

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

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,

Defendant.

JURY INSTRUCTIONS
ON LIABILITY

09-cv-528-slc

Introduction

Now that you have heard the evidence and the arguments, I will give you the instructions that will govern your deliberations in the jury room. It is my job to decide what rules of law apply to the case and to explain those rules to you. It is your job to follow the rules, even if you disagree with them or don't understand the reasons for them. You must follow all of the rules; you may not follow some and ignore others.

The decision you reach in the jury room must be unanimous. In other words, you must all agree on the answer to each question. Your deliberations will be secret. You will never have to explain your verdict to anyone.

If you have formed any idea that I have an opinion about how the case should be decided, disregard that idea. It is your job, not mine, to decide the facts of this case.

Burden of Proof

When a party has the burden to prove any matter by a preponderance of the evidence, it means that you must be persuaded by the testimony and exhibits that the matter sought to be proved is more probably true than not true. The burden of proof is

on the party contending that the answer to a question should be “yes.” In this case, it is plaintiff EEOC that contends that the answers to the special verdict questions is “yes.” Therefore, if you find that the EEOC plaintiff has proved one of its claims by a preponderance of the evidence, then you should answer the question addressing that claim “yes” on the special verdict form. If, however, you find that the EEOC did not prove one of its claims by a preponderance of the evidence, then you should answer the question addressing that claim “no” on the special verdict form. You should base your decision on all of the evidence, regardless of which party presented it.

Answers Not Based on Guesswork

If, after you have discussed the testimony and all other evidence that bears upon a particular question, you find that the evidence is so uncertain or inadequate that you have to guess what the answer should be, then the party having the burden of proof as to that question has not met the required burden of proof. Your answers are not to be based on guesswork or speculation. They are to be based upon credible evidence from which you can find the existence of the facts that the party must prove in order to satisfy the burden of proof on the question under consideration.

Special Verdict Questions

The EEOC claims defendant Chase Bank denied Lisa McCurty a promotion into the SSA Opening at the Monona Branch in October 2008 because McCurty was African American, or because she was pregnant, or because she was a pregnant African American woman.

The case is being submitted to you in the form of a special verdict consisting of 3 questions. *{Court reads the verdict form}* Please note that you are to answer Question

No. 2 only if you answer “No” to Question No. 1, and that you are to answer Question No. 3 only if you answer “No” to Question No. 2.

You must give separate consideration to each of these questions. In answering the questions, you should consider only the evidence that has been received at this trial. Your decision on each question must be unanimous. Do not concern yourselves with whether your answers will be favorable to one side or another, or with what the final result of this lawsuit may be. Question No. 1 asks about racial discrimination. To prevail on this claim, the EEOC must prove by a preponderance of the evidence that defendant Chase Bank would have selected Lisa McCurty to fill the October 2008 Monona Branch SSA Opening if she had been of a different race (not African-American) and everything else had been the same.

Question No. 2 asks about pregnancy discrimination. To prevail on this claim, the EEOC must prove by a preponderance of the evidence that defendant Chase Bank would have selected Lisa McCurty to fill the October 2008 Monona Branch SSA Opening if she had not been pregnant and everything else had been the same.

Question No. 3 asks about a combination of racial and pregnancy discrimination. To prevail on this claim, the EEOC must prove by a preponderance of the evidence that defendant Chase Bank would have selected Lisa McCurty to fill the October 2008 Monona Branch SSA Opening if she had not been a pregnant African-American woman and everything else had been the same.

In deciding the EEOC’s claims, you should not concern yourselves with whether Chase Bank’s actions were wise, reasonable or fair. Rather, your only concern is whether the EEOC has proved that Chase Bank did not select Ms. McCurty for the position because she is African-American, because she is pregnant, or because she is a pregnant African American woman.

Evidence of Discrimination

The EEOC may prove its claim through circumstantial evidence. Circumstantial evidence of discrimination is evidence that allows the trier of fact to infer intentional discrimination by the decision maker. Circumstantial evidence of intentional discrimination may include suspicious timing, ambiguous oral or written statements, and evidence that the employee was qualified for the job in question but was passed over in favor of a person outside the protected class and the employer's reason is a pretext for discrimination.

A reason is a pretext if it is not the true reason for the employment decision. In other words, it is a lie to cover up the employer's discriminatory motives. A reason is not a pretext if the employer honestly believed its reasons at the time the employer made the employment decision. Therefore, it does not matter whether you think defendant's decision was fair or unfair, correct or incorrect. An employer is entitled to make its own business decisions, even if the employer is mistaken or foolish, so long as its reasons are not discriminatory. With respect to hiring decisions, if an employer chooses the person it believes is the best qualified applicant, then you must defer to the employer's decision unless you find that no reasonable employer could believe that it selected the best candidate.

The EEOC can attempt to prove pretext directly by persuading you by a preponderance of the evidence that Lisa McCurdy's race, her pregnancy, or the combination of both was more likely the reason for Chase Bank's decision than the reasons stated by Chase Bank. The EEOC also can attempt to prove that Chase Bank's stated reasons for the decision to reject McCurdy for the October 2008 SSA position are a pretext by persuading you that its reasons are not believable. If the EEOC persuades you that Chase Bank's reasons are not believable, then you may infer, but you do not have to infer, that Chase Bank discriminated against McCurdy because of her race, her

pregnancy or the combination of both. Keep in mind that Chase Bank does not ever have to prove that it did not discriminate against Lisa McCurty; the burden of proving that Chase Bank discriminated against Lisa McCurty remains on the EEOC at all times.

Suggestions for Conducting Deliberations

In order to help you determine the facts, you may want to consider discussing one claim at a time, and use my instructions to the jury as a guide to determine whether there is sufficient evidence to prove all the necessary legal elements for each claim or defense. I also suggest that any public votes on a verdict be delayed until everyone can have a chance to say what they think without worrying what others on the panel might think of their opinion. I also suggest that you assign separate tasks, such as note taking, time keeping and recording votes to more than one person to help break up the workload during your deliberations. I encourage you at all times to keep an open mind if you ever disagree or come to conclusions that are different from those of your fellow jurors. Listening carefully and thinking about the other juror's point of view may help you understand that juror's position better or give you a better way to explain why you think your position is correct.

Selection of Presiding Juror; Communication with the Judge; Verdict

When you go to the jury room to begin considering the evidence in this case you should first select one of the members of the jury to act as your presiding juror. This person will help to guide your discussions in the jury room.

You are free to deliberate in any way you decide or select whomever you like as a presiding juror. However, I am going to provide some general suggestions on the process to help you get started. When thinking about who should be presiding juror,

you may want to consider the role that the presiding juror usually plays. He or she serves as the chairperson during the deliberations and has the responsibility of insuring that all jurors who desire to speak have a chance to do so before any vote. The presiding juror should guide the discussion and encourage all jurors to participate.

Once you are in the jury room, if you need to communicate with me, the presiding juror will send a written message to me. However, don't tell me how you stand as to your verdict.

As I have mentioned before, the decision you reach must be unanimous; you must all agree on your answer to a particular question on the verdict form.

When you have reached a decision, the presiding juror will sign the verdict form, put a date on it, and all of you will return with the verdict into the court.