

Verdict copy

CAUSE NO. DC-09-07508

SHAHBAZ F. DIN

Plaintiff

V.

ATI ENTERPRISES, INC. D/B/A ATI
CAREER TRAINING CENTER,

Defendant

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

68TH JUDICIAL DISTRICT

COURT'S CHARGE

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

- 1. Do not let bias, prejudice or sympathy play any part in your deliberations.
- 2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
- 3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.
- 4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.
- 5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror

should not agree to answer a certain question one way if others will agree to answer another question another way.

6. Unless otherwise instructed, you may answer a question upon the vote of ten or more jurors. If you answer more than one question upon the vote of ten or more jurors, the same group of at least ten of you must agree upon the answers to each of those questions.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence unless you are otherwise instructed. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "preponderance of the evidence" means the greater weight of credible evidence admitted in this case. A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true. Whenever a question requires an answer other than "Yes" or "No," your answer must be based on a preponderance of the evidence unless you are otherwise instructed.

"CIRCUMSTANTIAL EVIDENCE" A fact may be established by direct evidence or by CIRCUMSTANTIAL EVIDENCE or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by CIRCUMSTANTIAL EVIDENCE when it may be fairly and reasonably inferred from other facts proved.

DEFINITIONS:

1. As used in this charge, Plaintiff Shahbaz F. Din is referred to as "Din."
2. As used in this charge, Defendant ATI Enterprises, Inc. is referred to as "ATI."
3. As used in this charge, the Equal Employment Opportunity Commission is referred to as the "EEOC."

QUESTION 1:

Was Din's national origin a motivating factor in ATI's decision not to promote Din?

You are instructed that a "motivating factor" in an employment decision is a reason for making the decision at the time it was made. There may be more than one motivating factor for an employment decision.

Answer "YES" or "NO"

ANSWER: YES

IF YOUR ANSWER TO QUESTION 1 IS "YES," PLEASE ANSWER QUESTION 1A. OTHERWISE, PLEASE PROCEED TO QUESTION 2.

QUESTION 1A:

Would ATI have taken the same action inquired about in Question No. 1 when it did, in the absence of the impermissible motivating factor?

Answer "YES" or "NO"

ANSWER: No

PLEASE PROCEED TO QUESTION 2.

QUESTION 2:

Did ATI discharge Din because Din filed a charge of discrimination with the EEOC on July 3, 2007?

Din must establish that without his filing a charge of discrimination with the EEOC, if any, ATI's discharge of Din, if any, would not have occurred when it did. There may be more than one cause for an employment decision. Din need not establish that his filing a charge of discrimination with the EEOC on July 3, 2007 was the sole cause of ATI's discharge of Din, if any.

Answer "YES" or "NO"

ANSWER: YES

ANSWER THE FOLLOWING QUESTION ONLY IF YOU HAVE ANSWERED (A) "YES" TO QUESTION 1 AND "NO" TO QUESTION 1A OR (B) "YES" TO QUESTION 2. OTHERWISE, DO NOT ANSWER ANY FURTHER QUESTIONS.

QUESTION 3:

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Din for his damages, if any, that resulted from such conduct?

Consider the following elements of damages, if any, and none other.

Do not include back pay or interest in calculating compensatory damages, if any.

Answer in dollars and cents for damages, if any.

a. Back pay

"Back pay" is that amount of wages that Din would have earned if he had not been subjected to his employer's unlawful conduct less any wages, unemployment compensation benefits or worker's compensation benefits he received in the interim.

Answer: \$234,600.00

b. Compensatory damages in the past, namely emotional pain and suffering in the past.

ANSWER: \$102,000.00

c. Compensatory damages in the future, namely emotional pain and suffering in the future.

ANSWER: \$102,000.00

ANSWER THE FOLLOWING QUESTION ONLY IF YOU HAVE UNANIMOUSLY ANSWERED (A) "YES" TO QUESTION 1 AND "NO" TO QUESTION 1A OR (B) "YES" TO QUESTION 2. OTHERWISE, DO NOT ANSWER ANY FURTHER QUESTIONS.

TO ANSWER "YES" TO THE FOLLOWING QUESTION, YOUR ANSWER MUST BE UNANIMOUS. YOU MAY ANSWER "NO" TO THE FOLLOWING QUESTION ONLY UPON A VOTE OF TEN OR MORE JURORS. OTHERWISE, YOU MUST NOT ANSWER THE FOLLOWING QUESTION.

QUESTION 4:

Do you find by clear and convincing evidence that ATI engaged in the discriminatory practice that you have found in answer to Question 1 or Question 2 with malice or with reckless indifference to the right of Din to be free from such practices?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means a specific intent by ATI to cause substantial injury or harm to Din.

ANSWER: YES

ANSWER THE FOLLOWING QUESTION ONLY IF YOU HAVE UNANIMOUSLY ANSWERED "YES" TO QUESTION 4. OTHERWISE, DO NOT ANSWER ANY FURTHER QUESTIONS.

YOU MUST UNANIMOUSLY AGREE ON THE AMOUNT OF ANY AWARD OF EXEMPLARY DAMAGES.

QUESTION 5:

What sum of money, if any, if paid now in cash, should be assessed against ATI and awarded to Din as exemplary damages, if any, for the conduct found in response to Questions 3?

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any are—

- a. The nature of the wrong.
- b. The character of the conduct involved.
- c. The degree of culpability of ATI.
- d. The situation and sensibilities of the parties concerned.
- e. The extent to which such conduct offends a public sense of justice and proprietary.
- f. The net worth of ATI.

Answer in dollars and cents, if any.

ANSWER: \$500,000.00

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked. It is the duty of the presiding juror—

1. to preside during your deliberations,
2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge,
3. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge,
4. to vote on the questions,
5. to write your answers to the questions in the spaces provided, and
6. to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

When you have answered all the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.



JUDGE PRESIDING

CERTIFICATE

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

I certify that the jury was unanimous in answering the following questions:

Answer "All" or list questions: ALL

E. R. Rhoads
PRESIDING JUROR

EDWIN R. RHOADS
Printed Name of Presiding Juror

(If the answers to some questions were not unanimous, the jurors who agreed to those answers must certify as follows:)

We agree to the answers to the following questions:

List questions: _____

Jurors' Signatures

Jurors' Printed Names
