

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>MOHAMED GOUSE SHAIK, Plaintiff, vs. EXPERITY, INC., Defendant.</p>	<p>4:21-CIV-4103 JURY INSTRUCTIONS</p>
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Jerome Riese
Judge

INSTRUCTION NO. 1

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. Do not single out some instructions and ignore others, because they all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now 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 earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

You must discharge your duties as jurors in your deliberations and rendering of a verdict without discrimination or bias against any party, witness, or counsel regarding race, color, ethnicity, national origin, religion, lack of religion, gender, gender identity, sexual orientation, disability, or economic circumstances.

INSTRUCTION NO. 2

As explained in my prior instructions, this is a civil case, brought by Mohamed Gouse Shaik against Experity, which is formally known as DocuTAP.

Plaintiff alleges that his former employer Experity discriminated against him on the basis of national origin or race and unlawfully retaliated against him.

Experity denies plaintiff's allegations and asserts that plaintiff was terminated from his employment because of substandard work performance.

It will be your duty to decide from the evidence whether Mohamed Gouse Shaik is entitled to a verdict against Experity. From the evidence you will decide what the facts are. You are entitled to consider the evidence in the light of your own observations and experiences in the affairs of life. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way, reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

INSTRUCTION NO. 3

I have mentioned the word “evidence.” “Evidence” includes the testimony of witnesses, documents and other things received as exhibits, facts that I tell you the parties have agreed are true, and any other facts that I tell you to accept as true.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence.

2. Documents or other things that might be in court or talked about, but that I do not receive as exhibits are not evidence.

3. Objections are not evidence. Parties have a right – and sometimes a duty - to object when they believe something should not be part of the trial. Do not be influenced one way or the other by objections.

If I sustain an objection to a question or an exhibit, that means the law does not allow you to consider that information. When that happens, you have to ignore the question or the exhibit, and you must not try to guess what the information might have been.

3. Testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence, and you must not consider them.

4. Anything you see or hear about this case outside the courtroom is not evidence, and you must not consider it unless I specifically tell you otherwise during the trial.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms. The law makes no distinction between the weight to be given to direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 4

Mr. Shaik decided to represent himself in this trial and not to use the services of a lawyer. He has a constitutional right to do that. This decision must not affect your consideration and your decision as to whether he recovers or not.

Because Mr. Shaik decided to act as his own lawyer, you heard him speak during the trial. I want to remind you that when Mr. Shaik spoke in opening statement, closing argument, questioning witnesses, making objections, and arguing legal issues to the court, he was acting as a lawyer in the case, and his words are not evidence. The only evidence in this case comes from witnesses who testify under oath on the witness stand and from exhibits that are admitted. Mr. Shaik's testimony under oath on the witness stand is evidence.

INSTRUCTION NO. 5

As stated earlier, in deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

You may consider the intelligence of the witness; the opportunity the witness had to see or hear the things testified about; the memory, knowledge, education, and experience of the witness; any reasons the witness may have for testifying a certain way; how the witness acted while testifying; whether the witness said something different at another time; the general reasonableness of the testimony; and the extent to which the testimony is consistent with other evidence you believe.

INSTRUCTION NO. 6

If any reference by the Court or by the parties to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of the parties.

You are the sole judges of the evidence received in this case.

In weighing the evidence in this case, you have a right to consider the common knowledge possessed by all of you, together with the ordinary experiences and observations in your daily affairs of life.

INSTRUCTION NO. 7

If you took notes during the trial, your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the evidence. If you did not take notes, you should rely on your own independent recollection of the proceedings and you should not be influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony may have been.

INSTRUCTION NO. 8

You must decide whether certain facts have been proved by the greater weight of the evidence. A fact has been proved by the greater weight of the evidence, if you find that it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable.

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.

INSTRUCTION NO. 9

Your verdict must be for plaintiff Mohamed Grouse Shaik and against defendant Experity, Inc. on plaintiff's claim of discrimination on the basis of national origin or race if all the following elements have been proved:

First, the defendant discharged the plaintiff; and

Second, the plaintiff's national origin or race was a motivating factor in the defendant's decision.

If either of the above elements has not been proved, your verdict must be for Experity and you need not proceed further in considering this claim. You may find that the plaintiff's national origin or race was a motivating factor in the defendant's decision if it has been proved that the defendant's stated reasons for its decision are a pretext to hide discrimination on the basis of national origin or race.

INSTRUCTION NO. 10

As used in these instructions, the plaintiff's national origin or race was a "motivating factor," if the plaintiff's national origin or race played a part or a role in the defendant's decision to discharge the plaintiff. However, the plaintiff's national origin or race need not have been the only reason for the defendant's decision to discharge the plaintiff.

INSTRUCTION NO. 11

You may find that the plaintiff's national origin or race was a motivating factor in the defendant's decision if it has been proved that the defendant's stated reasons for its decision are not the real reason, but are a pretext to hide discrimination on the basis of national origin or race.

INSTRUCTION NO. 12

You may not return a verdict for the plaintiff just because you might disagree with the defendant's decision or believe it to be harsh or unreasonable. Under South Dakota law, an employment relationship can be terminated at-will by either the employer or the employee. An employer has the right to make a business decision and/or discharge an employee for good reason, bad reason, or no reason at all, so long as its decision is not because of the employee's national origin or race.

INSTRUCTION NO. 13

Your verdict must be for plaintiff Mohamed Grouse Shaik and against defendant Experity on the plaintiff's claim of retaliation for making a complaint with DocuTap, now Experity, alleging discrimination on the basis of national origin or race if all the following elements have been proved:

First, the plaintiff filed a complaint with Experity alleging discrimination on the basis of national origin or race; and

Second, the defendant discharged the plaintiff; and

Third, the defendant would not have discharged plaintiff but-for plaintiff's filing a complaint with Experity alleging discrimination on the basis of national origin or race.

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

"But-for" does not require that plaintiff's filing a complaint with Experity alleging discrimination was the only reason for the decision made by the defendant. You may find that the defendant would not have discharged the plaintiff "but-for" plaintiff's filing a complaint with Experity alleging discrimination if it has been proved that the defendant's stated reasons for its decisions are not the real reasons, but are a pretext to hide retaliation.

INSTRUCTION NO. 14

If you find in favor of the plaintiff on his claim of discrimination on the basis of national origin or race in Instruction No. 9, or if you find in favor of the plaintiff on his claim of retaliation in Instruction No. 13, then you must award the plaintiff an amount of money that you find will fairly and justly compensate the plaintiff for any wages and fringe benefits you find the plaintiff would have earned in his employment with the defendant if he had not been discharged on January 23, 2019, through the date of your verdict, *minus* the amount of earnings and benefits from other employment received by the plaintiff during that time.

You are also instructed that the plaintiff has a duty under the law to “mitigate” his damages—that is, to exercise reasonable diligence under the circumstances to minimize his damages. Therefore, if you find that the plaintiff failed to seek out or take advantage of a substantially equivalent opportunity that was reasonably available to him, you must reduce his damages by the amount he reasonably could have avoided if he had sought out or taken advantage of such an opportunity.

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.

INSTRUCTION NO. 15

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I will list those rules for you now.

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, your verdict must be the unanimous decision of all jurors. Therefore, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement, if you can do this without going against what you believe to be true.

Each of you must come to your own decision, but only after you have considered all the evidence, discussed the evidence 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 unanimous verdict. Remember you are not for or against any party. You are judges—judges of the facts. Your only job is to study the evidence and decide what is true.

Third, during your deliberation, including during any recess taken during deliberations, you must not, directly or indirectly, communicate with or provide any information to anyone by any means or by any medium, about anything relating to this case, until I accept your verdict and discharge you from further service in this case.

Fourth, as stated in my instructions at the beginning of the trial, you may not in any manner seek out or receive any information about the case from any source other than the evidence received by the court and the law of the case I have provided to you. You are only permitted to discuss the case with your fellow jurors during deliberations because they have seen and heard the

INSTRUCTION NO. 15 (continued)

same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom. Otherwise, your decision may be based on information known only by you and not your fellow jurors or parties in this case. This would unfairly and adversely impact the judicial process.

Fifth, if you need to communicate with me during your deliberations, you may send a note to me through the 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 vote stands numerically.

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

Finally, the verdict form is your written decision in this case. You will take this form to the jury room, and when you have all agreed on the verdicts, your foreperson will fill in the form, sign and date it, and tell the court security officer that you are ready to return to the courtroom.