

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KENNETH TRIMBLE,

Plaintiff,

vs.

BNSF RAILWAY COMPANY,

Defendant.

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4:08CV3116

PRELIMINARY JURY INSTRUCTIONS

Preliminary Jury Instructions for Use in Civil Cases

Introduction

Ladies and gentlemen: I will take a few moments now to give you initial instructions about this case and about your duties as jurors. At the end of the trial, I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all instructions-- both those I give you now and those I give you later -- are equally binding on you and must be followed.

Serving as a Juror on this Civil Case

This is a civil case; this is not a criminal case. Accordingly, you will not be asked to decide if someone committed a crime. The case is brought by one or more plaintiffs against one or more defendants. The plaintiff[s] make[s] various claims. The defendant[s] deny[ies] plaintiff[s]' claims. It will be your duty to decide from the evidence whether the plaintiff[s] is [are] entitled to a verdict against defendant[s]. From the evidence you will decide what the facts are. You are entitled to consider that evidence in 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.

What Testimony to Believe

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 says, or only part of it, or none of it.

In deciding what testimony to believe, consider the witnesses' intelligence, their opportunity to have seen or heard the things they testify about, their memories, any motives they may have for testifying a certain way, their manner while testifying, whether they said something different at an earlier time, the general reasonableness of their testimony and the extent to which their testimony is consistent with other evidence that you believe.

No Sympathy or Prejudice

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you. You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

What Is and Is Not Evidence

I have mentioned the word "evidence." "Evidence" includes the testimony of witnesses; documents and other things received as exhibits; any facts that have been stipulated, that is, formally agreed to by the parties; and any facts that have been judicially noticed--that is facts which I say you may accept as true. During the trial certain evidence may be presented to you by the lawyers reading to you from one or more depositions or by your viewing one or more videotaped depositions. A deposition is the giving of oral testimony under oath at some time before trial. Each of the attorneys had an opportunity to be present and to ask questions. Deposition evidence is under oath and is entitled to the same

consideration that you would have given had the witness appeared personally at this trial.

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

1. Statements, arguments, questions and comments by lawyers are not evidence.

2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.

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

5. Exhibits that are identified by a party but not received in evidence are not evidence.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used. You should also pay particularly close attention to such an instruction, because it may not be available to you in writing later in the jury room.

Some of you may have heard the terms "direct evidence" and "circumstantial evidence." You should not be concerned with those

terms. The federal law makes no distinction between the weight to be given to direct and circumstantial evidence.

No Transcript Available But Note-Taking Allowed

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it is not feasible to play back lengthy testimony. You must pay close attention to the testimony as it is given.

If you wish, however, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you so that you do not hear other answers by the witness. When you leave at night, your notes will be secured and not read by anyone.

Jurors Not Allowed to Question Witnesses

I do not permit jurors to ask questions of a witness whether orally or in writing. Moreover, I do not allow jurors to give me a question for presentation to the witness. In other words, you will not be allowed to question witnesses directly or indirectly.

Conduct of the Jury

You must strictly obey the following rules during all recesses and throughout the trial:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it. If someone should try to talk to you about the case please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case--you should not even pass the time of day with any of them.

Fifth, if there is news coverage of this case, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it.

Sixth, do not do any research or make any investigation about the case on your own. Do not conduct research on the Internet about this case or about anyone involved with it. Do not consult any books such as dictionaries or similar references about this case or about anyone involved with it.

Seventh, do not make up your mind during the trial about what the verdict should be. On the contrary, keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

Eighth, if you need to communicate with me do so only in writing by giving the courtroom deputy a note which is signed by you and dated. Please do not ask the courtroom deputy questions about the law or the evidence. The courtroom deputy is not allowed to answer such questions.

Richard G. Kopf
United States District Judge

(Saved as CVPrelim)