowingly sworn falsely to any material matter in this case, then you may reject all of the testimony of the witness.

FINAL INSTRUCTION NO. 4 – BURDEN OF PROOF

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

Greater convincing weight 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 weight, 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 weight, 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 “greater convincing weight.” It applies in criminal cases, but not in this civil case; so put it out of your mind.

FINAL INSTRUCTION NO. 5 – DAMAGES

Because the court has already decided that, as a matter of law, the Railroad's violation of a federal law caused in whole or in part Ainsworth's injury, you must determine the amount of money, if any, that you find will fairly and justly compensate Ainsworth for any damages you find he sustained and is reasonably certain to sustain in the future as a direct result of the incident at issue here. You should consider the following elements of damages:

1. The physical pain and mental and emotional suffering Ainsworth has experienced and is reasonably certain to experience in the future, the nature and extent of the injury, whether the injury is temporary or permanent, and whether any resulting disability is partial or total, including any aggravation of a pre-existing condition; and
2. The earnings Ainsworth has lost to date, and the present value of earnings Ainsworth is reasonably certain to lose in the future.

It is Ainsworth's burden to prove his claimed damages by the greater convincing weight of the evidence, as defined in Final Instruction No. 4.

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 attorneys' fees.

FINAL INSTRUCTION NO. 6 – HARM FROM SUBSEQUENT MEDICAL CARE

If you find that Ainsworth suffered harm from medical treatment he received as a result of the incident at issue here, then the Railroad is legally responsible for this harm, and you may consider this harm in your assessment of damages.

FINAL INSTRUCTION NO. 7 – AGGRAVATION OF PRE-EXISTING CONDITION

If you find that Ainsworth had a condition prior to the incident at issue in this case, and damages can be apportioned, you may not award damages for any previous or subsequent injuries or conditions unrelated to the incident at issue here.

However, if you find that the incident at issue here caused an aggravation of Ainsworth's pre-existing condition, and damages can be apportioned, you may award damages for that aggravation.

On the other hand, if you find that Ainsworth is entitled to recover for an aggravation for a pre-existing condition, but you cannot logically, reasonably, or practically apportion Ainsworth's present and future injuries between the pre-existing condition and the aggravation caused by the incident at issue here, then you may award damages for all present and future injuries caused by both the pre-existing condition and the incident at issue here.

FINAL INSTRUCTION NO. 8 – “EGGSHELL” PLAINTIFF DOCTRINE

If you find that Ainsworth had a prior condition making him more susceptible to injury than a person in normal health, then you may award damages for the injuries caused by the incident at issue here, even though those injuries may be greater than what might have been experienced by a person in normal health under the same circumstances.

FINAL INSTRUCTION NO. 9 – AINSWORTH’S EMPLOYMENT APPLICATION

If you believe Ainsworth was dishonest in applying for employment with the Railroad, you can consider that only for the purpose of determining his credibility.

Ainsworth was an employee of the Railroad, and the means in which Ainsworth became employed does not reduce the amount of damages to which he is entitled, if he shows by the greater weight of the evidence that the damages are the direct result of the incident here.

FINAL INSTRUCTION NO. 10 – MITIGATION OF DAMAGES

Ainsworth has a legal duty to use reasonable efforts to mitigate his damages. To mitigate means to take reasonable steps to minimize his damages. If you find that Ainsworth failed to mitigate his damages, then your award must not include any sum for any amount of damage which you find Ainsworth might reasonably have avoided by taking reasonable steps.

The Railroad has the burden of proving the following by the greater convincing weight of the evidence, as defined in Final Instruction No. 4:

1. That Ainsworth failed to take reasonable steps to mitigate his damages; and
2. The amount by which damages would have been mitigated.

FINAL INSTRUCTION NO. 11 – PRESENT VALUE OF FUTURE DAMAGES

If you find that Ainsworth will sustain lost future earnings, then you must reduce those future damages to their present value.

The present value of future damages is the amount of money that will fully compensate Ainsworth for future damages, assuming that amount is invested now and will earn a reasonably risk-free rate of interest for the time that will pass until the future damages occur.

You must not reduce to present value any non-economic damages you find that Ainsworth is reasonably certain to sustain in the future, such as for pain and suffering or mental anguish.

FINAL INSTRUCTION NO. 12 – INCOME TAX EFFECTS OF AWARD

Any award that you make in this case will not be subject to income taxes, and you should not consider such taxes in fixing the amount of your award.

FINAL INSTRUCTION NO. 13 – 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.

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 advocates. 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.

Good luck with your deliberations.

Dated August 24, 2022.

BY THE COURT:



KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE