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

CHRISTI VITULLO	:	CIVIL ACTION
	:	
v.	:	
	:	
THE BOROUGH OF YEADON	:	NO. 04-3929

MEMORANDUM AND ORDER

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE April 12 , 2006

On March 10, 2006, after a three day trial, the jury returned a verdict of $25,000 for the Plaintiff in this reverse discrimination case. The jury awarded Plaintiff $13,560 in backpay and $11,440 in compensatory damages.[1] The Defendant has now filed a Motion for Judgment as a Matter of Law or, in the alternative, for Remittitur. The Plaintiff has filed a Motion to Mold the Verdict to include prejudgment interest on the award of backpay. Because we find there was sufficient evidence to support the jury's verdict, we will deny the Defendant's Motion for Judgment as a Matter of Law. However, because we find that the evidence does not support the amount awarded by the jury for backpay, we will remit the verdict and award prejudgment interest on the remitted amount. In the event the Plaintiff does not accept the remitted verdict, the Court will order a new trial.

Motion for Judgment as a Matter of Law

In ruling upon a motion for judgment as a matter of law, the Court must review the record in the light most favorable to the non-moving party. Starceski v. Westinghouse Electric Corp., 54 F.3d 1089 (3d Cir. 1995). Such a motion should only be granted if "there is no legally

[1]Both sides mistakenly state that the backpay award was $13,550. However, looking at the Verdict Sheet, signed by the foreperson, the correct amount is $13,560.

sufficient evidentiary basis" to support the verdict. Fed.R.Civ.P. 50(a)(1).

In this case, the facts adduced at trial clearly support the jury's finding that race was a motivating factor in Yeadon's employment decisions. At the time Yeadon first placed an advertisement for the full-time police secretarial position in the newspaper – *The Delaware County Daily Times*, the advertisement included a notation that criminal justice experience was a plus. (Exhibit P-3). Plaintiff, a Caucasian female, not only met all of the requirements listed in the advertisement, she was also working as a part-time secretary for the police department of Yeadon.

Plaintiff was interviewed first by the Chief of Police, and then a second interview was conducted by the Chief, the Mayor and the Borough Manager. Linda Saylor, another Yeadon employee, testified that, after Ms. Vitullo's second interview, she heard the Mayor say that the Borough needed more African Americans to apply for the position. Shortly thereafter, another ad was placed in the newspaper – this time in the *Philadelphia Tribune*. (Exhibit P-9). During the trial, there was testimony that the *Tribune* markets itself to the African American community. The advertisement that was run in the *Tribune* eliminated many of the qualifications that had earlier been listed in the *Daily Times'* ad. In addition, the jury heard the testimony of Police Chief Molineaux, who stated that the Mayor had told him that it was about time an African American was hired for the full-time secretarial position.

In the end, Yeadon hired Joan Watts, an African American, for the position. It is undisputed that Ms. Watts had no prior criminal justice experience. Comparing the testimony given by both regarding their work experience, there was sufficient evidence for the jury to conclude that Ms. Vitullo was more qualified for the full-time police secretarial position.

Despite this evidence, the Defendant argues that it was the Borough Manager,

Christopher van de Velde, who made the decision not to hire Ms. Vitullo. Mr. van de Velde testified that he believed the anti-nepotism policy of the Borough prohibited Ms. Vitullo's employment in this position.[2] However, the Plaintiff presented the policy, which, on its face, offers an exception to the policy into which Ms. Vitullo would fall. In addition, Plaintiff offered evidence of other related employees that worked in the same department.

Based on all of this evidence, including the statements attributed to the Mayor and the Borough Manager's arbitrary application of the anti-nepotism policy, there was sufficient evidence for the jury to conclude that race was a motivating factor in Yeadon's employment decision. Therefore, we will deny the Defendant's motion for judgment as a matter of law.

Remittitur

The Defendant next argues that the evidence does not support the amount of backpay the jury awarded to the Plaintiff. After reviewing the Plaintiff's testimony, we agree.

A motion for remittitur is left to the sound discretion of the trial judge, who is in the best position to evaluate the evidence and determine whether the jury has come to a rationally based award. Spence v. Board of Education, 806 F.2d 1198, 1201 (3d Cir. 1986). Remittitur is appropriate when the jury's conclusion is not rationally based in the evidence. See Evans v. Port Authority of New York and New Jersey, 273 F.3d 346, 354 (3d Cir. 2001). When the jury's award is clearly unsupported or excessive, and where no clear judicial error can be identified, the court should order the plaintiff to remit a portion of the verdict in excess of the maximum amount supported by the evidence or, if remittitur is refused, to submit to a new trial. Id. See also, Kazan, at 914. Because we find that the total backpay award was not supported by the

[2]Plaintiff's mother also worked as a secretary in the Police Department.

evidence we will grant the Defendant's motion, in part.

The crux of the Defendant's argument is that the Plaintiff voluntarily gave up employment that was financially equivalent to the full-time secretarial position after she was aware that she was not being considered for the full-time secretarial position. Thus, argues the Defendant, the loss of pay was due to the Plaintiff's decision to leave her employment, not Yeadon's decision not to hire her.

During the trial, Ms. Vitullo testified that she had been employed by Home Health Specialists. This was full time employment with full benefits. (N.T. 3/8/06, 46-47). At the time she applied for the full-time secretarial position with Yeadon, she was making $22,880. (Exhibit D-18). According to her own testimony, Ms. Vitullo was aware at the time she resigned the position with Home Health Specialists that she was not going to get the full-time secretarial position because the Chief of Police had so advised her mother. (N.T. 3/8/06, 48-49).[3] Because Yeadon is responsible only for the damages caused by its illegal employment decision, we must consider the salary that Ms. Vitullo voluntarily gave up when she left Home Health Specialists in calculating backpay damages. It is evident from the jury's award that they failed to take these wages into consideration. Therefore, we will remit the verdict.

The evidence at trial established that the full-time secretarial position would pay between $20,000 - $25,000 a year. (Exhibit P-3). Ms. Watts received a total of $4,496.16 for the three month period in 2003 after she was hired; $21,568.08 in 2004; and $24,789.52 in 2005. (Exhibit

[3]We note that Ms. Vitullo left her employment with Home Health Specialists because her employer would not permit her sick leave to tend to a medical problem. However, Yeadon played no part in Ms. Vitullo's resignation and does not bear the burden of Ms. Vitullo's decision to leave that employment.

D-24). The Defendant argues that the court should consider Ms. Watts' earnings in considering the award of backpay. Considering Ms. Vitullo's prior experience in the police secretarial position, we do not believe it unreasonable for the jury to have concluded that she would have received the salary at the high end of the scale - $25,000. However, this amount must be offset by the amount that Ms. Vitullo was making at Home Health Specialists, $22,800, resulting in a yearly difference of $2,200, or a monthly difference of $183.33. Both sides agree that the backpay period runs from October 1, 2003. Thus, the backpay award encompasses lost wages for 29 months, for a total of $ 5,316.67.

We will further reduce this amount by the amount that Ms. Vitullo received from her part-time work with Yeadon ($5316.67 - $544.50 = $4772.17). Because Ms. Vitullo had performed duties as the part-time secretary while employed with Home Health Specialists, we believe it appropriate to reduce the backpay award by the amount she received (and would have received had she been working for Home Health Specialists) from Yeadon for her continued part-time employment. However, we will not further reduce the backpay award by the amount Ms. Vitullo received from her full time employment with Urologic Physicians. Her full time employment with Home Health Specialists would have precluded her employment with Urologic Physicians. Therefore, we will remit the backpay award from $13,560 to $4,772.17, resulting in a verdict of $16,212.17. In the event the Plaintiff does not accept the remitted verdict, the court will order a new trial.

Prejudgment Interest

The Plaintiff has filed a motion requesting prejudgment interest on the backpay portion of

the verdict. In response, the Defendant does not object to such an award, but contends that the interest should apply to the remitted backpay award. We agree. However, we note that the Plaintiff's calculations result in the calculation of simple interest. Because the purpose of prejudgment interest is to make the Plaintiff whole by reimbursing her for the loss of the use of the money, we believe compound interest is the more precise measure to be used. See Starceski, at 1101-02. Therefore, we will compound the interest yearly. Using the 1 Year T-bill Rate published by the Federal Reserve results in the following calculation:

October, 2003 - October, 2004	($183.33 * 12) * 2.2% = $48.40
October, 2004 - October, 2005	($2199.96 + 2248.36) * 3.97% = $176.60
October, 2005 - March, 2006	($4624.92 + 916.65) * 5/12 * 4.74% = $109.45**

**To account for the fact that interest runs for only 5 months in the final calculation, we have reduced the interest earned in the final period by 7/12.

The calculation results in a prejudgment interest award of $334.45, which will be added to the verdict if the Plaintiff elects to accept the remitted verdict.

An appropriate Order follows.

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O R D E R

AND NOW, this 12th day of April , 2006, upon consideration of the Defendant's Motion for Judgment as a Matter of Law, or, in the Alternative, for Remittitur, IT IS HEREBY ORDERED that the Motion for Judgment as a Matter of Law is DENIED and the Motion for Remittitur IS GRANTED IN PART and DENIED IN PART. IT IS FURTHER ORDERED that the Plaintiff's Motion to Mold the Verdict to Include Prejudgment Interest is GRANTED. The jury's award of backpay is reduced to $4,772.17 and the court awards the Plaintiff $334.45 in prejudgment interest. This results in a total award of $16,546.62, including the jury's award of $11,440 in compensatory damages. This award does not include attorneys' fees and costs, which will be disposed of in a separate opinion. Plaintiff shall have twenty days to accept this remitted verdict or elect a new trial.

BY THE COURT:

/s/Jacob P. Hart

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE