

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

SEDRIC WARD,)	
)	
Plaintiff,)	
)	Case No. 2:20-cv-02407-JPM-cgc
)	
v.)	
)	
SHELBY COUNTY,)	
)	
Defendant.)	

FINAL JURY INSTRUCTIONS

I. INTRODUCTION

Members of the jury, we have now come to the point in the case when it is my duty to instruct you on the rules of law that you must follow and apply in deciding this case.

As jurors it is your exclusive duty to decide all questions of fact submitted to you and for that purpose to determine the effect and value of the evidence.

You must not be influenced by sympathy, bias, prejudice or passion for one side or the other.

You must follow the law as I explain it to you whether you agree with it or not. You are not to single out any particular part of the instructions and ignore the rest, but you are to consider all the instructions as a whole and regard each in the light of all the others.

All of the instructions are equally important. The order in which these instructions are given has no significance. You must follow all of the instructions and not single out some and ignore others.

II. GENERAL INSTRUCTIONS

A. Burden of Proof and Consideration of the Evidence

I will now instruct you with regard to where the law places the burden of making out and supporting the facts necessary to prove the theories in the case.

When a party denies the material allegations of the other party's claims, the law places upon the party bringing a claim the burden of supporting and making out each element of each claim by the greater weight or preponderance of the evidence. Defendant, Shelby County, has the burden of proof in this case. Shelby County has a duty to prove or establish its defense that Plaintiff Ward believed the benefits from the settlement agreement outweighed his USERRA rights by a preponderance of the evidence.

The preponderance of the evidence means that amount of factual information presented to you in this trial which is sufficient to cause you to believe that an allegation is probably true. In order to preponderate, the evidence must have the greater convincing effect in the formation of your belief. If the evidence on a particular issue appears to be equally balanced, the party having the burden of proving that issue must fail.

Those of you who have sat on criminal cases will have heard of proof beyond a reasonable doubt. That is a stricter standard, i.e., it requires more proof than a preponderance of the evidence. The reasonable doubt standard does not apply to a civil case and you should therefore put it out of your mind.

Unless otherwise instructed, you must consider all the evidence pertaining to every issue, regardless of which party presented it.

B. Governmental Entity Not to be Prejudiced

In this case, the defendant, Shelby County is a governmental entity. The fact that a party is a governmental entity must not influence you in your deliberations or in your verdict.

You may not discriminate between governmental entities and natural individuals. Each is a person in the eyes of the law, and each is entitled to the same fair and impartial consideration and to justice by the same legal standards.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. A governmental entity is entitled to the same fair trial at your hands as a private individual. All persons, including governmental entities, stand equal before the law, and are to be dealt with as equals in a court of justice.

C. Credibility and Weighing of Evidence

You, the members of the jury, are judges of the facts concerning the controversy involved in this lawsuit. In order for you to determine what the true facts are, you are called upon to weigh the testimony of the witness who appeared before you and to give the testimony of the witness the weight, faith, credit and value to which you think it is entitled.

You should consider the manner and demeanor of the witness while on the stand.

You must consider whether the witness impressed you as one who was telling the truth or one who was telling a falsehood, and whether or not the witness was a frank witness. You should consider the reasonableness or unreasonableness of the testimony of the witness; the opportunity or lack of opportunity of the witness to know the facts about which he testified; the intelligence or lack of intelligence of the witness; the interest of the witness in the result of the lawsuit, if any; the relationship of the witness to any of the parties to the lawsuit, if any; and whether the witness testified inconsistently while on the witness stand, or if the witness said or did something or failed to say or do something at any other time that is inconsistent with what the witness said while testifying.

These are the rules that should guide you, along with your common judgment, your common experience and your common observations gained by you in your various walks of life, in weighing the testimony of the witness who have appeared before you in this case.

Immaterial discrepancies do not affect a witness's testimony, but material discrepancies do. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

The preponderance of the evidence in a case is not determined by the number of witnesses testifying to a particular fact or a particular set of facts. Rather, it depends on the weight, credit and value of the total evidence on either side of the issue, and of this you jurors are the exclusive judges.

If in your deliberations you come to a point where the evidence is evenly balanced and you are unable to determine which way the scales should turn on a particular issue, then you must find against the party upon whom the burden of proof has been cast in accordance with these instructions.

Remember, you are the sole and exclusive judges of the credibility or believability of the witness who testified in this case.

Ultimately, you must decide what testimony you believe and how important you think that testimony was. You are not required to accept or reject everything a witness says. You are free to believe all, none, or part of the witness's testimony.

D. Impeachment – Inconsistent Statements or Conduct

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

If you believe that the witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness's other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves; you may, of course, accept any part you decide is true. This is all for you, the jury, to decide.

An act or omission is done "knowingly" if committed voluntarily and intentionally, and not because of mistake or accident, or some other innocent reason.

E. Direct and Circumstantial Evidence

There are two kinds of evidence: direct and circumstantial. Direct evidence is testimony by a witness about what a witness personally saw, heard or did. Circumstantial evidence is indirect evidence—that is, proof of one or more facts from which you can find another fact.

You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

F. Evidence

You are to decide this case only from the evidence that was received—that is, evidence that was presented for your consideration during the trial. The evidence consists of:

1. The sworn testimony of the witness who has testified;
2. The exhibits that were received and marked as evidence;
3. Any facts to which the lawyers for both sides have agreed or stipulated; and
4. Any other matters that I have instructed you to consider as evidence.

G. “Inferences” Defined

Although you are to consider only the evidence in this case, you are not limited to the statements of the witness. In other words, you are not limited to what you see and hear as the witness testified. You may draw from the facts that you find have been proved such reasonable inferences as seem justified in light of your experience.

Inferences are deductions or conclusions that reason and common sense lead you to make from facts established by the evidence in the case.

H. Statements and Arguments of Counsel

You must not consider as evidence any statements of counsel made during the trial.

If, however, counsel for the parties have stipulated to any fact, or any fact has been admitted by counsel, you will regard that fact as being conclusively established.

As to any questions to which an objection was sustained, you must not speculate as to what the answer might have been or as to the reason for the objection, and you must assume that the answer would be of no value to you in your deliberations.

You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken out by the Court. Such matter is to be treated as though you had never known it.

You must never speculate to be true any insinuation suggested by a question asked of a witness. A question is not evidence. It may be considered only as it supplies meaning to the answer.

I. Totality of the Evidence

You should consider all of the evidence admitted in the case. Testimony and documents which the Court allowed into evidence over a hearsay objection may be considered by you as evidence, on the same basis as all other evidence, for the purpose for which it was admitted. For example, matters and things that a decision maker is told may be considered for the purpose of explaining the basis upon which that person acted or made a decision. This, of course, is all for you, the jury, to decide.

J. Juror Notes

If you took notes, please remember that your notes are not evidence. You should keep your notes to yourself. They may only be used to help refresh your personal recollection of the evidence in this case. It is the evidence itself, and not your notes, that you should discuss with the other jurors.

If you cannot recall a particular piece of evidence, you should not be overly influenced by the fact that someone else on the jury appears to have a note regarding that evidence.

Remember, it is your recollection and the collective recollection of all of you upon which you should rely in deciding the facts in the case.

K. Comments by the Court

During the course of this trial, I occasionally asked questions of a witness in order to bring out facts not then fully covered in the testimony. Please do not assume that I hold any opinion on the matters to which my questions may have related. Remember that you, as jurors, are at liberty to disregard all comments of the Court in arriving at your own findings as to the facts.

On the other hand, you are required to follow the Court's instructions on the law, whether you agree with these instructions or not.

L. Limited Admission of Evidence

During the course of this trial, certain evidence may have been admitted for a limited purpose only. You must not consider such evidence for any other purpose.

For example, evidence is admitted for the limited purpose of showing a witness's state of mind, or that the witness had notice of a particular issue. Evidence of a witness's state of mind is relevant only to show what the witness believed. Such evidence cannot be considered for the truth or accuracy of the belief. Likewise, evidence admitted only to show notice cannot be considered for the truth or accuracy of the matter it concerns.

III. STATEMENT OF THE CASE AND STIPULATED FACTS

A. Statement of the Case

Before I instruct you on the specific provisions and factors you are to consider under the laws alleged to have been violated in this case, I want to frame the issues that you will be called upon to decide. Plaintiff Sedric Ward alleges that Shelby County suspended him without pay and terminated his employment as a result of a Shelby County investigation of all military service member employees' use of military leave. While his appeal of his termination was pending, Mr. Ward signed an Agreement and General Release. Under the terms of the Agreement, Ward dismissed his appeal, would return to work and be on probation for the six months following his return, and would receive three weeks of back pay.

Defendant Shelby County contends that Mr. Ward waived his rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA). Defendant contends this waiver occurred because at the time the Agreement was executed, Mr. Ward believed that the Agreement's benefits outweighed his potential USERRA claim.

Mr. Ward contends that, at the time he signed the Agreement and General Release, he did not believe that the Agreement benefits outweighed his potential USERRA claim.

B. Stipulated Facts

Before the trial of this case, the parties agreed to the truth of certain facts. As a result of this agreement, Sedric Ward and Shelby County entered into certain stipulations in which they agreed that the stipulated facts could be taken as true without the parties presenting further proof on the matter. This procedure is often followed to save time in establishing facts that are undisputed.

Facts stipulated to by the parties in this case include the following:

1. Mr. Ward has been an Army reservist since 1987.
2. In 1998, Mr. Ward began working for the Shelby County Jail, which is run by the Shelby County Sheriff's Office.
3. Like most reservists, Mr. Ward often took military leave while deployed and to attend drills and training.
4. In 2013, Shelby County conducted an audit that allegedly revealed potential instances where employees at the jail had taken paid leave on fraudulent grounds.
5. Following the audit, the General Investigations Bureau of the Shelby County Sheriff's Office conducted an investigation.
6. The Sheriff's Office Bureau of Professional Standards and Integrity also investigated Mr. Ward for alleged violations of disciplinary rules.
7. On November 4, 2014, the State of Tennessee indicted Mr. Ward on theft charges.
8. On November 5, 2014, Mr. Ward was suspended by the Sheriff's Office without pay.
9. On April 8, 2015, Mr. Ward was terminated by the Shelby County Sheriff's Office.
10. On or about November 5, 2015, the State of Tennessee dismissed all charges against Mr. Ward.
11. In April 2015, Mr. Ward appealed his termination to the Shelby County Civil

- Service Merit Board (“CSMB”).
12. On August 3, 2016, while the Civil Service appeal was pending, Mr. Ward signed an Agreement and General Release.
 13. Under the terms of the Agreement, Mr. Ward dismissed his Civil Service Merit Board appeal, would be on probation for the six months following his return, and would receive three weeks of back pay.
 14. On September 7, 2016, Mr. Ward declined to return to work and notified the Sheriff’s Office, stating in an email that: “It’s been almost two years since I was relieved of duty from the Sheriff’s office and I realize that things wouldn’t feel right if I returned. So in my best interest I’ve decided not to return to the Sheriff’s office.”
 15. Mr. Ward did not return to work or accept any payment, but he did dismiss his Civil Service Merit Board appeal.

IV. GENERAL INSTRUCTIONS ON THE APPLICABLE LAW

A. Legal Theories of the Case

Turning now to the legal theories in the case, it is my duty to tell you what the law is. If a lawyer or party has told you that the law is different from what I tell you it is, you must, of course, follow the law as I give it to you. That is my duty. But it is your duty, and your duty alone, to determine what the facts are and after you have determined what the facts are, apply the law to those facts, free from any bias, prejudice or sympathy, either one way or the other.

B. Nature of the Action

Defendant Shelby County contends that Mr. Ward waived his USERRA rights because at the time the Agreement was executed, Mr. Ward believed that the Agreement's benefits outweighed his potential Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) claim.

Mr. Ward denies that he had such a belief.

C. Brief Statement of the Law

The sole issue of the case is whether Mr. Ward waived his USERRA rights. In order to prevail on this issue, Shelby County has the burden of proving by a preponderance of the evidence that, under the totality of the circumstances at the time the agreement was executed, Plaintiff Mr. Ward believed benefits from the Agreement and General Release outweighed his USERRA claim.

D. The Statute/USERRA

The claim before you is based on 38 U.S.C. § 4301 et seq., which is also known as the Uniformed Services Employment and Reemployment Rights Act, or “USERRA.”

E. USERRA Rights Waiver

The Uniformed Services Employment and Reemployment Rights Act (USERRA) is a law that protects military service members' employment rights. The law contains special provisions regarding how service members may waive their USERRA rights. Specifically, as applied to a settlement agreement, which we have in this case, USERRA requires that the settlement agreement establish rights that are more beneficial for the servicemember than the ones he gives up under USERRA. To satisfy the waiver requirements the servicemember must make a considered judgment that the agreement is more beneficial to him than his USERRA claim is. Thus, whether a particular settlement agreement provides greater benefits than a USERRA claim is for the servicemember to decide. But that determination must depend on the totality of the circumstances, not on the facts of the settlement agreement alone.

F. USERRA Employment Right

In determining whether Mr. Ward believed the benefits from the settlement agreement outweighed his USERRA claim, you may consider, among other things, how the reinstatement position offered to Mr. Ward in the agreement compared to his prior employment with Shelby County. The right to reinstatement under USERRA requires that the employment offered be equivalent in terms of proper seniority, position, status, pay, and lost benefits. Under USERRA, Mr. Ward was not obligated to accept an inferior position.

V. VERDICT

Finally, members of the jury, we come to the point where we will discuss the form of your verdict and the process of your deliberations. You will be taking with you to the jury room a verdict form that will reflect your findings. The verdict form reads as follows:

[Read Verdict Form]

You will be selecting a presiding juror after you retire to the jury room. That person will preside over your deliberations and be your spokesperson here in court. When you have completed your deliberations, your presiding juror will fill in and sign the verdict form.

Each of you should deliberate and vote on each issue to be decided.

Before you return your verdict, however, each of you must agree on the answer to the question so that each of you will be able to state truthfully that the verdict is yours.

The verdict you return to the Court must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to the answer. Your verdict must be unanimous.

It is your duty to consult with one another and to reach an agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is not correct. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

We will be sending with you to the jury room all of the exhibits in the case. You may not have seen all of these previously and they will be there for your review and consideration. You may take a break before you begin deliberating, but do not begin to deliberate and do not discuss the case at any time unless all of you are present together in the jury room. Some of you have taken notes. I remind you that these are for your own individual use only and are to be used by you only to refresh your recollection about the case. They are not to be shown to others or otherwise used as a basis for your discussion about the case.

If a question arises during deliberations and you need further instructions, please write your question on a sheet of paper, knock on the door of the jury room, and give the question to the court security officer.

I will review your question, and after consulting with all counsel in the case, will either respond to your question in writing or have you return to the courtroom for further oral instructions. Please understand that I may only answer questions about the law and I cannot answer questions about the evidence. I caution you, however, that with regard to any message or question you might send me, you should not tell me your numerical division at the time.

I remind you that you are to decide this case based only on the evidence you have heard in court and on the law I have given you. You are prohibited from considering any other information and you are not to consult any outside sources for information. You must not communicate with or provide any information, photographs, or video to anyone by any means about this case or your deliberations. You may not use any electronic device or media, such as a telephone, cell phone, smart phone or computer; the Internet, any text or instant messaging service; or any chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or X (formerly known as Twitter), to communicate with anyone or to conduct any research about this case.