

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

TED MAINES,

Intervenor-Plaintiff,

-vs-

Case No. 6:02-cv-1112-Orl-28DAB

FEDERAL EXPRESS CORPORATION,

Defendant.

ORDER

This employment discrimination case was tried to a jury in December 2004. The jury found that Defendant Federal Express retaliated against Plaintiff Ted Maines by, inter alia, constructively discharging him after more than twenty years of employment. (Doc. 116). The jury awarded Mr. Maines \$201,010.30 in lost wages and benefits, as well as \$1.37 million to compensate him for emotional pain and mental anguish. (Doc. 116). However, the jury declined to award punitive damages. (Doc. 121).

This cause is currently before the Court on Defendant's Renewed Motion for Judgment as a Matter of Law or, in the Alternative, for New Trial or Amendment of Judgment

(Doc. 126). Defendant has filed a Memorandum (Doc. 127) in support of the motion, and Plaintiffs have filed a Joint Response (Doc. 132) in Opposition to the motion.¹

In its motion, Defendant seeks (1) a judgment of no liability as a matter of law on the basis that Plaintiffs failed to prove retaliation; (2) alternatively, a new trial on the basis that the verdict is against the great weight of the evidence; and (3) alternatively, a reduction in the amount of damages awarded for lost wages and emotional distress on the basis that the awards are not supported by the evidence or within the realm of reasonableness under the circumstances of this case. As set forth below, Defendant's motion is denied except to the extent it seeks remittitur of the amount of the compensatory damages for emotional pain and mental anguish.

I. Motion for Judgment as a Matter of Law

Federal Rule of Civil Procedure 50 provides in relevant part that "[i]f . . . a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue." Defendant argues that it is entitled to relief under this rule because Plaintiffs failed to establish their retaliation claim as a matter of law.

¹Defendant has also filed a Notice of Scrivener's Error (Doc. 128) with respect to this motion, and the Court has made note of the Defendant's corrections to its motion.

“[J]udgment as a matter of law after the verdict may be granted only when, without weighing the credibility of the evidence, there can be but one reasonable conclusion as to the proper judgment.” Pulte Home Corp. v. Osmose Wood Preserving, Inc., 60 F.3d 734, 739 (11th Cir. 1995) (quoting 5A James W. Moore et al., *Moore’s Federal Practice* ¶ 50.07[2] (2d ed. 1995)). In ruling on such a motion, the court “must draw all reasonable inferences in favor of the nonmoving party.” Cleveland v. Home Shopping Network, Inc., 369 F.3d 1189, 1192-93 (11th Cir.), reh’g and reh’g en banc denied, 116 Fed. Appx. 254 (2004). “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge. . . . [A]lthough the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe.” Cleveland, 369 F.3d at 1193 (quoting Reeves v. Sanderson Plumbing Prods., 530 U.S. 133, 150-51 (2000)). Where a case involves allegations of employment discrimination, factors to be considered in ruling on a motion for a judgment as a matter of law “include the ‘strength of the plaintiff’s prima facie case, the probative value of the proof that the employer’s explanation is false, and any other evidence that supports the employer’s case.’” Cleveland, 369 F.3d at 1193 (quoting Reeves, 530 U.S. at 149-50)).

The Court has considered these factors and concludes that Defendant’s motion for judgment as a matter of law must be denied. Granting the motion would require the Court to second-guess the jury’s credibility determinations, which the Court cannot do. Although if the Court were the factfinder it might have reached a different conclusion than did the jury, and although the constructive discharge issue is a close one, the Court is unable to hold as

a matter of law that Plaintiffs did not present evidence from which a reasonable jury could find in their favor as to liability.

II. Motion for New Trial

Defendant also seeks a new trial under Federal Rule of Civil Procedure 59, arguing that the verdict is against the great weight of the evidence. However, as with the motion for a judgment of a matter of law, to grant this motion would require the Court to second-guess credibility determinations made by the jury, as factfinder, in this case. Thus, Defendant's argument that it is entitled to a new trial on the issue of liability on the basis that the verdict is against the great weight of the evidence is rejected.

III. Motion for Amendment of Judgment (Remittitur)

Finally, Defendant contends that the jury's damage awards – \$201,010.30 for lost wages and benefits and \$1.37 million for emotional pain and mental anguish – are not supported by the evidence and are unreasonable. The Court disagrees with this argument as to the award of lost wages, but it agrees with Defendant that the award of \$1.37 million for emotional pain and mental anguish cannot be sustained in this case. Thus, that amount will be reduced and Plaintiffs will be given the option of accepting the reduced amount or proceeding to a new trial on damages.

“[T]he standard of review for awards of compensatory damages for intangible, emotional harms is deferential to the fact finder because the harm is subjective and evaluating it depends considerably on the demeanor of the witnesses.” Munoz v. Oceanside Resorts, Inc., 223 F.3d 1340, 1349 (quoting Ferrill v. Parker Group, Inc., 168

F.3d 468, 476 (11th Cir. 1999)). The Eleventh Circuit has noted that it "will disturb such a jury verdict only 'where the verdict is so excessive as to shock the conscience of the court.'" Munoz, 223 F.3d at 1349 (quoting Goldstein v. Manhattan Indus., Inc., 758 F.2d 1435, 1447 (11th Cir. 1985)).

As another district court has noted, "[t]he Eleventh Circuit has never precisely delineated the factors that a court should consider in determining whether the plaintiff's evidence of emotional distress is sufficient to support the jury's award of compensatory damages for emotional distress." Bernstein v. Sephora, 182 F. Supp. 2d 1214, 1227 (S.D. Fla. 2002). The Bernstein court noted that the Fourth Circuit had compiled the following factors: "(1) whether the plaintiff had lost the esteem of h[is] peers; (2) whether the plaintiff suffered physical injury as a consequence of h[is] emotional distress; (3) whether the plaintiff received psychological counseling or other medical treatment; (4) whether the plaintiff suffered a loss of income; (5) the degree of emotional distress; (6) the context of the events surrounding the emotional distress; (7) the evidence tending to corroborate the plaintiff's testimony; (8) the nexus between the challenged conduct and the emotional distress; and (9) any mitigating circumstances." Bernstein, 182 F. Supp. 2d at 1227 (citing Price v. City of Charlotte, 93 F.3d 1241, 1254 (4th Cir. 1996)). Another district court in this circuit has listed the appropriate considerations as: (1) the size of the award; (2) the rational relationship between the award and the evidence adduced at trial; and (3) awards in similar cases." Copley v. BAX Global, Inc., 97 F. Supp. 2d 1164, 1172 (S.D. Fla. 2000).

Considering the evidence that was presented during the trial of this case, the award of \$1.37 million for emotional pain and mental anguish rises to the level of shocking the

conscience of the Court. Although evidence was presented regarding emotional distress that Mr. Maines suffered, including medical testimony regarding Mr. Maines's depression and counseling, under the totality of the circumstances the award is excessive. Mr. Maines did not suffer any physical harm, and the testimony also established that other events in Mr. Maines's life contributed to his emotional distress.

Amounts of emotional distress awards in reported employment discrimination cases vary greatly from case to case, but the award in this case is out of line with the majority of those that have been sustained. See Bogle v. McClure, 332 F.3d 1347 (11th Cir.) (affirming trial court's reduction of emotional distress damages from \$1 million to \$500,000 per plaintiff where evidence of emotional distress damages consisted only of plaintiffs' testimony), reh'g and reh'g en banc denied, 77 Fed. Appx. 510 (11th Cir. 2003), and cert. dismissed, 540 U.S. 1158 (2004); Farley v. Nationwide Mut. Ins. Co., 197 F.3d 1322 (11th Cir. 1999) (affirming trial court's reduction of emotional damages award from \$450,000 to \$300,000); Bernstein (reducing emotional distress damages from \$150,000 to \$75,000); Copley (reducing award of damages for emotional pain and mental anguish from \$479,692 to \$100,000); see also Evans v. Port Auth. of N.Y. & N.J., 273 F.3d 346 (3d Cir. 2001) (finding no abuse of discretion in district court's reduction of emotional distress damage award from \$1.15 million to \$375,000); Spina v. Forest Preserve Dist. of Cook County, 207 F. Supp. 2d 764 (N.D. Ill. 2002) (finding jury's compensatory damages award of \$3 million "monstrously excessive" and reducing it to \$300,000, including \$200,000 for emotional distress); Liberatore v. CVS N.Y., Inc., 160 F. Supp. 2d 114 (D.D.C. 2001) (granting defendant's motion for remittitur and reducing emotional distress damages award from \$1.1 million to \$200,000). But cf. Griffin

v. City of Opa-Locka, 261 F.3d 1295 (11th Cir. 2001) (affirming district court's denial of motion for remittitur of awards of \$500,000 for sexual harassment and \$1.5 million for rape of city employee by city manager); Rowe v. Hussmann Corp., 381 F.3d 775 (8th Cir. 2004) (affirming district court's refusal to remit jury's emotional distress award of \$500,000); Gagliardo v. Connaught Labs., Inc., 311 F.3d 565 (3d Cir. 2002) (affirming district court's denial of motion for remittitur and thus allowing to stand award of \$1.55 million for pain and suffering); Passantino v. Johnson & Johnson Consumer Prods., Inc., 212 F.3d 493 (9th Cir. 2000) (affirming district court's decision not to reduce jury's award of \$1 million for emotional distress damages). The award of \$1.37 million for emotional pain and mental anguish is beyond what is reasonable. Therefore, this award is remitted to \$350,000.

However, "no judgment for a remittitur may be entered without the plaintiff's consent because the Seventh Amendment prohibits the court from substituting its judgment for that of the jury's regarding any issue of fact." Johansen v. Combustion Eng'g, Inc., 170 F.3d 1320, 1329 (11th Cir. 1999) (citing Hetzel v. Prince William County, Va., 523 U.S. 208 (1998)). "If the plaintiff does not consent to the remittitur, the court has no alternative but to order a new trial." Johansen, 170 F.3d at 1329. Thus, Plaintiffs will be given the option of accepting the reduced amount or proceeding to a new trial on damages.

IV. Conclusion

In accordance with the foregoing, it is **ORDERED** and **ADJUDGED** as follows:

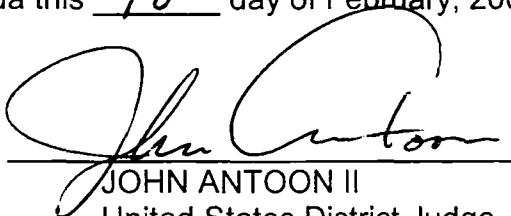
1. Defendant's Renewed Motion for Judgment as a Matter of Law or, in the Alternative, for New Trial or Amendment of Judgment (Doc. 126) is **GRANTED in part** and

DENIED in part. The motion is **DENIED** insofar as it seeks judgment as a matter of law on liability. The motion is also **DENIED** to the extent it seeks reduction in the damages awarded for lost wages and benefits. The motion is **GRANTED** only to the extent it seeks remittitur of the damages for emotional pain and mental anguish. The motion for new trial is **DENIED**, subject to Plaintiffs' acceptance of the Court's order of remittitur.

2. The jury's award for emotional pain and mental anguish is remitted from \$1.37 million to \$350,000. Plaintiffs shall file a notice of acceptance of remittitur **on or before Friday, February 25, 2005** if they accept the Court's remittitur. If no such notice of acceptance is filed, the Court will order a new trial limited to the issue of damages for emotional pain and mental anguish.

3. The ore tenus Motion for Judgment as a Matter of Law (see Doc. 106) made during trial by Defendant Federal Express is **DENIED as moot**.

DONE and ORDERED in Orlando, Florida this 10 day of February, 2005.



JOHN ANTOON II
United States District Judge

Copies furnished to:
Counsel of Record
Unrepresented Party