

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GARRY T. TRIMBLE,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
WESTINGHOUSE ELECTRIC CORPORATION,	:	
	:	
	:	
Defendant.	:	NO. 97-7528

MEMORANDUM

Reed, S. J.

September 29, 1999

Before the Court are the motion of defendant Westinghouse Electric Corporation (“Westinghouse”) for summary judgment (Document No. 15), the response of plaintiff Garry T. Trimble (“Trimble”) (Document No. 20), the reply of Westinghouse (Document No. 27), and the motion of Trimble for partial summary judgment (Document No. 17), the response of Westinghouse (Document No. 23), and the reply of Trimble (Document No. 25). Based on the following, the motion of Westinghouse will be granted in part and denied in part and the motion of Trimble will be denied.

I. BACKGROUND

Trimble filed a complaint in this Court alleging claims for age discrimination under the Age Discrimination in Employment Act (“ADEA”) and the Pennsylvania Human Relations Act (“PHRA”). The following facts are taken from the record presented to the Court in connection with the motions and viewed in the light most favorable to the respective non-moving parties.

Trimble began working for Westinghouse in 1968 as a sales trainee. (Pl.’s Mem. Ex. H).

In a letter dated July 17, 1995, he was terminated by Westinghouse, effective January 2, 1996. (Pl.'s Mem. Exs. B and C). At the time of his termination, Trimble held the position of Philadelphia District Manager of the North American Field Sales division. (Pl.'s Mem. Ex. D). Trimble's termination was part of a corporate restructuring and reduction in force at Westinghouse. (Def.'s Mem. Ex. E). He was 49 years old at the time of his termination. (Pl.'s Mem. Ex. D).

Westinghouse contends that Trimble was terminated under a reduction in force plan that was not based on the age of the employees, but rather their connection to "anchor" customers of Westinghouse. (Def.'s Mem. Ex. D, Deposition of Miller at 66-67). Prior to the restructuring, Westinghouse had twenty districts with twenty District Managers, of which Trimble was one. As a result of the restructuring, these twenty districts and the twenty District Manager positions were eliminated, and twelve Areas with twelve Area Managers were established. (Def.'s Mem. Exs. F and O). Westinghouse contends that the location and assignment of a manager for each of these Areas was determined by proximity and connection to the anchor customers. (Def.'s Mem. Ex. D, Deposition of Miller at 66-67). Westinghouse argues that Trimble was not selected for an Area Manager position because he did not know the anchor customer in the area as well as another District Manager, Frank Knowles, who was given the position. (Def.'s Mem. Ex. D, Deposition of Miller at 68).

Trimble contends that his termination was based on this age. Trimble first argues that his position was not really eliminated, but rather his duties were reassigned to other, younger, employees. John McCormack, to whom Trimble reported directly while at Westinghouse, testified that Joseph Byrd, a Project Development Manager, assumed responsibility for some of

Trimble's customers after his termination. (Pl.'s Mem. Ex. I, Declaration of McCormack at 3). Byrd was 43 years old at the time of Trimble's termination. (Def.'s Supplemental Information Ex. A). Trimble contends that some of his sales duties were assigned to Gwen Mizell, aged 34, as well as his office phone number and company car. (Pl.'s Mem. Ex. F, Deposition of Gwen Mizell at 50-51). David Miller, who made the decision to terminate Trimble, testified that some of Byrd's customers were given to Mizell; it is not clear from the record whether those customers were customers that Byrd had assumed from Trimble. (Pl.'s Mem. Ex. E, Deposition of Miller at 118). Frank Knowles, a former District Manager, also testified that he assumed some of Trimble's managerial duties after Trimble was terminated and Knowles became an Area Manager. (Pl.'s Mem. Ex. M, Deposition of Knowles at 66-67). Knowles was 42 at the time of Trimble's termination. (Pl.'s Mem. Ex. N).

In addition, Trimble argues that eight younger similarly situated District Managers, including Mike Neely, John Williams, I. R. Williamson, Pete Harden, Len Roberts, and Scott McHugh, who were not selected as Area Managers were retained by Westinghouse in other positions. (Pl.'s Mem. Ex. E, Deposition of David L. Miller at 168-177). Miller testified that these former District Managers who were retained in some position by Westinghouse were all in their 40s. (Pl.'s Mem. Ex. E, Deposition of Miller at 177). Of the District Managers who were not assigned as Area Managers, five were terminated, including Trimble; the ages of those individuals were 56, 50, 49,¹ 44, and 39. (Pl.'s Mem. Ex. P).

Trimble also contends that an internal company memorandum, known as the "Chairman's Initiative," is evidence of the discriminatory motivation for his termination and the ageist

¹ Exhibit P, entitled ESD Disposition List, provides Trimble's age as 48. However, Exhibit P is dated August 31, 1995 and Trimble was not terminated until January 2, 1996, at which time he was 49.

corporate culture at Westinghouse that was the basis for the reduction in force. (Pl.'s Mem. Ex. G). The Chairman's Initiative Memorandum, dated September 1, 1994, was sent from the CEO of Westinghouse, Michael Jordan, to attendees of the Chairman's Initiative sessions. The identities of the attendees are not clear from the record, but neither party disputes that the attendees included high level managers of Westinghouse responsible for making decisions about hiring and terminating employees. The Chairman's Initiative Memorandum includes summaries of the sessions that took place between Jordan and other members of the company on July 6 and 7, 1994. The summaries reveal that Jordan and the others present at the meeting discussed the future of the company, including "employee selection, development, rewards, and costs." Jordan testified at his deposition that the reduction in force that resulted in Trimble's termination was discussed at the Chairman's Initiative sessions. (Pl.'s Mem. Ex. L, Deposition of Jordan at 23-24).

Trimble contends that many of the statements made during those meetings, many by the CEO himself, were ageist. For example, one participant in the sessions stated that "[i]n many of our businesses we have an older workforce. As a result, the workforce gets a higher salary. Additionally, our low growth businesses can strain opportunities for younger workers. Somehow we must provide those opportunities. We have to get the 'blockers' out of the way." Another participant followed by stating "[w]e're often in the position to having to let younger people go because of the guidelines we're forced to use. However, often they are the ones who have the skills we need." Jordan stated that "[w]e think we need to get younger individuals who think well and who think differently involved in the process as well." Another participant noted later in the session that:

[w]e really haven't hired much over the last 10-15 years. As result, we have a hole in terms of people development, We don't have enough people in the organization ages 30-40. Somehow we have to anticipate what our requirements are for people three years down the road and be willing to hire people for the future.

A participant followed by stating:

[w]e spent some time talking about the dynamic staffing process we used in Human Resources and in ESBU. It's different than from what we've done in the past. Typically, we do a percentage reduction. This new approach is really reengineering. It's painful as hell, but it's caused us to look at the fundamentals of our business. It's provided real benefits without putting us in a position of too much exposure. We seem to have gotten buy-in from people. Also it allows us to get blockers out of the way.

Jordan later stated that "[a]n eager high-energy person will get more done in one month than someone who is retired in place will do in one year."² Toward the end of one of the sessions,

Jordan stated that:

[w]e seem to be missing the people in the middle of the age range who have talent, the willingness and the horsepower to take on risky change projects. We don't have those types pushing up from the bottom. We have a kind of regeneration gap here. We have to have those kinds of people. Not only are these individuals the leadership of tomorrow, these are the people that create ferment down in the ranks that pushes against the status quo in the system.

II. STANDARD FOR SUMMARY JUDGMENT

Rule 56(c) of the Federal Rules of Civil Procedure provides that "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law" then a motion for summary judgment may be granted.

² In the copy of the summaries of the Chairman's Initiative Memorandum supplied to the Court, this quote is cut off at the bottom of the page. However, the quote appears in full in the transcript of the deposition of Jordan at 30. (Ex. L).

The moving party has the initial burden of illustrating for the court the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144, 159-161 (1970). The movant can satisfy this burden by “pointing out to the district court that there is an absence of evidence to support the nonmoving party’s case;” the movant is not required to produce affidavits or other evidence to establish that there are no genuine issues of material fact. Celotex, 477 U.S. at 323-25.

Once the moving party has made a proper motion for summary judgment, the burden switches to the nonmoving party. Under Rule 56(e),

[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

The court is to take all of the evidence of the nonmoving party as true and to draw all reasonable inferences in his favor in determining if there is a genuine issue of material fact. See Adickes, 398 U.S. at 158-59. In order to establish that an issue is genuine, the nonmoving party must proffer evidence such that a reasonable jury could return a verdict in her favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). A proper motion for summary judgment will not be defeated by merely colorable or insignificantly probative evidence. See id. at 249-50.

III. ANALYSIS

A. Trimble’s Motion for Partial Summary Judgment: Collateral Estoppel

Trimble moves for partial summary judgment on the issue of the liability of Westinghouse for age discrimination on the basis of collateral estoppel. Specifically, Trimble argues that the decision in Ryder v. Westinghouse Electric Corporation, 128 F.3d 128 (3d Cir.

1997), affirming a jury's finding that Westinghouse had discriminated on the basis of age, bars Westinghouse from disclaiming liability in this case. To support this argument, Trimble alleges that the complaint in Ryder was virtually identical to the complaint in this case and the issues decided in Ryder are identical to the issue presented here, namely, whether the policies embodied in the Chairman's Initiative Memorandum were carried out by company managers in the reduction in force that resulted in the termination of Ryder and Trimble.

For collateral estoppel to apply, the proponent must establish that: (1) the issue decided in the prior adjudication is identical to the one presented in the later action, (2) the previous determination was necessary to the decision, (3) a final judgment has been entered on the merits, (4) the party against whom collateral estoppel is being asserted must be the same as, or in privity with, the party in the previous action, and (5) the party against whom collateral estoppel is being asserted must have had a full and fair opportunity to litigate the issue in the prior action. See Raytech Corp. v. White, 54 F.3d 187, 190 (3d Cir. 1995); Gentner v. Chayney University of Pennsylvania, No. 94-7443, 1997 U.S. Dist. LEXIS 12747, at *2 (E.D. Pa. Aug. 25, 1997) (citing Schroder v. Acceleration Life Insurance Co., 972 F.2d 41, 45 (3d Cir. 1992)).

Trimble's argument is totally unpersuasive. Trimble fails to establish the first two requirements for collateral estoppel. First, it is unclear whether Trimble is relying on the Court of Appeals for the Third Circuit decision cited above or on the proceedings in the District Court below as a basis for precluding Westinghouse from contesting liability here. However, neither decision provides a final judgment on the issue of liability for which Trimble may claim collateral estoppel. The Court of Appeals for the Third Circuit merely affirmed the District Court's finding that the Chairman's Initiative Memorandum was relevant, did not constitute

hearsay, and that its probative value outweighed its prejudicial effect. The Court of Appeals did not hold that the Chairman's Initiative Memorandum alone supported the jury's verdict in favor of the plaintiff. As for the proceedings in the District Court, because the jury verdict was a general verdict, it is impossible to ascertain if the existence of the Chairman's Initiative Memorandum was the sole basis for the finding of liability in Ryder. See Gentner v. Chayney University of Pennsylvania, No. 94-7443, 1997 U.S. Dist. LEXIS 12747, at *4 (E.D. Pa. Aug. 25, 1997) (refusing to give preclusive effect to a prior jury verdict on issues for which it "would be pure guess work on the Court's part as to what facts the jury believed to be true in making its finding"). Thus, Trimble cannot establish that the critical issue, as he has framed it, has already been adjudicated in Ryder or that it was necessary to the jury verdict.

Second, like any discrimination case, a determination of the liability of Westinghouse, if any, will hinge on the specific facts that relate to Trimble's termination, such as the part of the company in which Trimble worked, the identity of the persons who supervised Trimble and who ultimately terminated him, the identity and ages of the persons who replaced Trimble or assumed his responsibilities, the identify and ages of any similarly situated persons who were retained by Westinghouse during the reduction in force. Trimble has not established that these facts are identical to the facts of Ryder such that collateral estoppel should apply to Westinghouse in this case.

Finally, granting summary judgment to Trimble on the basis of collateral estoppel would undermine on the policy of avoiding inconsistent judgments, rather than further it. As Westinghouse points out, Westinghouse has obtained defense judgments, either through jury verdicts or through summary judgment, in age discrimination cases in which the Chairman's

Initiative Memorandum was proffered as evidence. See, e.g., Pribanic v. Westinghouse Electric Corporation, No. 97-273 (W.D. Pa. 1998). Estopping Westinghouse from defending itself here would be inconsistent with the judgments entered in cases in which it has successfully defended itself against claims of age discrimination.

Based on the foregoing, the motion of Trimble will be denied.

B. Westinghouse's Motion for Summary Judgment

1. Prima Facie Case of Age Discrimination

Courts have uniformly interpreted the PHRA consistently with the ADEA. See Kelly v. Drexel University, 94 F.3d 102, 105 (3d Cir. 1996) (claims for discrimination under the PHRA are subject to the standards for claims under the ADEA). Thus, the Court will only analyze the claims of Trimble under the ADEA; however, the Court's conclusion are equally applicable to his claims under the PHRA.

Under the ADEA, a plaintiff can sustain an age discrimination claim by either presenting direct or circumstantial evidence. A direct evidence case of age discrimination exists when "the evidence the plaintiff produces is so revealing of discriminatory animus that it not necessary to rely on any presumption from the prima facie case to shift the burden of production."

Armbruster v. Unisys Corp., 32 F.3d 768, 778 (3d Cir.1994). See also Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 121 (1985) (holding that a policy that allows captains who become disqualified for any reason other than age to "bump" less senior flight engineers was discriminatory on its face and thus, direct evidence of age discrimination). Trimble does not argue that he has direct evidence of age discrimination, but rather that he has circumstantial evidence to support a prima case of age discrimination.

Where there is no direct evidence of age discrimination, a plaintiff may still prevail by presenting circumstantial evidence under the burden shifting analysis of McDonnell Douglas. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Under a McDonnell Douglas framework, a plaintiff must first present a prima facie case by establishing, by a preponderance of the evidence, that (1) he belongs to the protected class, i.e., that he is over 40 years old, (2) he was qualified for the position in question, (3) the job he occupied was eliminated or he suffered from an adverse employment decision, and (4) other similarly situated workers not in the protected class were retained and the duties of the plaintiff were subsumed by persons not in the protected class. See Lawrence v. National Westminster Bank N.J., 98 F.3d 61, 65-66 (3d Cir.1996) (citing Sempier v. Johnson & Higgins, 45 F.3d 724, 728 (3d Cir.1995)); Torre v. Casio, Inc., 42 F.3d 825, 830-31 (3d Cir. 1994). In the context of a reduction in force case, a plaintiff need not show that he was actually replaced by someone outside the protected class; rather, a plaintiff must show that others not in the protected class were treated more favorably. See Massarsky v. General Motors Corp., 706 F.2d 111, 118 (3d Cir. 1983).

There is no dispute that Trimble satisfies the first and third prongs of his prima facie case. He was 49 years old at the time of this termination, which qualifies him as a member of the protected class. Trimble claims that he was terminated because of his age, which constitutes an adverse employment decision.

As for the second prong, Westinghouse does not dispute that he was qualified for the job he held as District Manager. Westinghouse's position, rather, is that he was not qualified for the position of Area Manager. The Court concludes that whether Trimble was qualified for another position that opened up at Westinghouse as part of the same restructuring plan is irrelevant to his

prima facie case that he was terminated from the position for which he was undisputedly qualified on the basis of his age. See Sempier v. Johnson & Higgins, 45 F.3d 724, 729 (3d Cir. 1995) (holding that the plaintiff's twenty years of experience at the company and election to high posts on the board of directors led "to the almost inevitable inference that he was qualified for the position from which he was discharged") (emphasis added). Further, even if Trimble's qualifications for another position that opened up were relevant, Trimble has made a prima facie showing that he was qualified for the positions that were given to the other District Managers or the sales position given to Mizell. See Pl.'s Mem. Ex. E, Deposition of Miller at 148-49; Ex. I, Declaration of McCormack ¶ 17.

Westinghouse argues that Trimble has no evidence to support the fourth prong of his prima facie case of age discrimination. However, Trimble produced evidence that, if taken as true, shows that he was terminated while other, younger District Managers, who were also not given positions as Area Managers, were retained in some capacity at Westinghouse. Trimble also produced evidence that some of his duties as a District Manager were taken over by Frank Knowles, Joseph Byrd, and Gwen Mizell, who were all younger than Trimble.

Westinghouse argues that the age differences between Trimble and the District Managers who were retained by Westinghouse or Trimble and the persons who allegedly assumed his duties are too insignificant to raise an inference of age discrimination. However, there is no bright-line rule as to what is a sufficient age difference to give rise to an inference of age discrimination. See Sempier, 45 F.3d at 729. Knowles was seven years younger than Trimble. Mizell was fifteen years younger, and Byrd was six years younger. The District Managers who were retained by Westinghouse were in their 40s. Here, where Trimble has produced other

evidence of discriminatory animus by Westinghouse through the Chairman's Initiative Memorandum, the Court concludes that a reasonable jury could, in light of the contents of the Memorandum, draw an inference of age discrimination from the age differences between Trimble, the other District Managers, and the employees who assumed his duties. See id. at 730 (holding that the combined differences in age between the plaintiff and the persons who assumed his duties, one of whom was four years and one of which was over ten years, was sufficient to satisfy the fourth prong of the prima facie case).

Based on the foregoing, the Court concludes that Trimble has satisfied his burden to establish a prima facie case of age discrimination for purposes of summary judgment analysis.

2. Evidence of Pretext for Age Discrimination

Westinghouse argues that even if Trimble can sustain a prima facie case of age discrimination, he does not have evidence to establish that the reasons proffered by them for his termination were pretext for discrimination. The legitimate business reason for terminating Trimble proffered by Westinghouse is that Trimble's termination was part of a large reduction in force at Westinghouse that was caused by economic pressures, not age animus.

To survive a motion for summary judgment once the defendant has proffered a legitimate business reason for the plaintiff's termination, a plaintiff may either discredit the proffered reasons with direct or circumstantial evidence or adduced direct or circumstantial evidence that discrimination was more likely than not a motivating cause of the termination. See Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994).

Trimble has produced evidence from which a jury could reasonably find that discrimination was more likely than not the reason for his termination. The Court of Appeals for

the Third Circuit has recognized that “a plaintiff may offer circumstantial proof of intentional discrimination on the basis of age in the form of a supervisor’s statement relating to formal or informal managerial attitudes held by corporate executives.” Ryder v. Westinghouse Electric Corp., 128 F.3d 128, 132, 133 (3d Cir. 1997) (holding that the statements in the Chairman’s Initiative Memorandum may have reflected a “cumulative managerial attitude” at Westinghouse). Even though the record is not clear to whom the Chairman’s Initiative memo was distributed or whether the person who made the decision to fire Trimble received the memo, it is clear that Jordan encouraged the top members of management to read the summaries and the memo is evidence from which a jury could infer the nature of the company’s corporate culture. (Ex. L, Deposition of Jordan at 23).

Trimble also presented evidence that although Miller testified that he made the decision that Trimble would be not be given an Area Manager position and would be terminated in late June or early July of 1995, the records of the Westinghouse reflected that the decision to terminate Trimble had been made as of June 1, 1995. (Pl.’s Mem. Ex. E, Deposition of Miller at 100; Ex. N). This discrepancy surrounding the decision to terminate Trimble, coupled with the statements by Jordan and other participants at the Chairman’s Initiative sessions which indicate that Westinghouse was considering restructuring the company to remove “blockers” and hire more people between the ages of 30 and 40,³ creates “such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions” in defendant’s proffered legitimate, non-discriminatory reason such that a reasonable jury could conclude in the context of this case that

³ Westinghouse argues that this Court should adopt the reasoning of the District Court in Pribanic v. Westinghouse Corporation, No. 97-273 (W.D. Pa. 1998) (Def.’s Mem. Ex. B), which held that the mere existence of the Chairman’s Initiative Memorandum, without more, was insufficient to establish pretext. However, even if this Court were to adopt this reasoning, in Pribanic, the court held that the plaintiff had failed to produce any evidence of inconsistencies in Westinghouse’s reason for his termination, which makes the case here factually distinguishable.

the proffered reasons are not worthy of credence. Fuentes v. Perskie, 32 F.3d 759, 764 and n. 7 (3d Cir. 1994).

Thus, the Court concludes that Trimble has satisfied his burden to produce evidence of pretext so as survive the motion for summary judgment.

3. Mitigation of Damages

Westinghouse also argues that Trimble's claims should be dismissed because Trimble refused to accept an offer from Westinghouse for the position of account manager, which constitutes a failure by Trimble to mitigate damages. Westinghouse has the burden to establish that Trimble failed to mitigate damages. See Anastasio v. Schering Corp., 838 F.2d 701, 707 (3d Cir. 1988). Westinghouse could meet this burden by showing that it had offered Trimble a job that was substantially equivalent to his previous position or that other substantially equivalent positions were available to Trimble and he did not use reasonable diligence to obtain one. See id. at 708. The record reveals that Westinghouse offered Trimble an accounts manager position in the spring of 1996. (Pl.'s Mem. Ex. M, Deposition of Knowles at 88). When Knowles called Trimble to offer him the position, Trimble asked Knowles about the position, including the benefits and how it would affect his seniority with Westinghouse. Knowles passed these inquiries on to the Human Resources Department of Westinghouse, but Trimble allegedly never received any response. (Pl.'s Mem. Ex. M, Deposition of Knowles at 88-92). Trimble made other inquiries through his attorney to Westinghouse about the offered position of accounts manager. (Pl.'s Mem. Exs. R, T, and V). Trimble produced evidence that no one from Westinghouse answered his questions about the position. (Pl.'s Mem. Ex. D, Affidavit of

Trimble ¶ 14). Trimble also produced evidence that the position was not substantially equivalent to his prior position. Plaintiff points to evidence that the accounts manager position was graded at a lower code than Trimble's position as District Manager. (Pl.'s Mem. Ex. M, Deposition of Knowles at 89). In addition, Miller testified that Trimble was over-qualified for the position of accounts manager. (Ex. E, Deposition of Miller at 145). Even though Westinghouse contends the position would have had the same salary, Trimble has established a genuine issue of material fact as to whether the position offered to him was substantially equivalent to the position from which he was terminated.

Westinghouse also contends that Trimble has failed to mitigate damages since 1996 because he was made no efforts to seek employment since that time. However, Trimble submitted evidence that he was been working as an independent real estate broker since mid-1996. (Pl.'s Mem. Ex. D, Affidavit of Trimble ¶ 18). Thus, there is a genuine issue of fact as to whether Trimble can rebut the defendant's contention at trial that he failed to mitigate damages since his termination.

4. Punitive Damages

Westinghouse argues that it is entitled to summary judgment on the claims of Trimble for punitive damages because even accepting Trimble's allegations as true, he cannot establish that Westinghouse acted with malice or with reckless indifference to his federally protected rights. The Supreme Court of Pennsylvania held in Hoy v. Angelone, --- A.2d ---, 1998 WL 808634, *5 (Pa. Nov. 24, 1998) that punitive damages are not available under the PHRA; thus, summary judgment will be granted to the defendant on Trimble's claim for punitive damages under the PHRA.

To sustain a claim for punitive damages, or double liquidated damages, under the ADEA, a plaintiff must show that the violation of her rights was willful in that the employer knew or showed reckless disregard for whether its conduct violated her rights. See U.S.C. § 626(b); Starceski v. Westinghouse Electric Corporation, 54 F.3d 1089, 1099 (3d Cir. 1995). I conclude that Trimble has established a genuine issue of material fact on the issue of punitive damages on his claims under the ADEA in that a jury could reasonably find, based on the statements recorded in the Charman's initiative Memorandum, that Westinghouse acted intentionally or with reckless disregard for whether its actions in terminating Trimble violated the ADEA.

IV. CONCLUSION

The Court concludes that Trimble is not entitled to partial summary judgment on the basis of collateral estoppel. Further, because Trimble has established genuine issues of material fact on his claims of age discrimination, Westinghouse is not entitled to summary judgment on those claims. Summary judgment will be granted to Westinghouse on the claim for punitive damages under the PHRA only. Thus, based on the foregoing, the motion of Trimble will be denied, and the motion of Westinghouse will be granted in part and denied in part.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GARRY T. TRIMBLE,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
WESTINGHOUSE ELECTRIC CORPORATION,	:	
	:	
Defendant.	:	NO. 97-7528

ORDER

AND NOW, this 29th day of September, 1999, upon consideration of the motion of defendant Westinghouse Electric Corporation (“Westinghouse”) for summary judgment (Document No. 15), the response of plaintiff Garry T. Trimble (“Trimble”) (Document No. 20), the reply of Westinghouse (Document No. 27), and the motion of Trimble for partial summary judgment (Document No. 17), the response of Westinghouse (Document No. 23), and the reply of Trimble (Document No. 25), and based on the reasons set forth in the foregoing Memorandum, it is hereby **ORDERED** that the motion of Trimble is **DENIED** and the motion of Westinghouse is **GRANTED IN PART AND DENIED IN PART. JUDGMENT IS ENTERED** in favor of Westinghouse on Trimble’s claims for punitive damages under the Pennsylvania Human Relations Act. The motion for summary judgment of Westinghouse is denied on all other grounds.

IT IS FURTHER ORDERED that the parties shall submit a joint report to the Court no later than **October 13, 1999** as to the status of settlement. If the parties need the assistance of the Court in facilitating settlement negotiations, the report should so indicate.

LOWELL A. REED, JR., S. J.