

IN THE IOWA DISTRICT COURT FOR STORY COUNTY

GERALD F. DETERS	)	
MIKE D. FITZGERALD, and	)	
LYNN RAHFELDT,	)	
	)	
Plaintiffs,	)	CASE NO. LACV050099
	)	
v.	)	
	)	
INTERNATIONAL UNION, SECURITY,	)	JURY INSTRUCTIONS
POLICE, AND FIRE PROFESSIONALS	)	
OF AMERICA, LOCAL UNION #249,	)	
	)	
Defendant.	)	

COMES NOW the Plaintiff, by counsel, and after consideration of the evidence to be presented in this case, Plaintiff requests the inclusion of the following jury instruction:

100.1 Statement Of The Case. Members of the Jury: In this case the Plaintiffs, Gerald Deters and Lynn Rahfeldt were employees of American Eagle Protective Services at the National Animal Disease Lab in Ames, Iowa and members of the International Union, Security, Police, and Fire Professionals of America, Local Union #249. The Plaintiffs allege that the Union discriminated against them as part of a rebidding process that started in 2015 for security guard shifts at the National Animal Disease Lab in Ames, Iowa. As a result of this age discrimination, Mr. Deters lost his position and Mr. Rahfeldt lost his regular shifts as a security guard at the National Animal Disease Lab. The Union denies that it had any role in the process and that age discrimination resulted.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

100.2 Duties Of Judge And Jury, Instructions As Whole. My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

Authority

Roushar v. Dixon, 231 Iowa 993, 2 N.W.2d 660 (1942)

100.3 Burden Of Proof, Preponderance Of Evidence. Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Authority

Mabrier v. A.M. Servicing Corporation of Raytown, 161 N.W.2d 180 (1968)

100.4 Evidence. You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

Authority

Iowa Rules of Evidence.

100.5 Deposition Testimony. Certain Testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

Authority

Iowa R. Civ. P. 1.704
Farley v. Seiser, 316 N.W.2d 857 (Iowa 1982)

100.9 Credibility Of Witnesses. You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;

2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

Authority

Burger v. Omaha & C.B. St. Ry. Co., 139 Iowa 645, 117 N.W.35 (1908)

100.18 General Instruction To Jury. Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

100.23 Use of Electronic Devices.

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. [Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.]

It is important that we have your full and undivided attention during this trial.

Elements of Claim:

Your verdict must be for Plaintiffs, Gerald Deters and Lynn Rahfeldt, and against Defendant, SPFFA, if all the following elements have been proved:

First, the Defendant discriminated in the privileges, rights or benefits of membership on the basis of age against the Plaintiffs, and

Second, the discrimination on the basis of age was a cause of the Plaintiffs' losses.

If any of the above elements has not been provided, your verdict must be for the defendant.

"A cause" does not require that age was the only reason for the Plaintiffs' loss. You may find that the Defendant's discrimination against the Plaintiffs' has been proved while the Defendant's stated reason for its actions is merely a pretext to hide age discrimination.

Source: 8th Circuit Manual of Model Civil Jury Instructions, Iowa Code 216.6(b); *Deboom v. Raining Rose*, 772 N.W.2d 1, 12-14 (Iowa 2009)

Damages: Actual

If you find in favor of either or both of the Plaintiffs then you must award the Plaintiff such sum as you find will fairly and justly compensate the Plaintiff for any damages you find the Plaintiff sustained as a direct result of the Defendant's discrimination. The Plaintiff's claim for damages includes lost wages:

First you must determine the amount of any wages the Plaintiffs would have earned in their employment had they not lost their shifts or been discharged from the date they lost their shifts or were discharged to the date of your verdict, minus the amount of earning and benefits that the Plaintiffs received from other employment during that time.

Second you must determine the amount of any other damages sustained by the plaintiff, such mental pain and suffering and emotional damages as a result of the Defendant's action. 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 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 either Plaintiff failed to seek out or take advantage of an 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.

Source: 8th Circuit Manual of Model Jury Instructions 5.70

Respectfully submitted,
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