

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ETHEL EMELIA MORRIS-SHAW,

Plaintiff,

v.

STORA ENSO NORTH AMERICA,

Defendant.

ORDER

04-C-704-C

In an order entered on August 15, 2005, I granted defendant Stora Enso North America's motion for summary judgment, dismissing plaintiff Ethel Emelia Morris-Shaw's complaint for employment discrimination and granting defendant judgment on its counterclaim for breach of a severance agreement. Defendant had asked for nominal damages for the breach but did not specify a dollar amount; I gave it until August 29, 2005 in which to specify precisely what damages it was seeking. In response to the order, defendant advised the court and plaintiff that it sought an award of only \$1.00. In its reply brief, it has clarified its request by saying that it applies only if plaintiff forgoes an appeal of the judgment in this case.

In opposition to defendant's request for an award of \$1.00, plaintiff has submitted

a document in which she re-argues the summary judgment motion, contends that she was not given adequate information about the procedures she was to follow in opposing the motion for summary judgment and maintains that she is entitled to damages of more than \$13,000,000.00. In the last paragraph, plaintiff says that she will pay the \$1.00 in damages that defendant seeks, “as long as this completely satisfies all and any claim that Defendant may, based on this decision by the Court to grant Defendant Summary Judgment, believe it has.” Dkt. #28.

I cannot tell from plaintiff’s submission whether she understands that defendant’s offer is premised on plaintiff’s giving up her right to appeal the adverse decision of this court, particularly since defendant did not make it clear until its reply brief that its offer was conditional. Therefore, I will give plaintiff an opportunity to advise the court whether she will accept the request on defendant’s terms or whether she would prefer to litigate the matter of damages to which defendant is entitled by virtue of plaintiff’s breach of the Separation and Release Agreement.

ORDER

IT IS ORDERED that plaintiff Ethel Emelia Morris-Shaw may have until November 1, 2005, in which to advise the court whether she

1. Agrees to pay defendant the sum of \$1.00 as damages for her breach of the

Separation and Release Agreement she signed, on the understanding that if she agrees to do this, she will be giving up any and all right to appeal to the Court of Appeals for the Seventh Circuit this court's decision dismissing her claims of employment discrimination;

OR

2. Declines to pay defendant the sum of \$1.00 and prefers to litigate the amount of damages due defendant for her breach of the Separation and Release Agreement (which defendant estimates have been more than \$75,000.00 to date) and preserve her right to appeal this court's decision to the Court of Appeals for the Seventh Circuit. If plaintiff chooses the second option, I will direct defendant to submit an itemized statement of the fees and costs it has incurred in defending this case, allow plaintiff an opportunity to object to the amounts of time expended and the hourly rates charged and allow defendant an opportunity to respond to plaintiff's objections and then I will make a decision on the basis of the parties' submissions.

Entered this 19th day of October, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge