

Jury Instructions

Kevin Johnston v. The Urban League of Rhode Island and Dennis Langley
09-cv-167 M

I. GENERAL INSTRUCTIONS

Now that you have heard all of the evidence and the arguments of counsel, it is my job to instruct you what the law is that is applicable to this case. This is the law that must govern your deliberations.

I will send into the jury room a written copy of my instructions.

1. PROVINCE OF THE COURT AND JURY

It is your duty as jurors to follow the law as I shall state it to you. It is your duty 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 one instruction alone as stating the law, but must consider the instructions as a whole. You are not to be concerned with the wisdom of any rule of law stated by me. 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. I do not. It is not my function to determine the facts, but rather it is your function to do so.

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 -- and the law -- 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. EVIDENCE IN THE CASE

In determining the facts in this case, you are to consider only the evidence that properly has been put before you. Evidence that the court admits is properly before you for your consideration; evidence that this court has refused to admit is not a proper subject for your deliberations and should not be given consideration by you.

Documents 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.

That this court admits evidence as Full Exhibits over objection should not be permitted to 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. 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 this 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 to create any bias or prejudice in your minds with respect to counsel or the party he represents. It is the duty of counsel to protect the rights and interests of his client, and in the performance of that duty he freely may make objections to the admission of proffered evidence and should not, in any manner, be penalized for doing so.

3. EVIDENCE – DIRECT, INDIRECT OR CIRCUMSTANTIAL

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.

4. 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.

5. INFERENCES

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

6. CREDIBILITY OF WITNESSES

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 by 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 that 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 she or he 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.

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.

In this case you heard one witness, the plaintiff Kevin Johnston invoke his Fifth Amendment constitutional right against self-incrimination. Every citizen in the United States has a right to invoke his or her constitutional rights. In this

civil case, you may draw any reasonable inferences you deem appropriate from his assertion of that right.

II. CASE-SPECIFIC INSTRUCTIONS

7. NATURE OF THE PLAINTIFF'S CLAIM

The Plaintiff in this case, Kevin Johnston, is alleging that The Urban League of Rhode Island and Dennis Langley fired him because he opposed and made complaints about alleged discriminatory employment practices in the workplace. The Defendants deny the Plaintiff's allegations and claim that Plaintiff was terminated not because he filed complaints but for legitimate reasons including but not limited to, insubordination and poor work performance.

Plaintiff is not required to prove that his claims of alleged discrimination had merit in order to prove that he was fired in retaliation for making that claim.

There is no claim before you that the Urban League or Mr. Langley actually discriminated against the Plaintiff because of his race and gender, prompting the Plaintiff's complaints to the Human Resources Department and the R.I. Commission for Human Rights. Therefore, you are not being asked to

consider whether Defendants are liable for gender and race based discrimination.

8. RETALIATION CLAIM AGAINST THE URBAN LEAGUE

Employers may not retaliate against employees for having exercised their right to speak out about actual or perceived illegal conduct by their employers. In order to succeed on a retaliation claim against the Urban League, Plaintiff must prove by a preponderance of the evidence:

First, that he engaged in protected conduct;

Second, that he suffered an adverse employment action, and in this case, the “adverse employment action” is that he was fired; and

Third, that there was a causal connection between the protected conduct and his firing.

9. RETALIATION CLAIM AGAINST DENNIS LANGLEY

In order to succeed on a retaliation claim against Defendant Dennis Langley, Plaintiff must prove by a preponderance of the evidence that Mr. Langley aided, abetted, incited, compelled, or coerced the Urban League to terminate Plaintiff’s employment because he engaged in protected conduct; obstructed and/or prevented the Urban League from complying with the law; *or*

attempted directly or indirectly to commit an unlawful employment practice under the law.

10. CAUSAL CONNECTION

A causal connection between the protected conduct and the adverse action, that is between Mr. Johnston's claim of alleged discrimination and his firing, exists where Plaintiff has established that the protected conduct was a motivating factor in his firing. Such a causal connection may be established by a close connection in time between the protected activity and the firing. You may find that Defendants are liable for retaliation if you find that the retaliation was a motivating reason behind Plaintiff's termination, but not if retaliation was a mere factor among many reasons.

An adverse employment action by a supervisor or a Board of an organization is an action of the employer.

If you find that the Plaintiff has proven by a preponderance of the evidence that his claim of alleged discrimination was a motivating factor in the Defendants' decision to fire him, then the burden of proof shifts to Defendants to prove by a preponderance of the evidence that they would nevertheless have taken the same action even if they had not considered Plaintiff's claim of alleged discrimination.

If you find that Defendants have not met their burden of proof, your verdict

will be for the Plaintiff and you will proceed to consider damages, as I will describe them. But if you find that Defendants have proven that they would have taken the same action regardless of Plaintiff's claims of alleged discrimination, you will not proceed to consider damages.

11. BUSINESS DECISIONS

Bear in mind that an employer has the right to make business decisions for any reason, whether good or bad, so long as those decisions are not motivated by a factor that the law makes illegal, such as retaliation. It is not your function to second guess the decision Defendants made in this case, but solely to determine whether, in making that decision, Defendants broke the law by permitting retaliation to be a motivating factor in its decision to terminate the Plaintiff. Thus, even if you personally disagree with that decision to fire the Plaintiff or think it harsh or unreasonable, you may not permit that feeling to influence in any way your determination of whether Defendants retaliated against Plaintiff when they decided to terminate him.

12. WHISTLEBLOWERS PROTECTION ACT

The second claim that Plaintiff asserts is under the Rhode Island Whistleblowers Protection Act. This law provides relief to an employee who is terminated because he reports or is about to report unlawful conduct to a public

body or to his employer. In order to recover on this claim, Plaintiff must show that he reported to a public body, verbally or in writing, a violation of federal or state law that the employee knew or reasonably believed had occurred or was about to occur. If you find that the Plaintiff was about to report unlawful conduct, as opposed to having already reported unlawful conduct, the Plaintiff must have proven this count to you by clear and convincing evidence, which means that you must believe that it is highly probable that it is true. Otherwise, the standard burden of proof applies.

13. BURDEN OF PROOF

The standard burden of proof is preponderance of the evidence. Plaintiff has the burden of proving each and every element of his claims by a preponderance of the evidence, which is another way of saying that the Plaintiff must prove them by the greater weight of the evidence. To put it another way, you must be satisfied that the evidence shows that the Plaintiff is claiming is more probably true than not.

14. DAMAGES – RETALIATION

If you find for Plaintiff on his claims that Defendants retaliated against him because of his claim of alleged discrimination, then you must determine whether he is entitled to damages in an amount that is fair compensation. You

may award him the amount of wages, employment benefits, or other compensation he would have earned in his employment at the Urban League if Plaintiff had not been terminated on March 22, 2007 until the day he started his new job on August 25, 2009, minus the amount of earnings and benefits from other employment received by Plaintiff during that time.

You also may award Plaintiff compensatory damages for emotional pain and suffering, loss of enjoyment of life, mental anguish, inconvenience and emotional injuries.

The fact that I have instructed you as to the proper measure of damages should not be considered as indicating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance only in the event you should find in favor of the Plaintiff.

15. PUNITIVE DAMAGES

In addition to compensatory damages, Plaintiff seeks to recover punitive damages from Defendants in this case. The purpose of punitive damages is not to compensate a plaintiff but rather it is to punish a wrongdoer for outrageous or extraordinary misconduct and to deter them or others from engaging in similar conduct in the future. On the jury verdict form, you will be asked whether you

find that Defendants' conduct was motivated by malice or ill will or involved a reckless or callous indifference to the statutorily protected rights of others.

You are not required to award punitive damages. Whether any one or both of these Defendants should be required to pay punitive damages is a matter for you to determine.

III. FINAL PROCEDURAL INSTRUCTIONS

Ladies and Gentleman, 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; and it is your right and duty to consider the evidence in the light of such experience and observations.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, iPhone, Blackberry or computer, the internet, any internet service, any text or instant messaging service, any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations.

Now, in order for you to return a final verdict, your decision must be unanimous. That means that you cannot return a verdict unless and until all seven of you are in unanimous agreement as to the verdict.

Therefore, in the course of your deliberations and in your consideration of the evidence, you should exercise reasonable and intelligent judgment. It is not required that you yield your conviction simply because a majority holds to the

contrary view, but in pursuing your deliberations you should keep your minds reasonably open to conviction with respect to the point in dispute so that you will not be precluded or prevented from achieving a unanimous verdict by mere stubbornness. It is your right to maintain your conviction. Each vote of each juror is as important as the vote of any other juror, and you need not give up your sincerely held conviction simply because a majority holds to the contrary.

I am designating juror _____, juror number 1, as the Foreperson of this jury. _____, it will be your responsibility to organize the group and facilitate organized and healthy deliberations. The Foreperson's opinion, voice, or vote, however, is no more meaningful than any other juror.

When you are in the jury room, you will be given a verdict form. When you have reached a verdict, the Foreperson will fill out that form and sign it. Once the verdict form is complete, you will inform the Court Security Officer.

If in the course of your deliberations you should deem it necessary to be further instructed or assisted by the Court in any way, the Foreperson should reduce such request or question to writing. The Foreperson may then hand such written request or question to the officer in whose charge you will now be placed. The officer will then bring such written request to me and I, in consultation with the attorneys, will determine an appropriate response. Other

than the method outlined, please do not attempt to communicate privately or in any other way with the Court.