

CASE NO. 14-CI-02690

JEFFERSON CIRCUIT COURT  
DIVISION FOUR (4)  
CHARLES L. CUNNINGHAM, JR., JUDGE

PAM SPAYD

PLANITIFF

VS.

**FINAL JUDGMENT**

THE PNC FINANCIAL SERVICES GROUP, INC.  
d/b/a PNC BANK

DEFENDANT

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This case was called for trial October 27, 2015, and both parties announced ready. After ruling on preliminary matters, a jury was duly empaneled and the parties presented their evidence consisting of a number of witnesses and exhibits. At the close of the proof, the Court having denied motions for directed verdict, the jury was instructed, heard closing arguments, and retired to deliberate.

The verdict (by vote of nine jurors) was in favor of Plaintiff under Instruction No. 3 (Retaliation). The jury therefore also rendered a verdict as to damages under Instruction No. 4 and awarded (again, with nine jurors so voting) FOURTEEN THOUSAND DOLLARS (\$14,000.00) in special damages (lost income) and ONE THOUSAND DOLLARS (\$1,000.00) for general damages.

WHEREFORE, judgment is hereby entered in favor of the Plaintiff as against the Defendant in the sum of \$15,000.00 in damages.

Plaintiff has asked that interest on this judgment run at 12% pursuant to statute. Defendant moved to set a lower rate, introducing evidence that such a rate significantly exceeds the rate expected for reasonable investments in today's economy with its low rates of return generally. However, the 12% rate presumably is set to account for the lack of prejudgment interest, has not been lowered by the legislature, is manageable for this Defendant in light of the size of the award, and should provide some counterweight

to knee-jerk decision to extend the case by appeal. Therefore, the judgment shall carry interest at 12% *per annum*.

Plaintiff has asked for front pay in lieu of reinstatement, and the Defendant agrees that reinstatement is undesirable. However, Defendant contends front pay is not appropriate in this situation. It contends the jury was given the opportunity to assess and award lost earning and set them at a level which did not contemplate recovery beyond the period Plaintiff found new, comparable employment at Stockyards Bank. The Court agrees and will not award front pay damages.

Defendant disputes two items of costs claimed by Plaintiff; mediation fees and copies of deposition transcripts. Neither are “taxable costs” under general Kentucky civil litigation rules and case law. However, the Plaintiff contends Kentucky’s Civil Rights statute envisions a broader recovery, *viz.*, all reasonable costs of litigation. The Court concludes the cost of copies of depositions are a reasonable cost of litigation as envisioned by the legislature and those can be recovered. However, the cost of paying a mediator, while no doubt reasonable in scope and generally a prudent idea, is not a cost of litigation which the Court believes it should award. The parties no doubt went into the mediation with the plan to pay their respective share of that expense and any different result should be by agreement, not by judicial decree. Therefore, Plaintiff is awarded her itemized costs except for the share of the mediator’s fee (a total of \$4,284.30).

The most significant point of dispute post-verdict is the award of attorneys’ fees. Plaintiff’s counsel have requested a total of \$130,970.00. Defendants dispute this because it believes there is some “padding” in the hours, because Plaintiff only won on one of her two causes of action, and because she only recovered about 5% of damages she sought. The point to determine, it seems, is how much in fees would be necessary to incentivize competent attorneys to undertake the representation of someone with a valid but modest claim such as the Plaintiff which must be litigated against a Defendant with deep pockets and first-rate lawyers? As was the case in this Court’s *Banker* decision, the causes of action were too intertwined to permit only fees for work on the successful retaliation claim. Moreover, while the

recovery was small, it frankly takes about as much work (if you do it right), and definitely as much risk, to litigate a \$15,000 case as it does a \$150,000 case. The Court awards \$130,970.00 in attorney's fees.

This is a final and appealable judgment as it resolves all remaining disputes between the parties and there is no just cause for further delay.

*Charles L. Nicholson*  
ENTERED IN COURT  
CHARLES L. NICHOLSON, CLERK  
JAN 15 2016  
BY *[Signature]*  
DEPUTY CLERK

xc: Counsel of record