

2005 WL 859274
United States District Court,
S.D. Iowa, Davenport Division.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, Plaintiff,
v.
DIAL CORPORATION, Defendant.

No. Civ.3-02-CV-10109. | Feb. 3, 2005.

Attorneys and Law Firms

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Opinion

ORDER

LONGSTAFF, Chief J.

*1 The Court has before it defendant Dial Corporation's ("Dial") motion for judgment as a matter of law, filed September 24, 2004. The Equal Employment Opportunity Commission ("EEOC") resisted the motion on October 24, 2004.¹

In addition, on August 24, 2004, Dial filed a motion to exclude compensatory damages claims from women whose employment applications were denied by Dial prior to April 2001. The EEOC has not formally resisted the motion.

Both motions are now considered fully submitted.

I. MOTION FOR JUDGMENT AS A MATTER OF LAW

The Eighth Circuit recently summarized the standard for reviewing a Rule 50 motion for judgment as a matter of law ("jmal"):

Judgment as a matter of law is appropriate where the evidence adduced at trial is entirely insufficient to support the verdict []. In making this determination, we consider all of the evidence in the record without weighing credibility, and we resolve conflicts and make all reasonable inferences in favor of the non-moving party []. An inference is reasonable, however, when it "may be drawn from the evidence without resort to speculation" []. Credence should also be given to evidence favoring the moving party where that evidence is uncontradicted and unimpeached and comes from disinterested witnesses. *Kinserlow v. CMI Corp.*, 217 F.3d 1021, 1025-26 (8th Cir.2000) (citing *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 151, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000)).

Genthe v. Lincoln, 383 F.3d 713, 716 (8th Cir.2004). In support of its present motion, Dial argues the evidence was insufficient to have enabled a reasonable jury to have found intentional discrimination. Specifically, Dial notes that the two women who developed the test, plant nurse Martha Lutenegeger and former human resources manager Jean Farrington, testified that the sole reason for implementing the Work Tolerance Screening test, or "WTS," was to reduce injuries by first ensuring applicants were physically capable of performing the jobs at issue. Both Ms. Farrington and Terry Hartledge, the female plant manager from September 2000 through February 2004, also testified they were periodically informed that the annual rate of injuries dropped from more than 60 in 1999, prior to the WTS' introduction, to less than 30 in 2000 through 2003. Thus, they claimed to have had no basis for recommending any elimination or change in the WTS.

Dial also argues that it was error for the jury to infer intentional sex discrimination based on the statistically adverse impact of the WTS on female applicants, and that the EEOC failed to prove at trial that Dial acted affirmatively for the explicit purpose of discriminating against women applicants. *See, e.g., Ricketts v. City of Columbia*, 36 F.3d 775, 781 (8th Cir.1994) ("discriminatory purpose is more than a mere 'awareness of the consequences'").

The Court declines to set aside the verdict. Although, as reflected in this Court's summary judgment ruling, statistical evidence is alone insufficient to establish intentional discrimination, the EEOC produced ample additional evidence of overt acts on the part of Dial employees from which the jury could infer intentional discrimination. For example, the WTS score sheets completed by Ms. Lutenegeger and others gave passing

grades to most male applicants with few, if any, comments. The score sheets for female applicants included subjective comments, regardless of whether the women actually completed the test. Additionally, Dial clearly was aware of the disparate impact on women as early as April 2001, yet affirmatively chose to continue use of the WTS. Although an extremely close question, the Court finds a reasonable jury could infer that the continued use of the WTS after April 2001 was the product of intentional discrimination.

*2 Dial's motion for jmal is denied.

II. MOTION TO EXCLUDE COMPENSATORY DAMAGES CLAIMS

As set forth above, on August 23, 2004, the jury returned a verdict finding that, as of April 2001, Dial has engaged in a pattern or practice of intentional discrimination against female applicants. Additional evidence regarding compensatory damages was presented to the jury on August 25, 2004. Later that day, the jury returned a verdict awarding the following amounts of compensatory damages to the nine women who testified that morning:

A.	Chrystal Capps/Guzman	\$5,000
.....		
B.	Angela Elder	\$5,000
.....		
C.	Lena Keppel	\$1
.....		
D.	Tiffany Smith	\$1
.....		
E.	Karen Sperry	\$5,000
.....		
F.	Kimberly Walker	\$5,000
.....		

G. Sharon Harriman \$5,000

.....

H. Paula Smeltzer \$1

.....

I. Cheri Vanderlip \$5,000

Dial seeks to dismiss the compensatory and, for that matter, all damages claim of women who took the WTS and failed to pass in February or March of 2001. At trial, the EEOC argued that such claims should be allowed, based on the fact the women had a proposed start date of April 2, 2001-after the threshold date of intentional discrimination. In particular, the jury heard testimony from Lena Keppel and Tiffany Smith, both of whom took the test on March 2, 2001. In a Title VII context, the United States Supreme Court has held that discrimination takes place at the time the adverse decision was made and communicated to the plaintiff-even though the *effects* of the discrimination may be felt on a later date. *Delaware State College v. Ricks*, 449 U.S. 250, 258, 101 S.Ct. 498, 66 L.Ed.2d 431 (1980). Accordingly, a jury finding that any intentional discrimination took place on or after April 2001 necessarily precludes the damages claims-not only for compensatory damages, but also for back pay and front pay as well, for all female applicants who were told they did not pass the WTS prior to April 2001.

This holding also is consistent with the jury's verdict. Its decision to award Ms. Keppel and Ms. Smith nominal damages of one dollar a piece suggests it believed these women were not in the class of women subject to intentional discrimination, which it found did not begin until April 2001. In entering final judgment, the Court will reduce the damages awarded to Ms. Keppel and Ms. Smith from one dollar to zero.² Moreover, the Court will not award damages to any woman whose employment applications were denied by Dial prior to April 2001.

III. CONCLUSION

For the reasons outlined above, Dial's August 24, 2004 motion to exclude compensatory damages claims from female job applicants whose employment applications were denied by Dial prior to April 2001 is granted. Dial's September 24, 2004 motion for jmal is denied. To ensure duplicate damages are not awarded, however, the Court will withhold entry of judgment until all remedies issues have been resolved with regard to the disparate impact claim.

*3 IT IS ORDERED.