

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

OUSMAN CHAM

Plaintiff,

v.

C.A. No. 08-326 ML

STATION OPERATORS, INC.,

Defendant.

JURY INSTRUCTIONS

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PART I

1. **PROVINCE OF THE COURT AND JURY**

Members of the Jury, now that you have heard the evidence and the arguments of counsel, it becomes my duty to give you instructions as to the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts of the case as you determine those facts to be from the evidence in this case. You are not to single out any one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me.

Counsel have quite properly referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you are to adhere to the Court's instructions.

Further, nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts, but rather that is yours.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be governed by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

2. **ALL PERSONS EQUAL BEFORE THE LAW – CORPORATIONS**

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. A

corporation is entitled to the same fair trial at your hands as a private individual. All persons, including corporations, stand equal before the law, and are to be dealt with as equals in a court of justice.

3. EVIDENCE IN THE CASE

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

In determining the facts in this case, you are to consider only the evidence that properly has been put before you. It is the duty of the Court, during the course of trial, to pass upon the admissibility of proffered evidence, that is, to decide whether or not you should consider proffered evidence. Such evidence as the Court admits is properly before you for your consideration; such evidence as the Court has refused to admit is not a proper subject for your deliberations and should not be given consideration by you.

Papers, documents, and other objects admitted into evidence by the Court are a part of the evidence properly before you and will be available to you in the jury room for consideration during your deliberations.

The fact that the Court admitted evidence over objection should not influence you in determining the weight you should give such evidence. Nor should statements made by counsel, either for or against the admission of such evidence, influence your determination of the weight you will give the evidence, if admitted. In other words, you should determine the weight you will give such evidence on the basis of your own consideration of it and without regard to the ruling

of the Court or the statements of counsel concerning the admissibility of such evidence.

Nor should you permit objection by counsel to the admission of evidence, or the rulings of the Court thereon, to create any bias or prejudice in your minds with respect to counsel or the party he or she represents. It is the duty of counsel to protect the rights and interests of his or her client, and in the performance of that duty he or she freely may make objection to the admission of proffered evidence and should not, in any manner, be penalized for doing so.

4. PREPONDERANCE OF THE EVIDENCE

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of his claim by a preponderance of the evidence. If the proof should fail to establish any essential element of the plaintiff's claim by a preponderance of the evidence in this case, you should find for the defendant.

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds the belief that what is sought to be proved is more likely true than not true. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a preponderance of the evidence in this case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

5. “IF YOU FIND”

When I say in these instructions that a party has the burden of proof on any proposition, or use the expression “if you find,” I mean you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true.

6. EVIDENCE – DIRECT, INDIRECT OR CIRCUMSTANTIAL

As I told you at the beginning of the case, there are two types of evidence from which you may properly find the truth as to the facts of a case. One is direct evidence—such as the testimony of an eyewitness. The other is indirect or circumstantial evidence—that is, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct or circumstantial evidence, but simply requires that you find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

7. STIPULATIONS

The evidence in this case includes facts to which the lawyers have agreed or stipulated. A stipulation means simply that the plaintiff and the defendant accept the truth of a particular proposition or fact. Since there is no disagreement, there is no need for evidence apart from the stipulation. You may accept the stipulation as fact and give it whatever weight you choose.

8. INFERENCES – DEFINED

You are to consider only the evidence in the case. In your consideration of the evidence, however, you are not limited to the bald statements of the witnesses. In other words, you are not

limited to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as seem justified in light of your experience.

Inferences are deductions or conclusions which reason and common sense lead you to draw from facts which have been established by the evidence in this case. Inferences may not be based on speculation or conjecture.

9. CREDIBILITY OF WITNESSES – DISCREPANCIES IN TESTIMONY

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witnesses, the manner in which the witness testified, the character of the testimony given, or evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive, state of mind, and demeanor or manner while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case—including statements that he or she may have made on some prior occasion.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony

of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves. You may, in short, accept or reject the testimony of any witness in whole or in part. Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

PART II

10. NATURE OF THE PLAINTIFF'S CLAIM

Mr. Cham alleges that Station Operators Inc. retaliated against him for taking medical leave. To succeed on this claim, Mr. Cham must demonstrate, by a preponderance of evidence, that he availed himself of a protected right to medical leave and that Station Operators, Inc. took adverse employment action against him because of that leave.

11. RETALIATION CLAIM - ELEMENTS

Employers may not retaliate against employees for having exercised their right to qualified medical leave. Mr. Cham need not prove that his medical leave was the only reason for

the adverse employment action, but he must prove that it was a motivating factor in Station Operators, Inc. alleged retaliation against him.

In order to succeed on this claim, Mr. Cham must prove by a preponderance of the evidence:

First, that he engaged in a protected action;

Second, that he suffered an adverse employment action as result of Station Operators Inc. intentional conduct; and

Third, there was a causal connection between the protected activity and the adverse employment action.

12. PROTECTED ACTION

I instruct you that Mr. Cham engaged in protected action when he took his medical leave from January 18, 2005, to March 14, 2005.

13. ADVERSE EMPLOYMENT ACTION

In order to succeed on his retaliation claim, Mr. Cham must prove that Station Operators Inc. took adverse employment action against him by: (1) taking something of consequence away from him, for example by discharging or demoting him, reducing his salary, or taking away significant responsibilities; or (2) failing to give him something that is a customary benefit of the employment relationship. An adverse employment action by a supervisor is an action of the employer.

14. CONSTRUCTIVE DISCHARGE AS ADVERSE EMPLOYMENT ACTION

Mr. Cham's resignation from his employment at Station Operators Inc. is only an adverse employment action if he was "constructively discharged." "Constructive discharge" occurs where an employer imposes working conditions that are so intolerable that a reasonable person would feel compelled to leave. An employee's subjective beliefs, no matter how sincere, are not alone sufficient. Merely difficult or unpleasant working conditions do not give rise to constructive discharge. Conditions must be so intolerable that the choice to leave must be void of choice or free will.

15. CAUSAL CONNECTION

A causal connection exists where Plaintiff has established that the protected activity was a motivating factor in the adverse employment action. Such a causal connection may be established by a close temporal connection between the protected activity and the adverse employment action.

16. SHIFTING BURDENS OF PROOF

If you find that Mr. Cham has proved all of the elements of his medical leave retaliation claim that I have just outlined for you, it then becomes Station Operators Inc.'s obligation to articulate some legitimate reason why Mr. Cham was subject to adverse employment action. Station Operators, Inc. would then have the responsibility of showing that their actions were based on a valid reason rather than on Mr. Cham's having taken medical leave.

Station Operators Inc. does not have to prove by a preponderance of the evidence that it took adverse employment action against Mr. Cham for a reason other than his medical leave. It is enough if Station Operators, Inc. presents a legitimate non-retaliatory reason.

If Station Operators Inc. has met this burden, it then becomes Mr. Cham's obligation to prove by a preponderance of evidence that Station Operators, Inc.'s articulated reason for the adverse employment action was pretextual. "Pretextual" means either false or, though true, not the real reason for the employment action. To be successful in this regard, Mr. Cham must prove, by a preponderance of the evidence, that Station Operators Inc. took adverse employment action against him because of his exercise of his right to medical leave.

The focus of your deliberations must be on Station Operators Inc.'s motivation. The issue is not whether Station Operators Inc.'s decisions were correct or even fair. The question is whether its decisions were based on Mr. Cham's having taken medical leave. If so, then Station Operators Inc. is liable.

17. WILLFUL VIOLATION

Mr. Cham alleges that Station Operators Inc.'s retaliation was willful, that is, Station Operators Inc. knew its conduct violated the law or showed reckless disregard for whether its conduct violated the law. Mr. Cham must prove willfulness by a preponderance of the evidence.

18. CONSIDER DAMAGES ONLY IF LIABILITY IS PROVEN

I now turn to the question of damages. In doing so, I do not intend to indicate that I am of the opinion that Station Operators Inc. is liable for damages. You are instructed on damages in order that you may reach a sound and proper determination of the amount you will award, if any, in the event that you find that Station Operators Inc. is liable.

You need consider the question of damages only if you find that Mr. Cham has proved his retaliation claim; for if you do not find Station Operators Inc. liable, no award of damages can be

made.

Damages must be proven. The burden of proof as to the existence and the extent of damages is on the plaintiff. In other words, you may make an award for damages only to the extent that you find damages have been proved by a preponderance of the evidence. You may not base an award of damages or the amount of any such award on speculation or conjecture. You must base an award of damages on the evidence presented and on what you consider to be fair and adequate compensation for such damages as you find have been proved. In making an award of damages, it is required that you determine the precise amount to be awarded. Mr. Cham must prove all elements of his claim by a preponderance of evidence in order to be entitled to an award of damages.

19. DAMAGES

If Mr. Cham has proven by a preponderance of evidence that Station Operators Inc. has taken adverse employment action against him on the basis of his having exercised his right to medical leave, then he is entitled to damages. This instruction on damages is not meant to suggest that your judgment should be for a particular party.

If you find that Station Operators Inc. retaliated against Mr. Cham for having taken medical leave, then Station Operators Inc. shall be liable only for wages, salary, employment benefits, or other compensation denied or lost to Mr. Cham because of the violation. The law does not permit an award for damages for any other losses. An award of damages is limited to the time period between May 18, 2005, and June 17, 2007.

PART III

20. **DELIBERATIONS – GENERAL CONSIDERATIONS**

Ladies and Gentlemen, in a moment I will dismiss you so that you may commence your deliberations. However, before I do that, I need to give you some instructions about the procedures you must use in the course of your deliberations.

As I said at the beginning of my instructions, it goes without saying that prejudice, sympathy, or compassion should not be permitted to influence you in the course of your deliberations. From what I have said I do not and did not mean to imply that you should approach your consideration of this case in an intellectual vacuum. You are not required to put aside or to disregard your experiences and observations in the ordinary, everyday affairs of life. Indeed, your experiences and observations in the ordinary, everyday affairs of life are essential to your exercise of reasonably sound judgment and discretion in the course of your deliberations; it is your right and duty to consider the evidence in the light of such experience and observations.

21. **VERDICT – UNANIMITY & DUTY TO DELIBERATE**

In order for you to return a verdict, your decision must be a unanimous decision, that is, all nine of you must concur in the decision. You cannot return a verdict, either for the plaintiff or for the defendant, unless and until you are in unanimous agreement as to what your verdict shall be.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement. Each of you must decide this for yourself, but you should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. Your verdict must be unanimous, but you are not

bound to surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of other jurors. Discuss and weigh your respective opinions dispassionately, without regard to sympathy, without regard to prejudice or favor for either party, and adopt that conclusion which in your good conscience appears to be in accordance with the truth.

Again, each of you must make your own decision about the proper outcome of this case based on your consideration of the evidence and your discussions with your fellow jurors. No juror should surrender his or her conscientious beliefs solely for the purpose of returning a unanimous verdict.

22. COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS

During your deliberations, if you need further instruction or assistance by the Court in any way, I ask that, through your foreperson, you reduce such requests or questions as you may have to writing. The foreperson may then hand such written requests or questions to the officer in whose charge you will now be placed. The officer will then bring such written requests to me and I will attempt to fulfill your request or answer the question as the case may be. Other than the method outlined, please do not attempt to communicate privately or in any other way with the Court.

Finally, you are never to reveal to any person – not even to the Court – how you stand, numerically or otherwise, on the questions before you, until you have reached a unanimous verdict.