FILED
US DISTRICT COURT
DISTRICT OF NEBRASKA
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CATHERINE PETERS,	*	8:03-cv-448
Plaintiff,	*	
v.	*	
ROBERTS DAIRY COMPANY, LLC.,	*	**FINAL JURY INSTRUCTIONS**
Defendant.	*	

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FINAL JURY INSTRUCTION NO. 1: EXPLANATORY

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

The instructions I am about to give you now as well as those I gave you earlier 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.

FINAL JURY INSTRUCTION NO. 2: JUDGE'S OPINION

Neither in these instructions nor in any ruling, action, question, or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

FINAL JURY INSTRUCTION NO. 3: CREDIBILITY OF WITNESSES

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.

In deciding what testimony to believe, you may consider a witness' intelligence, the opportunity a witness had to see or hear the things testified about, a witness' memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

FINAL JURY INSTRUCTION NO. 4: BURDEN OF PROOF

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claim or defense depends upon that fact. The party who has the burden of proving a fact must prove it by the greater weight of the evidence. To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved. The greater weight of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

FINAL JURY INSTRUCTION NO. 5: INTRODUCTION OF CLAIMS

Plaintiff has two claims which you must consider:

First is Plaintiff's claim that Defendant's decision to terminate her employment was based on her gender. Throughout these instructions, this will be referred to as Plaintiff's "discriminatory discharge" claim.

Second is Plaintiff's claim that she was subjected to gender based harassment in the workplace by both coworkers and supervisors. Throughout these instructions, this will be referred to as Plaintiff's "hostile work environment claim."

FINAL JURY INSTRUCTION NO. 6: ESSENTIAL ELEMENTS

DISCRIMINATORY DISCHARGE

Your verdict must be for Plaintiff and against Defendant on Plaintiff's discriminatory discharge claim if all of the following elements have been proved by the greater weight of the evidence:

First, Defendant discharged plaintiff; and

Second, Plaintiff's gender was a motivating factor in the Defendant's decision. Gender was a "motivating factor" if Plaintiff's gender played a role in Defendant's decision to terminate Plaintiff. However, it does not require that Plaintiff's gender was the only reason for Defendant's decision to terminate.

If either of the above elements has not been proved by the greater weight of the evidence, your verdict must be for Defendant and you need not proceed further in considering this claim.

FINAL JURY INSTRUCTION NO. 7: BUSINESS JUDGMENT INSTRUCTION

You may not return a verdict for Plaintiff just because you might disagree with Defendant's decisions or believe them to be harsh or unreasonable. An employer is entitled to make its own subjective personnel decisions for any reasons that are not discriminatory.

FINAL JURY INSTRUCTION NO. 8: SAME DECISION DEFENSE

If you find in favor of Plaintiff under Instruction 6, then you must answer the following question: Has it been proved by the greater weight of the evidence that defendant would have discharged Plaintiff regardless of her gender?

If you find in favor of Defendant under this Instruction, then you need not proceed further in considering this claim.

FINAL JURY INSTRUCTION NO. 9: ACTUAL DAMAGES

DISCRIMINATORY DISCHARGE

If you find in favor of Plaintiff under Instruction No. 6, and answered "no" in response to the question posed in Instruction No. 8, then you must award Plaintiff such actual damages as you find by the greater weight of the evidence will fairly and justly compensate Plaintiff for any damages you find Plaintiff sustained as a direct result of Defendant's decisions to discharge Plaintiff. You may award compensatory damages only for injuries that Plaintiff proves were caused by Defendant's wrongful conduct. The damages you award must be fair compensation – no more, no less.

First, you must determine the amount of any wages and fringe benefits Plaintiff would have earned in her employment with Defendant if she had not been terminated on March 11, 2002, through the date of your verdict, minus the amount of earnings and benefits that Plaintiff received from other employment during that time.

Second, you must determine the amount of any other damages sustained by Plaintiff, such as emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life. You may also award damages for future emotional distress to a Plaintiff who has proved discrimination, if her emotional distress and its consequences can reasonably be expected to continue in the future. You must use your sound judgment based on an impartial consideration of the evidence. You should consider the nature, character, and seriousness of the emotional distress, in addition to its extent and duration, when determining the appropriate amount to be awarded. You must enter separate amounts for each type of damages in the verdict form and

must not include the same items in more than one category.

You are also instructed that plaintiff has a duty to "mitigate" her damages. That is, to exercise reasonable diligence under the circumstances to minimize her damages. Therefore, if you find by the greater weight of the evidence that Plaintiff failed to seek out or take advantage of an opportunity that was reasonably available to her, you must reduce her damages by the amount she reasonably could have avoided if she 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.

FINAL JURY INSTRUCTION NO.10 : ESSENTIAL ELEMENTS

HOSTILE WORK ENVIRONMENT

Your verdict must be for Plaintiff, and against Defendant on Plaintiff's hostile work environment claim if all of the following elements have been proved by the greater weight of the evidence:

First, Plaintiff was subjected to harassing conduct by Defendant's employees or supervisors consisting of derogatory comments and/or offensive language and/or sexual innuendos, comments or actions and/or plaintiff was subjected to different terms and/or conditions than Defendant's male sales representatives;

Second, such conduct was unwelcome;

Third, such conduct was based on plaintiff's gender;

Fourth, such conduct was sufficiently severe or pervasive that a reasonable person in plaintiff's position would find plaintiff's work environment to be hostile or abusive; and

Fifth, at the time such conduct occurred and as a result of such conduct, plaintiff believed her work environment to be hostile or abusive.

In addition, in regards to any harassing conduct alleged against Neil Lewis, Plaintiff must, in order for the conduct to be considered in determining if the environment was hostile or abusive, show:

Sixth, Defendant knew or should have known of the sexual harassment; and

Seventh, Defendant failed to take prompt and appropriate corrective action to end the harassment.

Plaintiff need not prove the last two elements in regards to any gender based harassment suffered at the hands of her immediate supervisor Greg Smith, or any of her other supervisors. Gender based harassment may include not only "sexual" comments, but other conduct, which is based on Plaintiff's gender.

FINAL JURY INSTRUCTION NO. 11: REASONABLE PERSON STANDARD

In determining whether a reasonable person in the Plaintiff's circumstances would find the Plaintiff's work environment to be hostile or abusive as discussed in Instruction 10, you must look at all the circumstances. The circumstances may include the frequency of the conduct complained of; its severity; whether it was physically threatening or humiliating; or merely offensive; whether it unreasonably interfered with the plaintiff's work performance; and the effect on plaintiff's psychological well-being. No single factor is required in order to find a work environment hostile or abusive.

FINAL JURY INSTRUCTION NO. 12: AFFIRMATIVE DEFENSE

HOSTILE WORK ENVIRONMENT

Your verdict must be for Defendant on Plaintiff's claim of hostile work environment if it has been proved by the greater weight of the evidence that (a) Defendant exercised reasonable care to prevent and correct promptly any sexually harassing behavior; and (b) that Plaintiff unreasonably failed to take advantage of Defendant's anti-harassment procedures.

FINAL JURY INSTRUCTION NO. 13: ACTUAL DAMAGES

HOSTILE WORK ENVIRONMENT

If you find in favor of Plaintiff under Instruction 10, then you must award Plaintiff such sum as you find by the greater weight of the evidence will fairly and justly compensate Plaintiff for any actual damages you find Plaintiff sustained as a direct result of the sexual harassment by Defendant's employees and/or supervisors.

Actual damages may include amounts for emotional distress, humiliation, mental anguish, and other injuries suffered by the Plaintiff.

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.

FINAL JURY INSTRUCTION NO. 14: NOMINAL DAMAGES

If you find in favor of Plaintiff under either claim, but you find that Plaintiff's damages have no monetary value, then you must return a verdict for Plaintiff on that claim in the nominal amount of One Dollar ($1.00).

FINAL JURY INSTRUCTION NO. 15: PUNITIVE DAMAGES

In addition to actual damages mentioned in the other instructions, the law permits the jury under limited circumstances to award an injured person punitive damages in order to punish the Defendant for some extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct.

If you find in favor of Plaintiff on either of her claims, and if you find that Defendant acted with malice or reckless indifference to Plaintiff's right not to be discriminated against on the basis of her sex. Defendant acted with malice or reckless indifference if it has been proven by clear, convincing and satisfactory evidence that Defendant knew that Plaintiff's discharge and/or Defendant's gender based harassment was in violation of the law prohibiting gender discrimination, or Defendant's knew of the law but acted with reckless disregard of that law.

If you find that Defendant acted with malice or reckless disregard and did not make a good-faith effort to comply with the law, then, in addition to any actual damages to which you find Plaintiff entitled, you may, but are not required to award Plaintiff an additional amount as punitive damages if you find it is appropriate to punish the Defendant or to deter Defendant and others from like conduct in the future.

If you do award punitive damages, you should fix the amount using calm discretion and sound reason. You must not be influenced by sympathy for or dislike of any party in the case. Whether to award Plaintiff punitive damages and the amount of those damages are within your sound discretion.

FINAL JURY INSTRUCTION NO. 16: ELECTION OF FOREPERSON; DUTY TO DELIBERATE; COMMUNICATIONS WITH COURT; CAUTIONARY; UNANIMOUS VERDICT; VERDICT FORM

In conducting your 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 agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it 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 verdict. Remember at all times that you are not partisans. 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 bailiff, 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. [The form reads: (read form)]. You will take this form to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

If more than one form was furnished, you will bring the unused forms in with you.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CATHERINE PETERS,	*	8:03-cv-448
Plaintiff,	*	
v.	*	
ROBERTS DAIRY COMPANY, LLC,	*	**VERDICT**
	*	Discriminatory Discharge
Defendant.	*	

Note: Complete the following paragraph by writing in the name required by your verdict. On the discriminatory discharge claim of Plaintiff, Catherine Peters, as submitted in Instruction 6,we find in favor of:

_____

(Plaintiff Catherine Peters) or (Defendant Roberts Dairy Co., LLC)

Note: Answer the next question only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberations on this claim.

Has it been proved by the greater weight of the evidence that Defendant would have discharged plaintiff regardless of her sex? (See Instruction No. 8)

_____ Yes _____ No
(Mark and "X" in the appropriate space)

Note: Complete the following paragraphs only if your answer to the preceding question is "no." If you answered "yes" to the preceding question, have your foreperson sign and date this form because you have completed your deliberations on this claim.

We find the Plaintiff's lost wages and benefits through the date of this verdict to be:

$ _____ (stating the amount or, if none, write the word "none")

We find the Plaintiff's emotional distress damages to be:

$ _____ (stating the amount or, if you find that Plaintiff's damages do not have a monetary value, write in the nominal amount of One Dollar ($1.00)).

We assess punitive damages against Defendant on this claim, as submitted in Instruction 15, as follows:

$ _____ (stating the amount or, if none, write the word "none.")

Note: You have completed your work on this claim. Have your foreperson sign and date immediately below.

_____
Foreperson

Dated: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CATHERINE PETERS,	*	8:03-cv-448
Plaintiff,	*	
v.	*	
ROBERTS DAIRY COMPANY, LLC,	*	**VERDICT**
	*	Hostile Work Environment
Defendant.	*	

Note: Complete the following paragraph by writing in the name required by your verdict.

On the hostile work environment claim of Plaintiff Catherine Peters as submitted in Instruction 10, we find in favor of:

(Plaintiff Catherine Peters) OR (Defendant Roberts Dairy Co., LLC)

Note: Answer the next question only if the above finding is in favor of Plaintiff. If the above finding is in favor of Defendant, have your foreperson sign and date this form because you have completed your deliberations on this claim.

Has it been proved by the greater weight of the evidence that Defendant exercised reasonable care to prevent and correct promptly any sexually harassing behavior and Plaintiff unreasonably failed to take advantage of Defendant's anti-harassment procedures? (See Instruction No. 12)

_____ Yes _____ No
(Mark and "X" in the appropriate space)

Note: Complete the following paragraphs only if your answer to the preceding question is "no." If you answered "yes" to the preceding question, have your foreperson sign and date this form because you have completed your deliberations on this claim.

We find the Plaintiff's Actual Damages (See Instruction No. 13) in regards this claim to

be:

$ _____ (stating the amount, or if you find that Plaintiff's damages do not have a monetary value, write in the nominal amount of One Dollar ($1.00)).

We assess punitive damages against Defendant on this claim, as submitted in Instruction 15, as follows:

$ _____ (stating the amount or, if none, write the word "none.")

Note: You have completed your work on this claim. Have your foreperson sign and date below.

_____
Foreperson

Dated: _____