

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>RONALD GERLIB, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
vs.	)	<b>Case No. 95 C 7401</b>
	)	
<b>R.R. DONNELLEY &amp; SONS COMPANY, )</b>	)	
	)	
<b>Defendant.</b>	)	

**INSTRUCTIONS GIVEN TO THE JURY**

Date: August 2, 2002

Members of the jury, you have seen and heard all of the evidence and the arguments of the attorneys. Now I will instruct you on the law that applies to this case.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in this case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform your duties fairly and impartially. In deciding your verdict, you must not allow sympathy, bias, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex. The parties to this case and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law that I give you, and reach a just verdict regardless of the consequences.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be. It is not my function to determine the facts in this case. That function belongs to you.



You should consider and decide this case as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to the same fair consideration. A corporation is entitled to the same fair consideration as a private individual. All persons and corporations, stand equal before the law and are to be dealt with as equals in a court of justice.



As I stated earlier, it is your duty to determine the facts. In determining the facts, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses, testimony that was read to you from depositions, the exhibits admitted in evidence, and stipulations. A stipulation is an agreement between both sides that certain facts are true.

During the trial, certain testimony was presented to you by the reading of a deposition. Deposition testimony is entitled to the same consideration as testimony that was given in court. You are to judge its truthfulness and accuracy, and you are to weigh and consider it, insofar as possible, in the same way as if the witness had been present and testified from the witness stand.



Certain things are not evidence. I will list them for you.

First, testimony and exhibits that I struck from the record, or that I told you to disregard, are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports that you may have seen or heard. Such reports are not evidence, and your verdict must not be influenced in any way by such publicity.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements and arguments to you are not evidence. The purpose of these statements and arguments is to discuss the issues and the evidence. If the evidence as you remember it is different from what the lawyers said, your memory is what counts.



Some of you may have heard the phrases “direct evidence” and “circumstantial evidence.”

Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, in other words it is proof of one or more facts that point to the existence or non-existence of another fact that is at issue. You are to consider both direct and circumstantial evidence. The law allows you to give equal weight to both types of evidence, but it is up to you to decide how much weight to give to any evidence in the case.

You are to consider all of the evidence in determining your verdict. However, that does not mean that you must accept all of the evidence as true or accurate.



You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we sometimes look at one fact and conclude from that fact that another fact exists. In law we call this an “inference.” You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.



In determining the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. You will also have to decide what weight, if any, to give to the testimony of each witness.

In considering the testimony of any witness, you may take into account:

- the opportunity and ability of the witness to see or hear or know the things that the witness testified about;
- the witness's memory;
- the witness's intelligence;
- any interest the witness may have in the outcome of the case, and any bias or prejudice the witness may have;
- the witness's manner while testifying;
- the reasonableness of the witness's testimony in light of all the evidence in the case; and - any other factors that bear on believability.

The weight of the evidence as to a particular fact does not necessarily depend on the number of witnesses who testify. You may find the testimony of a smaller number of witnesses to be more persuasive than that of a greater number.

A witness may be discredited or “impeached” by contradictory evidence, by, among other things, a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something that is inconsistent with the witness’ testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness’s testimony in whole, in part, or not at all, and how much weight to give to that testimony.

It is proper for an attorney to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney does not, by itself, reflect negatively on the truth of the witness's testimony.



You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.



The plaintiffs in this case are 342 former employees of R.R. Donnelley & Sons Company who worked at Donnelley's Chicago Manufacturing Division, and who were terminated as a result of the shutdown of that division in 1993-94. When I use the term "plaintiffs" in these instructions, I mean to refer to this group of persons.

The defendant in this case is R.R. Donnelley & Sons Company, a corporation. When I use the term "defendant" in these instructions, I mean to refer to R.R. Donnelley & Sons.

A corporation can only act through its employees, agents, directors, and officers. Therefore, a corporation is responsible for the acts and omissions of its employees, agents, directors, and officers performed within the scope of their authority.

A federal law called the Age Discrimination in Employment Act makes it unlawful  
unlawful for an employer--

(1) to fail or refuse to hire, discharge, or otherwise discriminate against any person with respect  
to the terms, conditions, or privileges of employment, because of the person's age, or

(2) to limit, segregate, or classify employees in any way which would deprive or tend to  
deprive any person of employment opportunities or otherwise adversely affect his status as an  
employee, because of the person's age.

This law protects employees who are at least forty years old from discrimination because of their age,  
but it does not require that such employees be given special or favored treatment, nor does it guarantee  
them continued employment.

The plaintiffs claim that the defendant engaged in a pattern or practice of unlawful age discrimination in connection with the defendant's shutdown of its Chicago Manufacturing Division in 1993-1994, specifically, that the defendant selected older employees disproportionately for termination, and/or treated older employees less favorably in consideration for continued employment based on their age.

The defendant denies the plaintiffs' claim of a pattern or practice of discrimination and claims that it treated all employees equally, regardless of their age.

In a civil lawsuit like this one, the burden is on the plaintiffs to prove every essential element of their claim by a “preponderance of the evidence.”

A preponderance of the evidence simply means evidence that persuades you that the plaintiff’s claim is more likely true than not true.

In deciding whether any fact has been proven by a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.



You must decide whether the plaintiffs have proved that the defendant, in connection with its shutdown of the Chicago Manufacturing Division, engaged in a pattern or practice of age discrimination in its decisions regarding termination and/or continued employment of employees.

To establish that the defendant engaged in a pattern or practice of age discrimination, the plaintiff must prove by a preponderance of the evidence that it was defendant's regular practice to discriminate against Chicago Manufacturing Division employees on the basis of their age in making termination decisions in connection with the shutdown of the Division and/or in offering employees the opportunity for continued employment after the Division closed.

To constitute a pattern or practice, age discrimination must have been repeated, routine, or of a generalized nature. Isolated or sporadic incidents of age discrimination are not sufficient to constitute a pattern or practice.

The Age Discrimination in Employment Act permits an employer to offer employees voluntary early retirement incentive plans. However, the Act does not permit an employer to require the involuntary retirement of any person who is forty or older because of that person's age.

If you find that the defendant engaged in a pattern or practice of age discrimination, then you must determine whether the defendant willfully violated the Age Discrimination in Employment Act.

To establish that the defendant willfully violated the Age Discrimination in Employment Act, the plaintiffs must prove by a preponderance of the evidence one of the following:

- (1) that the defendant knew that its actions violated the Age Discrimination in Employment Act; or
- (2) that the defendant showed reckless disregard for whether its actions violated the Age Discrimination in Employment Act.

An employer acts with “reckless disregard” when it acts with indifference to the requirements of the law, or with indifference to whether or not it had the legal right to act as it did.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

A form of verdict has been prepared for you. [Read the verdict form.]

Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the form, and each of you will sign it.



I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer.

If any communication is made, it should not indicate your numerical division.



The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the views of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or solely for the purpose of returning a unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict which is consistent with the individual judgment of each juror. You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

**Verdict form**

Question 1. Did the plaintiffs prove by a preponderance of the evidence that the defendant, in connection with its shutdown of the Chicago Manufacturing Division, engaged in a pattern or practice of age discrimination?

Yes \_\_\_\_\_

No \_\_\_\_\_

If you answer “yes” to Question 1, then answer Question 1a and Question 2.

If you answer “no” to Question 1, then skip Question 1a and Question 2, and sign and date this form.

Question 1a. Was your “yes” answer to Question 1 based on (check only one of the following):

- decisions regarding termination? \_\_\_\_\_

- decisions regarding continued employment? \_\_\_\_\_

- decisions regarding both termination and continued employment? \_\_\_\_\_

Question 2. Answer this question only if you answered “yes” to question 1.

Did the plaintiffs prove by a preponderance of the evidence that the defendant willfully violated the Age Discrimination in Employment Act?

Yes \_\_\_\_\_

No \_\_\_\_\_

_____	_____
Foreperson	
_____	_____
_____	_____
_____	_____

\_\_\_\_\_ Date: \_\_\_\_\_