

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:07-CV-64-H

MICHAEL S. ADAMS,)
)
Plaintiff,)
)
v.)
)
THE TRUSTEES OF THE UNIVERSITY)
OF NORTH CAROLINA-WILMINGTON,)
et al.,)
)
Defendants.)

ORDER

This matter is before the court on plaintiff's motion for equitable relief [DE #227], plaintiff's motion for extension of time [DE #228] and defendants' motion for judgment as a matter of law or a new trial [DE #231]. Defendants have responded to plaintiff's motions, and defendants' motion requires no response. Thus, these matters are ripe for adjudication.

COURT'S DISCUSSION

On March 20, 2014, following a four day trial, the jury returned a unanimous verdict, finding that:

the plaintiff's speech activity [was] a substantial or motivating factor in the defendants' decision to not promote the plaintiff, [and] the defendants [would not] have reached the same decision not to promote the plaintiff in the absence of the plaintiff's speech activity.

(Jury Verdict [DE #222]).

At the direction of the court, the clerk entered judgment on

March 20, 2014 in accordance with the jury's verdict, providing:

It is ORDERED, ADJUDGED AND DECREED defendants have deprived plaintiff of his First Amendment right to protected speech in violation of 42 U.S.C. §1983 and the United States Constitution. Plaintiff is entitled to recover equitable damages from defendants, to be determined by the court at a later date.

(Judgment [DE #226]).

Following the conclusion of the trial, the court directed the plaintiff to file a motion for equitable relief within seven days and provided seven days for defendants to respond. This motion was filed with the other instant motions in accordance with the federal and local rules.

I. Defendants' renewed motion for judgment as a matter of law and, in the alternative, motion for a new trial

Defendants move for judgment as a matter of law or alternatively for a new trial. See Fed. R. Civ. P. 50 (b) (providing that after entry of judgment movant may file a renewed motion for judgment as a matter of law, including an alternative or joint request for a new trial); Fed. R. Civ. P. 59 (providing the grounds for granting a new trial). The Rule 50 motion simply examines whether the evidence is insufficient as a matter of law. See Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc., 546 U.S. 394, 396 (2006). The Rule 59 motion allows the court to weigh and assess the evidence at trial to determine if the verdict was unfair. See In re Wildewood Litigation, 52 F.3d 499, 502 (4th

Cir. 1995) (asking "whether a jury, viewing the evidence in the light most favorable to [the prevailing party], could have properly reached the conclusion reached by the jury").

The trial of this matter came seven years after the filing of the complaint and after a partial reverse and remand by the Fourth Circuit. Adams v. Trustees of the Univ. of N.C.-Wilmington, 640 F.3d 550, 566 (4th Cir. 2011). Jury selection, trial and deliberation took four days. The parties agreed that the jury selection process was without objection. Five witnesses testified before the jury, and almost 200 exhibits were entered into the record. The jury instructions were carefully prepared following receipt of the parties' proposed instructions and multiple conferences with their attorneys.

The court notes that defendants also specifically move for judgment as a matter of law as to defendants DePaolo, Cordle, Levy and Cook. The court is satisfied there was sufficient evidence as to each defendant presented and denies defendants' Rule 50 motion as to DePaolo, Cordle, Levy and Cook. The court is fully satisfied there was sufficient evidence as a matter of law presented for the jury to find for plaintiff, and accordingly denies the Rule 50 motion as to all defendants.

The court also finds that the trial was conducted in accordance with appropriate rules of law and procedure. Under the Rule 59 standard, the evidence viewed in the light most favorable to plaintiff was sufficient for a jury to find in his favor.

Accordingly, the motion for new trial is also denied.

II. Plaintiff's Motion for Equitable Relief

Plaintiff requests, pursuant to the jury verdict, that the court order the defendants to confer the rank of full professor on plaintiff. Plaintiff further seeks an award of back-pay, including pre-judgment interest, and emotional and reputational damages.

The equitable remedies of an order of promotion and back-pay are appropriate in this case to make plaintiff whole. See, e.g., Albemarle Paper Co. v. Moody, 422 U.S. 405, 421 (1975) (finding that back-pay must be granted when unlawful discrimination occurs); Hopkins v. Price Waterhouse, 920 F.2d 967, 975 (D.C. Cir. 1990) (finding the proper remedy for unlawful failure to promote was an order of promotion). The parties are in agreement that these types of equitable remedies are suitable.

A. Promotion

The court hereby orders the defendants confer upon plaintiff full professorship as of the date of this order, with pay and benefits in the future to relate back to August 2007, when plaintiff's 2006 promotion application would have gone into effect had it been successful.

B. Back-pay and Prejudgment Interest

Plaintiff contends he is entitled to back-pay with prejudgment interest in the total amount of \$61,106.26.

Defendants disagree with plaintiff's calculations and contend that back-pay and prejudgment interest are more accurately calculated at \$39,751.60. The court has carefully reviewed the method and manner in which each side has calculated their respective position. For more than a quarter century, this court has presided over proceedings involving equitable remedies, and during this time has seldom seen the experts agree when multiple years and changing circumstances are at play.

After careful review and study the court hereby finds as just, reasonable, and monetarily accurate that plaintiff receive from the defendants the full sum of \$50,000 for back-pay and prejudgment interest. This amount is current as of the date of this order. Post-judgment interest shall accrue on the entire \$50,000 awarded.

C. Emotional and Reputational Damages

Additionally, plaintiff seeks emotional and reputational damages in the amount of \$50,000. Defendants contend that the plaintiff is not entitled to any such award.

Damages for emotional and mental anguish are compensatory, not equitable in nature. See Carey v. Piphus, 435 U.S. 247, 264 (1978). Thus, plaintiff should have sought to bring these type of emotional harm damages to a jury in this case. Dairy Queen v. Wood, 369 U.S. 469 (1962). Emotional distress damages must be proven and cannot be presumed for this type of action.

Although plaintiff did raise some emotional harm evidence

during his three and a half hours of testimony, it is not proper for the court to now weigh that evidence. Plaintiff had ample opportunity to request that non-equitable questions of fact go to the jury. In fact, the court considered and rejected after hearing all of the evidence, plaintiff's contention that the jury should be instructed on punitive damages. Therefore, no emotional harm damages may be awarded in this case.

III. Attorneys Fees and Costs

The plaintiff has noted his intention to move for attorneys fees. Simultaneously with filing plaintiff's motion for equitable relief on March 27, 2014, plaintiff filed a motion for extension of deadline to file motion for attorneys fees.

Plaintiff pointed out that this litigation has encompassed approximately seven years, and has been extensive and expensive, including earlier appeals and litigation before the Fourth Circuit Court of Appeals. Plaintiff explained that compiling and collating these matters would take considerable time. Plaintiff further indicated that defendants may appeal the jury's verdict. Defendants contend that in order to make an informed decision concerning appeal, they need to assess the true cost of this action.

On April 2, 2014, the court granted a stay of the deadline for an intended short period, with direction that the court would later set out time frames for such filings. This court herein makes its rulings regarding all other matters, and the time for

focusing on attorney fees is now ripe.

The court hereby grants plaintiff 15 days from the date of this order to file his motion for attorneys fees and costs. Defendants shall have an additional 15 days afterward to file any response to such motion.¹

CONCLUSION

For the foregoing reasons, plaintiff's motion for equitable relief is GRANTED IN PART and DENIED IN PART in accordance with this order [DE #227]. Plaintiff's motion for extension of time is GRANTED [DE #228]. Plaintiff shall have 15 days from the date of this order to file his motion for attorneys fees. Defendants shall have an additional 15 days afterward to file any response to such motion. Defendants' motion for judgment as a matter of law, or in the alternative, for a new trial is DENIED [DE #231].

The clerk is directed to enter judgment in favor of plaintiff and against defendants as follows:

The court hereby orders the defendants confer upon plaintiff full professorship as of the date of this order, with pay and benefits in the future to relate back to August 2007. Additionally, the court awards back-pay in the amount of \$50,000, inclusive of prejudgment interest.

¹The court recognizes defendants' concern regarding their time for appeal. However, given their own options for extensions, including filing a motion for extension of the deadline to appeal pursuant to Rule 5(a)(5) of the Federal Rules of Appellate Procedure, this short extension for plaintiff will not impose undue hardship on defendants.

Post-judgment interest shall accrue on the entire amount (\$50,000) awarded at the federal, post-judgment rate.

IT IS SO ORDERED.

This 8TH day of April 2014.



MALCOLM J. HOWARD
Senior United States District Judge

At Greenville, NC
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