

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

PETER BIONDO, BRIAN GILHOOLY,)	
PATRICK JOYCE, DAVID McELROY,)	
THOMAS TERVANIS, VICTOR WALCHUK)	
Plaintiffs,)	Case No.: 88 C 3773
v.)	Judge James F. Holderman
)	
CITY OF CHICAGO and THE FIREMAN'S)	
ANNUITY, AND BENEFIT FUND OF CHICAGO)	
Defendants.)	

PRELIMINARY JURY INSTRUCTIONS

Members of the jury, the six plaintiffs in this trial are employed by the Chicago Fire Department and are a part of a group of plaintiffs who were unlawfully discriminated against by the defendant City of Chicago because of their race. This happened when the City denied the plaintiffs the promotions that the plaintiffs had earned to the rank of Lieutenant in the Chicago Fire Department based on the results of the 1986 Lieutenants' exam.

Because liability has already been found against the City, it is your job, as the jury in this trial, to determine the amount of damages suffered by each of these six plaintiffs as a result of the City's unlawful actions.

In doing that job, you must consider the damage claims of each plaintiff separately from each other plaintiff. You may not infer the existence of damages for a particular plaintiff from the testimony and evidence pertaining to another plaintiff.

Each plaintiff must prove his entitlement to the damages you award by a preponderance of the evidence which means each plaintiff must prove his entitlement to any damages you award to be more probably true than not true.

The parties have agreed to the date each plaintiff would have been promoted to the rank of Lieutenant from the 1986 Lieutenants' exam but for the City's unlawful conduct. Each plaintiff would have been promoted to the rank of Lieutenant in the Chicago Fire Department on that date if the City had not discriminated against that plaintiff because of his race.

Each plaintiff has now been promoted to the rank of Lieutenant. The parties have agreed to a monetary award for each plaintiff's back pay and interest due to the delay in each plaintiff's being promoted to the rank of Lieutenant.

This agreement, however, only covers each plaintiff's back pay and interest due to the delay in each plaintiff's promotion to the rank of Lieutenant from the date that that plaintiff should have been promoted to the rank of Lieutenant until that plaintiff was promoted to the rank of Lieutenant. The agreement does not cover any compensation of back pay and interest for the lost chances of any plaintiff's promotion to the ranks of Captain and Battalion Chief. Nor does it cover any of the other damages that you are being asked to determine in this trial.

You, as the jury in this trial, are being asked to determine the appropriate amount of damages to which you, as the jury, find each of these six plaintiffs are fairly entitled based upon your consideration of the evidence that you will receive and review during this trial.

You each have been given a notebook that contains six separate sections, one for each plaintiff in this trial with the name of each plaintiff stated on the tab before each section.

Before all the tabs in your notebook is a document called “Stipulations.” These Stipulations state facts that have been agreed upon by the parties to the case relating to all the plaintiffs in this trial. In each plaintiff’s section is a statement of the agreed facts about that plaintiff as well as his picture.

Also, in each plaintiff’s section there are some blank sheets of paper for you to make notes on, if you desire, to assist you in remembering the evidence that will be presented in the trial about each plaintiff. If you need more sheets of paper for notetaking, we will provide those to you.

Behind the blank sheets of papers in each section is a copy of a form regarding each plaintiff on which you, as the jury, will report your answers to the questions posed on the form and a copy of the official verdict form on which you, as the jury, will report your verdict as to each plaintiff. We are giving you copies of these forms now so you will know, as you listen to the testimony and review the exhibits presented to you, what exactly you, as the jury in this trial, are being asked to determine. We will give you the official answer forms and verdict forms on which you will report your determinations and verdicts as the jury when you retire to the jury room to start your deliberations on your verdicts which is the final phase of the trial regarding these six plaintiffs.

To determine each plaintiff's appropriate damages, you, as the jury in this trial, must decide the question: What effect did being held back from the promotion to Lieutenant, that each of these six plaintiffs had earned on the 1986 Lieutenants' exam, have on each plaintiff's later chances of advancement in the Chicago Fire Department? In other words, you, as the jury, are being asked to decide each plaintiff's probability of promotion that each plaintiff lost for promotion to the ranks of Captain and Battalion Chief in the Chicago Fire Department because of the City's unlawful conduct.

In the Chicago Fire Department, a person must have first attained the rank of Lieutenant to be eligible to take the exam to be a Captain, which is the next highest rank above Lieutenant. And a person must have attained the rank of Captain to be eligible to take the exam for the next highest rank of Battalion Chief. Since 1986, the Chicago Fire Department has given promotional exams only approximately every five years or so.

Because each of these plaintiffs were not made a Lieutenant by the City on the dates they each should have been made a Lieutenant from the 1986 Lieutenants' exam, they could not take the 1992 Captains' exam given by the Chicago Fire Department because the next Lieutenants' exam was the 1993 Lieutenants' exam which was after the 1992 Captains' Exam. Because of that, these plaintiffs could not attain the rank of Captain in time to be eligible to take the 1994 Battalion Chiefs' exam or the 1999 Battalion Chiefs' exam. The next Captains' exam after the 1992 Captains' exam was the 1999 Captains' exam. The next Battalion Chiefs' exam after the 1999 Battalion Chiefs' exam was the 2005 Battalion Chiefs' exam. The key dates for each of these promotional exams are in the "Stipulations" at the beginning of your notebook starting on page 2.

When the evidence phase of the trial starts, the parties will provide you each with another notebook that contains what are called "Joint Exhibits." These "Joint Exhibits" are documents that are part of the evidence in the trial that both sides jointly want you to consider in making your decisions on your verdict. Each side will present additional documentary evidence for your consideration along with the testimony of the witnesses who will be called to testify.

As I mentioned, there are different categories of damages about which you, as the jury, will be asked to determine and report on the official verdict forms at the end of the trial. It is up to you, as the jury, to determine whether any damages should be awarded. To give you a better understanding of what these damages are, I will discuss them briefly with you now and will discuss them again in the final instructions I will give you after you have received all the evidence in the trial. If you want to, you may turn to the verdict form which is the last page of the first plaintiff's section in your notebook, to use as an example, the verdict form for Peter Biondo.

The first category of that verdict form deals with "back pay and prejudgment interest." "Back pay" is the amount of income a plaintiff would have earned at the higher ranked position that you find he would have achieved minus the income that he did earn at his current position. In this part of the verdict form, you are to include the prejudgment monetary interest that the back pay amount would have earned. Back pay and prejudgment interest are calculated up to the day of your verdict.

"Front pay," with which category 2 of the verdict form deals, is the amount of money starting the day of your verdict forward to provide each plaintiff with the income, reduced to present value, of the higher rank that he should have attained but for the City's unlawful conduct. Front pay should only be awarded for a limited period of time and cannot extend past the time a reasonable person would need to achieve the same or an equivalent position in the absence of discrimination.

"Pension losses," with which category 3 deals, are the amount of pension benefits each plaintiff lost, assuming that proper contributions had been made, because each plaintiff was not promoted to the higher ranks, that you find he would have achieved minus the pension benefits he will receive at his current rank when he retires from the Chicago Fire Department or is placed on disability status.

Categories 4 and 5 of the verdict form deal with "emotional distress damages." Emotional distress damages are a part of the compensatory damages you, as the jury, may award and should include damage amounts for any emotional distress, suffering, inconvenience and mental anguish suffered by each plaintiff that was caused to that particular plaintiff by the City's promotion decisions from the 1986 Lieutenants' exam.

In making your findings regarding each plaintiff, you must first determine what the likelihood of promotion to Captain and to Battalion Chief was for the average candidate for promotion from the evidence presented in the trial as a starting point in your analysis. You may assume that but for the City's racial discrimination, each plaintiff would have had the same probability of promotion of all test takers on each of the Captains' and Battalion Chiefs' exams.

In determining the probability of each plaintiff's lost chance for promotion, you may consider whether each plaintiff has established by a preponderance of the evidence the extent to which his lost chances for promotion to Captain and to Battalion Chief were greater than that of the probability of promotion of all test takers on each of the exams for those positions. You should bear in mind that the plaintiffs for the most part were not competing against an absolute standard for any promotions; they were competing against the other test takers.

You may also consider whether a preponderance of the evidence establishes that each plaintiff's lost chance was less than the probability of promotion of all test takers on each of the exams.

In other words, you may consider whether any party has successfully rebutted the assumption that each plaintiff's lost chance was equal to the probability of promotion of all test takers on each of the exams.

Members of the jury, your task is to determine the appropriate award of damages in each of the categories listed on the verdict form for each plaintiff that will fairly and justly reimburse and compensate each plaintiff for the damages, if any, he suffered considering the probability you find as to each of the plaintiffs' lost chances of promotion to Captain and to Battalion Chief resulting from the City's denial of his promotion to Lieutenant from the 1986 Lieutenants' exam.