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Labor, Employment & Benefits



Evidence of Sex Discrimination Was Enough for Emotional Distress Damages, but not for Punitive Damages

Robin Lawrence sued her former employer, CNF Transportation, Inc., for violation of the Equal Pay Act and gender discrimination. At trial, she established that the company paid her less than male employees, provided male employees with a company car and provided male employees with clerical assistance while these benefits were withheld from her. The jury awarded her \$125,000 in emotional distress damages and \$1 million in punitives. The damages were reduced to \$30,000 and \$200,000, respectively. CNF appealed.

In [Lawrence v. CNF Transportation, Inc.](#) (8/11/03), the U.S. Court of Appeals for the Eighth Circuit upheld the compensatory damages but reversed the award of punitive damages. The court held that to affirm the punitives award, Lawrence would have had to show that CNF discriminated against her "with malice or reckless indifference to her federally protected rights." The evidence of sex discrimination was not sufficient and the punitives award was set aside.

Employer's Investigation of Retaliation Claim Could Have Been a Cover-up, Justifying the Award of Punitive Damages

Gerald Lampley, who is African American, believed he was bypassed for a promotion because of his race and filed a complaint with the Equal Employment Opportunity Commission (EEOC). Three days later, after telling his supervisor he would not withdraw his EEOC claim, Lampley was discharged. During the EEOC investigation, Onyx Corp., Lampley's former employer, submitted documentation to support its position that Lampley was not promoted and ultimately discharged due to inadequate performance. Lampley eventually filed a lawsuit in federal court which included a retaliatory discharge claim. He was awarded compensatory and punitive damages. The employer appealed the award of punitives, pointing to its anti-discrimination policy as an indication of its good faith efforts to comply with Title VII.

In [Lampley v. Onyx Corp.](#) (8/18/03), the U.S. Court of Appeals for the Seventh Circuit upheld the award. The court noted that having "an anti-discrimination policy is not sufficient in itself to insulate an employer" from a punitive damages award. The court also noted that the jury could have believed the documentation provided by Onyx to the EEOC was doctored solely to discredit Lampley. If so, the jury could have found that Onyx, instead of engaging in a good faith investigation of Lampley's retaliation claim, engaged in a cover-up. That would have been sufficient to support a claim for punitive damages.

EEOC's Failure to Engage in Good Faith Conciliation Efforts Results in Dismissal of Case and Award of Attorney's Fees to Employer

In March of 1999, thirty-two months after receiving a complaint of race discrimination (which had been initially rejected), the Florida office of the Equal Employment Opportunity Commission (EEOC) issued a determination of "reasonable cause" against Asplundh Tree Expert Company. Within a week, the EEOC investigator submitted a proposed conciliation agreement to Asplundh's general counsel, who was based in Pennsylvania. The agreement would have obligated Asplundh to give nationwide notice of the claim to its employees and to conduct anti-discrimination training of all management and hourly employees within 90 days. The agreement also required Asplundh to reinstate and give front pay to the claimant, even though he had been hired for a temporary job in a project that had concluded three years earlier. Upon receipt of the proposed agreement, Asplundh hired a local attorney who promptly contacted the EEOC in writing to discuss the basis of the EEOC's determination. EEOC did not respond to the attorney but instead issued a letter to Asplundh's general counsel notifying the company that efforts to conciliate had been unsuccessful. Within two weeks, EEOC filed against Asplundh. The trial court dismissed the lawsuit and awarded attorney's fees and costs to Asplundh. The court found that EEOC failed to meet its statutory duty to engage in good faith conciliation.

In [Equal Employment Opportunity Commission v. Asplundh Tree Expert Company](#) (8/7/03), the U.S. Court of Appeals for the Eleventh Circuit upheld the dismissal of the lawsuit and the award of fees and costs. The court rejected EEOC's argument that it had no legal obligation to respond to the letter from outside counsel, noting that the duty to conciliate requires "nothing less than a reasonable effort." The court also found no excuse for EEOC not to extend negotiations with outside counsel before suing. The court concluded that EEOC failed to make a good faith effort to conciliate and dismissal and attorney's fees were not an abuse of discretion.

Former Employees Who Breached Duty of Loyalty Ordered to Disgorge Profits to Employer

Randell Riley and Lee Kunimitsu were employed as superintendent and laborer, respectively, by Eckard Brandes, Inc. (EBI). While at EBI, they formed a partnership, Kamaaina Pumping, to go into the same line of work as EBI, the repair and maintenance of sewer and drain pipes. Kamaaina later bid on a project on which EBI was the only other bidder. When Kamaaina was awarded the contract, EBI learned that Riley and Kunimitsu were its sole partners and terminated their employment. Riley and Kunimitsu sued EBI for overtime wage violations. EBI counterclaimed for breach of duty of loyalty.

In [Eckard Brandes, Inc. v. Riley](#) (8/11/03), the U.S. Court of Appeals for the Ninth Circuit held that the formation of the partnership while still employed by EBI was not itself a breach but their submission of a bid was the equivalent of soliciting customers and their signing the contract while still employed by EBI was direct competition. The court also affirmed the remedy sought by EBI; disgorgement of the profits from the successful bid. In addition, the court affirmed the award of EBI's attorney's fees and costs as properly available in a breach of contract claim.

Permanent Nerve Damage Did Not Substantially Impair Major Life Activities, says Eighth Circuit.

Charles Wood, the driver of a concrete ready-mix truck, sustained permanent nerve damage as a result of a fall. His doctor prohibited him from performing the duties of his position, including driving the ready-mix truck, lifting over 50 lbs., and bending or twisting. His employer, Crown Redi-Mix, Inc., did not have an alternative position to offer Wood and discharged him from employment. Wood then sued, claiming his discharge violated the Americans with Disabilities Act (ADA). After the trial court dismissed the case, Wood appealed.

In [Wood v. Crown Redi-Mix, Inc.](#) (8/7/03), the U.S. Court of Appeals for the Eighth Circuit examined Wood's limitations in detail noting, for example, that even though Wood claimed to be substantially impaired in "walking" he had not obtained a handicapped parking pass. The court accepted Crown's position that Wood could not drive a ready-mix truck and therefore could not perform the essential functions of his position. As Wood had held two jobs as a driver with other employers since his discharge from Crown, the court did not find him substantially limited in the major life activity of working. The court then concluded that the claimed restrictions were moderate and insufficiently serious to support an ADA claim. Wood had also claimed that his impairment substantially limited him in the major life activity of procreation. The court dispensed with this argument by noting that, even if limited in procreation, there was no connection between that impairment and the requested workplace accommodation.

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The logo for Robinson & Cole LLP is displayed on a dark blue, horizontal rectangular background with a slight wave-like top edge. The text "ROBINSON & COLE" is written in a white, serif, all-caps font, followed by "LLP" in a smaller, sans-serif, all-caps font.

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