EDWIN TAYLOR, Plaintiff, v. USF - RED STAR EXPRESS, INC., Defendant.

CIVIL ACTION NO. 03-2216

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

2005 U.S. Dist. LEXIS 3600

March 8, 2005, Decided
March 9, 2005, Filed

SUBSEQUENT HISTORY: Costs and fees proceeding at, Motion granted by, in part, Motion denied by, in part *Taylor v. USF-Red Star Express, Inc., 2005 U.S. Dist. LEXIS 3599 (E.D. Pa., Mar. 8, 2005)*
Affirmed by *Taylor v. USF-Red Star Express, Inc., 2006 U.S. App. LEXIS 31599 (3d Cir. Pa., Dec. 21, 2006)*

DISPOSITION: Defendant's Post-Trial Motion for Judgment as a Matter of Law or, in the Alternative, for a New Trial denied. Parties' Motions to Exceed Page Limits granted.

COUNSEL: [*1] For EDWIN TAYLOR, Plaintiff: LORRIE MCKINLEY, NANCY C. RYAN, MCKINLEY, RYAN & KRAMER LLC, PHILADELPHIA, PA; RALPH E. LAMAR, IV, COLLEGEVILLE, PA.

For USF - RED STAR EXPRESS, INC., Defendant: CHRISTOPHER M. SCALI, EDWARD S. MAZUREK, JOSEPH C. RAGAGLIA, AZEEZ HAYNE, MORGAN, LEWIS & BOCKIUS, LLP, PHILADELPHIA, PA.

JUDGES: Clarence C. Newcomer, United States District Judge.

OPINION BY: Clarence C. Newcomer

OPINION

MEMORANDUM AND ORDER

NEWCOMER, S.J.

March 8, 2005

Presently before the Court is Defendant's Motion for Judgment as a Matter of Law or, in the Alternative, a New Trial (Doc. 86). For the reasons stated below, the Court denies this Motion.

I. BACKGROUND

This is an *Americans with Disabilities Act* ("ADA"), and *Pennsylvania Human Relations Act* ("PHRA") employment-discrimination case. Plaintiff had two seizure-like incidents, allegedly caused by the supplement "Creatine," and was placed on leave from his job at Defendant's Philadelphia trucking terminal. Defendant would not let Plaintiff return to work without certain certifications that Plaintiff claims were unnecessary and retaliatory. Defendant argues that, because driving a forklift was an essential function of Plaintiff's [*2] job, it was reasonable to demand assurances that he would not have a seizure while driving. At trial, there was conflicting evidence over what Plaintiff told Defendant and what Defendant demanded of Plaintiff.

The Jury returned a verdict for Plaintiff. Defendant now moves for judgment as a matter of law or, in the alternative, a new trial. The Court will deny this Motion.

II. LEGAL STANDARD

Defendant characterizes its Motion as one for relief as a matter of law, under *FED. R. CIV. P. 50*, and in the alternative for a new trial under *FED. R. CIV. P. 59*. [1]

> 1 Defendant has not presented any discussion of the legal standards governing its Motion, perhaps in a tacit acknowledgment of the weakness of its Motion.

A properly preserved *Rule 50* Motion may be granted if "there is no legally sufficient evidentiary basis for a reasonable jury to find for [the opposing party] on [the contested issue]." *FED. R. CIV. P. 50(a)(1)* [*3] . See *Kutner Buick, Inc. v. American Motors Corp., 868 F.2d 614, 617 (3d Cir. 1989)* ("The rule that a post-trial *Rule 50* Motion can only be made on grounds specifically advanced on a motion for directed verdict at the end of plaintiff's case is the settled law of this Circuit") (internal citations omitted). The Court will draw all inferences in favor of Plaintiff, who prevailed before the Jury. This means, in short, that any conflicts in the evidence will be assumed to have been resolved in favor of Plaintiff, that the Court will not make credibility determinations or weigh the evidence, and that any evidence favorable to Defendant that the jury was not required to believe will be ignored. See *Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 150-51, 147 L. Ed. 2d 105, 120 S. Ct. 2097 (2000)*.

A district court grants a new trial pursuant to *FED. R. CIV. P. 59(a)* only when, "in the opinion of the trial court, the verdict is contrary to the great weight of the evidence, thus making a new trial necessary to prevent a miscarriage of justice." *Roebuck v. Drexel University, 852 F.2d 715, 736 (3d Cir. 1988)*. [*4] In general, this Court has discretion over whether to grant or deny a motion for a new trial. See *American Bearing Co. v. Litton Industries, Inc., 729 F.2d 943, 948 (3d Cir. 1984)*, cert. denied, *469 U.S. 854, 83 L. Ed. 2d 112 (1984)* (internal citations omitted). Courts have historically granted a new trial to remedy prejudicial errors of law or to correct a verdict that is against the weight of the evidence. *Maylie v. Nat'l R.R. Passenger Corp., 791 F. Supp. 477, 480 (E.D. Pa. 1992)*, aff'd without opinion, *983 F.2d 1051 (3d Cir. 1992)*. Courts in the Third Circuit employ two different standards when deciding a motion for a new trial. When the Motion is based on a prejudicial error of law, the district court has broad discretion to order a new trial. *Klein v. Hollings, 992 F.2d 1285, 1289-90 (3d Cir. 1993)*. When, on the other hand, a party moves for a new trial because a verdict is against the weight of the evidence, a district court's discretion is much narrower. In such a situation, a Court can only grant a new trial when the jury's verdict resulted in a miscarriage of justice, or where the verdict "cries [*5] out to be overturned or shocks the conscience." *Williamson v. CONRAIL, 926 F.2d 1344, 1353 (3d Cir. 1991)*. Here, Defendant seeks a new trial due to alleged errors of law. The Court will analyze Defendant's Motion against this framework.

III. ANALYSIS

A. *Rule 50 Motion*

Defendant failed to seek *Rule 50* relief at trial for its business necessity defense, and therefore waived its ability to renew its motion for this defense. See *Kutner, 868 F.2d at 617*. It would not matter if Defendant had properly preserved this defense, however, because there was ample evidence to allow a reasonable jury to conclude that Defendant acted in exactly the prejudiced and uniformed manner that the ADA was designed to prevent. Even if the Motion had been properly preserved, it would be denied.

At trial, the Court deliberately rejected Defendant's *Rule 50* Motion in favor of sending the disputed issues of fact to the Jury for resolution. The core of this case involved substantially disputed facts, facts that the Jury quite clearly resolved in favor of Plaintiff. There were ample grounds for the Jury to reach the conclusion that it did.

Defendant's exhaustion [*6] argument, which Plaintiff erroneously claims Defendant did not raise in its trial *Rule 50* Motion, [2] must be rejected. The Court does not find support for this Motion in the facts adduced at trial, or in the law Defendant cites. First, Plaintiff testified to the Jury that he did not deliberately mislead the EEOC. Tr. 4 at 227. Defendant's statement that "the records evidence undisputedly establishes that Plaintiff knowingly misrepresented in his EEOC charge that he had a disability..." (Def.'s Mot'n at 27) is, therefore, quite obviously, a total distortion of the record. Moreover, Defendant has not cited to any legal authorities that stand

for the proposition that a court must dismiss a case premised on a flawed EEOC charge. Even if there were evidence that Plaintiff knowingly misrepresented him or her self to the EEOC, then, the Court is not sure that the remedy sought by Defendant would be called for. As such, no further discussion of this point is needed.

> 2 Defendant did - see tr. 6 at 115. The Court will forgive Plaintiff for this failure to scrutinize the record.

[*7] On their merits, the Court can easily reject the remainder of Defendant's *Rule 50* arguments, namely that there was insufficient evidence for a reasonable jury to conclude that (1) Defendant regarded Plaintiff as disabled, and (2) that Plaintiff was not qualified for the position that he sought. First, there was extensive testimony, presented by both sides, as to Defendant's perception of Plaintiff, and the cause of that perception. Amongst other things, there was testimony that Defendant's agents thought that Plaintiff was seizure prone and a danger to the public. Tr. 5 at 70. If the Jury believed these statements, they could easily have believed that Defendant regarded Plaintiff as being substantially limited in one or more major life activities, such as walking or talking. "A plaintiff attempting to establish disability on the basis of 'substantial limitation' in the major life activity of 'working' must, at minimum, allege that he or she is "unable to work in a broad class of jobs." *Tice v. Ctr. Area Transp. Auth., 247 F.3d 506, 517 (3d Cir. 2001)* (citing *Sutton v. United Air Lines, Inc., 527 U.S. 471, 491, 144 L. Ed. 2d 450, 119 S. Ct. 2139 (1999))*. EEOC regulations [*8] also indicate that major life activities also include walking and breathing. See *Id. at 512*; see *29 C.F.R. 1630.2*. [3]

> 3 The Court notes that "breathing and walking" are contained in the EEOC regulations, but the Supreme Court has expressly refused to rule on the deference owed this definition by the courts. See *Sutton, 527 U.S. at 480*; *Tice, 247 F.3d at 512*. Because the Parties here do not challenge that breathing, walking, or working are major life activities, the issue does not need to be addressed.

The disingenuousness of Defendant's argument on this point is belied by their own Motion, which states that Defendant was concerned that Plaintiff could have a seizure which rendered him "unable to walk, talk, make decisions, or indeed do anything." Def.'s Mot'n at 20. It is flatly frivolous to argue, on one hand, that Defendant did not view Plaintiff as disabled in a major life activity, while with the other claiming that Defendant [*9] correctly viewed Plaintiff as so disabled that he could lose the ability to walk, talk, or do anything else. Without reaching Plaintiff's other, valid, arguments against Defendant's Motion on this point, it is clear that the Motion must be denied.

Defendant next claims that, if it regarded Plaintiff as disabled, it was Plaintiff's fault for creating this misperception. There was conflicting evidence on this issue, and the Jury clearly resolved the conflict in favor of Plaintiff. In keeping with Supreme Court precedent, this Court is obligated to respect the Jury's conclusion. See *Reeves, 530 U.S. at 150-51* (a court reviewing a *Rule 50* Motion must disregard evidence favorable to the movant that the Jury was not required to believe).

Finally, Defendant argues that Plaintiff was not qualified for the position he sought because he could not perform the essential functions of the job. There was conflicting testimony on this issue, specifically on whether all dock workers needed to drive a forklift, and whether Plaintiff was, in fact, capable of driving a forklift. In the face of ample evidence, presented by both sides, the Jury resolved this issue in favor of Plaintiff. [*10] The Court must give this decision all due deference, and deny Defendant's Motion. See id.

B. *Defendant's Motion for a New Trial*

Defendant points to several alleged errors in the jury charge. First, Defendant takes issue with the Court's instruction that the reason it prevented Plaintiff from coming back to work was his medical condition. Defendant claims that, rather than being Plaintiff's medical condition, the reason that it refused to allow Plaintiff back to work was because it required a doctor's note clearing him to come to work. What, pray tell, would Plaintiff need a doctor's note for, if not a medical condition? Even if the instruction was a mischaracterization of the Parties' dispute (which it was not), it would amount to nothing more than harmless error. The Court has reviewed the disputed charges, and finds that, taken as a whole and viewed in light of the evidence, they fairly and adequately submitted the issues in the case to the Jury. See *PXRE Corp. v. Terra Nova Ins. Co., 76 Fed. Appx. 485, 489 (3d Cir. 2003)* (citing *Ayoub v. Spencer, 550 F.2d 164, 167 (3d Cir. 1977)*. The same is true of the remaining disputed charges, [*11] none of which form grounds for a new trial.

C. *Defendant's Request that this Court Defy 6-Month Old, Binding Third Circuit Law*

Defendant asks this Court to constructively reverse a Third Circuit decision holding that "regarded as" plaintiffs are entitled to reasonable accommodation. See *Williams v. Phila. Hous. Auth. Police Dep't, 380 F.3d 751, 772 (3d Cir. 2004)*. Defendant graciously admits that "a panel of the Third Circuit" has already weighed in on this issue, it apparently wishes for this Court to rule differently. The Court will, obviously, refrain from taking Defendant's invitation.

IV. CONCLUSION

For the reasons stated above, Defendant's Motion is denied. An appropriate Order follows.

S/ Clarence C. Newcomer

United States District Judge

ORDER

AND NOW, this 8th day of March, 2005, upon consideration of Defendant's Post-Trial Motion for Judgment as a Matter of Law or, in the Alternative, for a New Trial (Doc. 86), and Plaintiff's Response, it is hereby ORDERED that said Motion is DENIED. It is further ORDERED that the Parties' Motions to Exceed Page Limits (Doc. 87, 101) is GRANTED.

AND IT IS SO ORDERED.

S/ Clarence [*12] C. Newcomer

United States District Judge