

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

FILED  
U.S. DISTRICT COURT  
DISTRICT OF NEBRASKA

03 OCT 17 PM 12:03

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

vs.

PROGRESS RAIL SERVICE,  
an Alabama corporation,

Defendant.

8:01CV494

GARY D. McFARLAND  
CLERK

QUESTIONS AND  
VERDICT FORM

The verdict in this case will be determined by your answers to a series of questions set forth below. Make sure that you read the questions and notes carefully because they explain the order in which the questions should be answered and which questions may be skipped.

**THOMAS ABBOTT**

**Question No. 1:** Has it been proved by a preponderance of the evidence that Thomas Abbott's age was a motivating factor in defendant's decision not to transfer Thomas Abbott during the period from December 1998 to May 1999?

           YES        X   NO  
(Mark an "X" in the appropriate space)

NOTE:

- Please now answer question No. 2.

**Question No. 2:** Has it been proved by a preponderance of the evidence that Thomas Abbott's age was a motivating factor in defendant's decision not to rehire Abbott for openings after May 12, 1999?

           YES        X   NO  
(Mark an "X" in the appropriate space)

NOTE:

- If you answered "yes" to either or both Questions No. 1 or No. 2, continue on to Question #3.
- If you answered "no" to Question No. 1 and No. 2, you should have your foreperson sign and date this form because you have completed your deliberations on Thomas Abbott's discrimination claim.

**Question No. 3:** You have found that Thomas Abbott's age was a motivating factor, you have thus found an unlawful motive. Do you find that the unlawful motive was defendant's only motivating factor?

\_\_\_\_\_ YES \_\_\_\_\_ NO  
(Mark an "X" in the appropriate space)

NOTE:

- If "yes," proceed to answer Question No. 5.
- If "no" proceed to answer Question No. 4.

**Question No. 4:** Has the defendant proved by the preponderance of the evidence that defendant would have taken the adverse employment action against Thomas Abbott regardless of its unlawful motive?

\_\_\_\_\_ YES \_\_\_\_\_ NO  
(Mark an "X" in the appropriate space)

NOTE:

- If you answered "yes," you should have your foreperson sign and date this form because you have completed your deliberations on Thomas Abbott's age discrimination claim.
- If you answered "no," proceed to Question No. 5.

**Question No. 5:** (VERDICT):

We assess Thomas Abbott's actual damages as instructed in Instruction No. 21 in the amount of \$ \_\_\_\_\_ (stating the amount)

NOTE:

- You should have your foreperson sign and date this form because you have completed your deliberations on Thomas Abbott's age discrimination claim.

*Adrienne E. Mott*  
Foreperson

10-17-03  
Date

Question #1 From Jury Re Testimony  
of Thomas Abbott

Question: What are the Recall Rights?

Question #2 From Jury Re Testimony  
of Thomas Abbott

- Clarification Please - 13

When did ~~Faber, Heresp, Scharbath, & Frederick~~ get transferred to  
car shop?

How long were those people in the company?

4

Question #3 From Jury Re Testimony  
of Thomas Abbott

What was the procedure to become  
a certified welder in your  
company?

Question #4 From Jury Re Testimony  
of Arnulfo Mendez

Which members of the wheel shop  
went to the car shop most frequently  
before the wheel shop closed?

~~Did some members go on a regular  
basis?~~

Question #5 From Jury Re Testimony  
of Arnulfo Mendoza

How much do you receive in Social Security  
benefits and when (what age) did you first  
start collecting benefits?

Question #6 From Jury  
Re Testimony of Dwight Thurston Porter

AFTER the wheelshop closed, WERE ANY NEW  
EMPLOYEES HIRED INTO THE CARSHOP?

---

Question #7 From Jury  
Re Testimony of David Bradford

If the 7 people hired in 1999  
were hired as welders, then is there  
documentation of:

- A - prior certification? or
- B - an initial test with  
documentation of results  
prior to hiring?

Question #8 From Jury Re  
Testimony of David Bradford

~~When Progress Rail laid off Agunlo, Abbott & Mendoza  
did they hire any new employees into the car shop?~~

① When Progress Rail went through ownership changes, did the employees get to keep their seniority with the company?

② Why was Mr. Mendoza fired after his medical leave?

~~Were all the people hired into the car shop,  
after the wheel shop closed, welders?~~

③ Did Mr. Bradford and Mr. Abbott have a good relationship up until the wheel shop closed?

~~What do you call a person who works in the car shop  
who doesn't weld?~~

Question #9 From Jury Re  
Testimony of David Bradford

- Does Progress Rail prefer to hire from within before they ~~outside~~ hire from the general public?
- How easy is it for an employee that is currently employed to become a welder?

Question #10 From Jury Re  
Testimony of Wade Brown

When Progress Rail took over TRINITY, was there AN orientation for that company talking about, AND going over new policies for the new company?

Could we please have a clear and  
precise definition of age discrimination  
as discussed in EEOC at U.S.C. § 1014.

Thank You

Under the stipulation of the law:

Does "experience" factor into  
the definition of age  
discrimination?

Adrian M. M.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

EQUAL EMPLOYMENT OPPORTUNITY	)	8:01CV494
COMMISSION,	)	
Plaintiff,	)	
vs.	)	
PROGRESS RAIL SERVICE,	)	JUROR QUESTIONS
an Alabama corporation,	)	
Defendant.	)	

**Question No. 1:** Could we please have a clear and precise definition of age discrimination as described in ADEA 29 U.S.C. § 621?


**Answer:** The ADEA prohibits employers from taking adverse employment actions against employees who are over age 40 because of an employee's age. It is for you to decide whether the action(s) were motivated by age consistent with all the instructions given to you.

**Question No. 2:** under the stipulation of the law: Does "experience" factor into the definition of age discrimination?

**Answer:** You must determine whether age was a motivating factor for the adverse employment action as per my answer above. An employee's experience level is a nondiscriminatory factor which may be used by employers to make personnel decisions.

DATED this 16th day of October, 2003.

BY THE COURT:

  
JOSEPH F. BATAILLON  
United States District Judge

We have reached our verdict at 10:50 am  
on Friday, October 17, 2003.

Adrienne E. Moll