TERRENCE J. MADIGAN *v.* HOUSING AUTHORITY OF THE TOWN OF EAST HARTFORD
(AC 35682)

Beach, Alvord and Pellegrino, Js.

Argued December 2, 2014—officially released April 7, 2015

(Appeal from Superior Court, judicial district of Hartford, Peck, J.)

Matthew Popilowski, with whom, on the brief, was *Donn A. Swift*, for the appellant (defendant).

Leon M. Rosenblatt, with whom, on the brief, was *Richard J. Padykula*, for the appellee (plaintiff).

Opinion

ALVORD, J. The defendant, the Housing Authority of the Town of East Hartford, appeals from the judgment of the trial court, rendered after a jury trial, in favor of the plaintiff, Terrence J. Madigan. The plaintiff was awarded $109,257.45 in economic damages for breach of contract and $100,000 in noneconomic damages for breach of the covenant of good faith and fair dealing in connection with the termination of his employment as the defendant's executive director. On appeal, the defendant claims that the court improperly (1) denied its motion to set aside the verdict on the ground that the plaintiff failed to present sufficient evidence to prove a breach of contract, (2) instructed the jury on the element of just cause for termination, (3) instructed the jury on emotional distress damages, (4) admitted into evidence a final decision issued by the Freedom of Information Commission, and (5) precluded evidence of the low morale among the defendant's staff, employees and directors. We disagree and affirm the judgment of the trial court.

The jury reasonably could have found the following facts. The plaintiff began his employment as the defendant's executive director on January 25, 2002. His initial contract provided for a term of three years. Subsequently, he signed a written employment agreement (agreement) with the defendant to continue serving as the defendant's executive director for an additional five year period that expired on January 25, 2010. Paragraph 14 of the agreement listed the circumstances under which the plaintiff's employment could be terminated. Subsection (c) provides: "The [defendant] may terminate the employment and remove [the plaintiff] from his position at any time for those activities constituting misfeasance or nonfeasance or for any other just cause, in accordance with applicable Federal, State or local law."

As the executive director, the plaintiff was responsible for the general supervision of the defendant's operations, including the hiring and firing of staff. The plaintiff reported to the board of commissioners (board) and served as its secretary. Between four and five department directors reported directly to the plaintiff. Staff employees, thirty-nine at the time of his departure, worked under the direction of the department directors. Staff employees and their managers were members of a union; directors were exempt nonunion employees.

Beginning in 2006 and continuing into 2007, major changes in the defendant's operations were occurring primarily because of various housing directives and a decrease in funding by the federal government. The plaintiff implemented "asset management," pursuant to the operating program of the Department of Housing

and Urban Development, and began to explore ways to generate income by entering into partnerships or other ventures to finance the defendant's projects. During this same time period, union negotiations, which included demands for salary increases, and a computer conversion project were negatively impacting the morale of the defendant's employees. Morale at the defendant's central office had been poor at times throughout the plaintiff's tenure, but had reached very low levels by mid-2007.

At board meetings held in the latter part of 2006 and into early 2007, the plaintiff discussed the need for the defendant to hire someone to pursue opportunities for future development projects. In March, 2007, the board gave the plaintiff permission to create a job description and to find a qualified individual to fill the new position. The commissioners, although concerned about the defendant's financial situation, agreed with the plaintiff that funding for the new position was necessary in order to generate additional income for the defendant. The plaintiff contacted people he knew in the industry, advertised the position in the Hartford Courant, and placed a notice on the defendant's website. Seven applications were received, and three individuals were interviewed. One individual, who already was employed by the defendant as an asset manager, did not have the requisite skills. The second individual who applied had recently been terminated from his position at another housing authority. One of the board's commissioners, Robert Keating, who was the chairman, told the plaintiff not to hire that candidate because of the bad publicity surrounding the termination. The third applicant, Marlene Walsh, was known and liked by three of the commissioners, namely, Keating, James Kate and Wanda Franek.

After receiving verbal approval from the board, the plaintiff hired Walsh as the director of policy and affordable housing development. Her employment commenced on August 15, 2007, and her initial salary was $69,750. By the provisions of her written employment agreement, the term of her employment was indefinite, her salary was to be reviewed "at least annually" by the board, and the defendant could terminate her employment for "activities constituting misfeasance or nonfeasance or for any other just cause . . . ." Although the defendant's staff knew that Walsh was a director, they did not fully understand the responsibilities of this new position. They reacted negatively to Walsh, particularly because they did not receive an increase in pay that year and Walsh was being compensated at the starting salary for a director. Morale suffered, and the employees became angry and disgruntled.

Rumors circulated among the staff that the plaintiff and Walsh were involved in an inappropriate personal relationship. In January, 2008, an anonymous letter was

sent to the mayor of East Hartford and the board. The letter expressed serious concerns about the plaintiff's behavior, including the suggestion of an inappropriate personal relationship with Walsh. Keating and Kate, the board's vice chairman, discussed the contents of the letter with the plaintiff. Because of the letter's allegations, they informed the plaintiff that the board had decided to conduct a short investigation. The receipt of the anonymous letter also prompted Keating to circulate a survey among the employees in February, 2008, requesting feedback and suggestions pertaining to the work environment and the defendant's policies. Those who responded to the survey questions were not required to identify themselves.

Responses to the survey were returned by sixteen of the thirty-nine employees. Of the sixteen responses, two were signed. The plaintiff was told that there were five negative comments about him in the survey responses, but Keating denied the plaintiff's request to review the results. During an executive session held at the end of the board's regular meeting on March 18, 2008, the plaintiff was questioned by various commissioners about the allegations contained in the anonymous letter and the survey results. The plaintiff, unaware that these matters were to be discussed, believed that he was being attacked, and he indicated that he needed time to review the information that had just been provided to him. When he asked if the commissioners had any further questions of him and no one answered, the plaintiff said, " 'good night,' " and left the meeting.

On March 20, 2008, the plaintiff scheduled a staff meeting to discuss various issues. Toward the end of the meeting, the plaintiff related some of the comments that he had received from the board at the March 18, 2008 meeting. He also read aloud the anonymous letter that had been sent to the board in January, 2008. The plaintiff appeared frustrated and upset, and he raised his voice at times while referring to the allegations made against him and Walsh.

The board scheduled an emergency meeting for April 1, 2008. The agenda for that meeting stated the emergency to be the plaintiff's demeanor and its impact on the morale of the employees. No notice of the meeting was posted, and the plaintiff was not told of the meeting or invited to attend. At the conclusion of the commissioners' discussion, they voted to place the plaintiff and Walsh on administrative leave with pay.

Ralph Alexander, the defendant's legal counsel, had prepared the notice for the emergency meeting and was in attendance. After the meeting concluded, Alexander telephoned the plaintiff and informed him of the board's decision. Alexander told the plaintiff not to come to the office the next day because a police officer would be there to prevent the plaintiff's entry into the building.

Alexander instructed the plaintiff to contact Walsh to tell her that she, too, had been placed on administrative leave, and Alexander said that the board would like the plaintiff "to go away quietly."

Subsequently, the board conferred with Alexander about conducting a further investigation of the plaintiff to determine what action should be taken with respect to his continued employment. Alexander contacted other attorneys who had more experience with such matters, and they recommended that the board retain an independent investigator. After receiving the names of three potential investigators, Alexander recommended David J. Dunn to the board. Dunn, a management consultant in labor relations and personnel services, was selected by the board on April 7, 2008, to review and investigate the defendant's operations. The investigation was to include issues concerning poor employee morale, the hiring process and funding of the position for Walsh, and the plaintiff's behavior at the March 18, 2008 executive session and March 20, 2008 staff meeting.

In July, 2008, Alexander contacted Bernard E. Jacques, an attorney who specialized in labor and employment law, to retain his professional services on behalf of the board. Jacques was told that the plaintiff had been placed on administrative leave with pay, that Dunn had conducted an investigation, and that the board now needed advice as to appropriate steps that could be taken to bring the matter to closure. Jacques agreed to represent the board and, by letter dated August 22, 2008, advised the plaintiff's counsel that a hearing would be held on September 18, 2008, to allow the plaintiff the opportunity to respond to Dunn's investigative report. A copy of Dunn's report was enclosed with the letter.

On September 18, 2008, the hearing went forward with Jacques, Alexander, Dunn, four commissioners and the plaintiff in attendance. Jacques, after making some preliminary remarks, referred to the plaintiff's contract and defined the term "just cause." He then referenced Dunn's report, commented that the report raised "disturbing questions" that could lead to the termination of the plaintiff's employment, and asked the plaintiff if he wanted to respond to the report. The plaintiff indicated in the affirmative and proceeded to read his response into the record. At the conclusion of his recitation, the meeting was adjourned. The board met in executive session on October 21, 2008, and voted unanimously to terminate the plaintiff's employment as the defendant's executive director.

The plaintiff commenced this action on July 29, 2009, alleging breach of contract and breach of the implied covenant of good faith and fair dealing.[1] Following ten days of testimony and the submission of more than seventy exhibits, counsel gave their closing arguments

and the court charged the jury. The jury returned a verdict in favor of the plaintiff, awarding $109,257.45 in economic damages for the breach of contract claim, and $100,000 in noneconomic damages for emotional distress in connection with the claim of breach of the covenant of good faith and fair dealing, for a total award of $209,257.45. The defendant filed postverdict motions to set aside the verdict and for remittitur. The trial court denied the defendant's postverdict motions and rendered judgment in accordance with the jury's verdict. This appeal followed.

I

The defendant's first claim on appeal is that the court improperly denied its motion to set aside the verdict on the ground that the plaintiff failed to present sufficient evidence to prove a breach of the employment agreement. Specifically, the defendant argues that "the evidence demonstrated legitimate reasons why the board possessed just cause to terminate the plaintiff." The defendant maintains that it "went to great lengths and expense to properly terminate [the plaintiff]" and that "[i]n light of the steps taken by [the] defendant, the jury should not have invaded [the] defendant's legitimate managerial discretion."

"We review the trial court's action in granting or denying a motion to set aside a verdict by an abuse of discretion standard. . . . A trial court may set aside a verdict on a finding that the verdict is manifestly unjust because, given the evidence presented, the jury mistakenly applied a legal principle or because there is no evidence to which the legal principles of the case could be applied. . . . A verdict should not be set aside, however, where it is apparent that there was some evidence on which the jury might reasonably have reached its conclusion. . . . This limitation on a trial court's discretion results from the constitutional right of litigants to have issues of fact determined by a jury. . . . An appellate court . . . in reviewing whether a trial court abused its legal discretion, must review the entire record and [all] the evidence. . . . Upon issues regarding which, on the evidence, there is room for reasonable difference of opinion among fair-minded men, the conclusion of a jury, if one at which honest men acting fairly and intelligently might arrive reasonably, must stand, even though the opinion of the trial court and this court be that a different result should have been reached. . . . [I]f there is a reasonable basis in the evidence for the jury's verdict, unless there is a mistake in law or some other valid basis for upsetting the result other than a difference of opinion regarding the conclusions to be drawn from the evidence, the trial court should let the jury work [its] will." (Internal quotation marks omitted.) *Deas* v. *Diaz*, 121 Conn. App. 826, 841, 998 A.2d 200, cert. denied, 298 Conn. 905, 3 A.3d 69 (2010).

In the present case, both parties agree that "just cause" was required by the express terms of the plaintiff's agreement in order to terminate the plaintiff's employment as executive director. Although "courts should not lightly intervene to impair the exercise of managerial discretion or to foment unwarranted litigation"; *Sheets* v. *Teddy's Frosted Foods, Inc.*, 179 Conn. 471, 477, 427 A.2d 385 (1980); "[g]ood cause or [j]ust cause substantially limits employer discretion to terminate, by requiring the employer, in all instances, to proffer a proper reason for dismissal, by forbidding the employer to act arbitrarily or capriciously." (Internal quotation marks omitted.) *Slifkin* v. *Condec Corp.*, 13 Conn. App. 538, 549, 538 A.2d 231 (1988). "Good cause, as distinguished from the subjective standard of unsatisfactory service, is defined as [*s*]*ubstantial reason*, one that affords a legal excuse . . . [l]egally sufficient ground or reason." (Emphasis added; internal quotation marks omitted.) Id. It is a matter for the trier of fact to determine whether the defendant had just cause to terminate the plaintiff's employment. See *Coelho* v. *Posi-Seal International, Inc.*, 208 Conn. 106, 125, 544 A.2d 170 (1988).

The defendant claims that the plaintiff did not present sufficient evidence to show that the defendant lacked good cause for the termination of his employment. "[I]t is not the function of this court to sit as the seventh juror when we review the sufficiency of the evidence . . . rather, we must determine, in the light most favorable to sustaining the verdict, whether the totality of the evidence, including reasonable inferences therefrom, supports the jury's verdict . . . . In making this determination, [t]he evidence must be given the most favorable construction in support of the verdict of which it is reasonably capable. . . . In other words, [i]f the jury could reasonably have reached its conclusion, the verdict must stand, even if this court disagrees with it." (Internal quotation marks omitted.) *Carrano* v. *Yale-New Haven Hospital*, 279 Conn. 622, 645–46, 904 A.2d 149 (2006).

The defendant argues that its evidence demonstrated that the plaintiff's employment had been terminated for valid reasons that constituted just cause. Kate testified that the plaintiff (1) had created a hostile work environment, as evidenced by his treatment of the defendant's employees at the March 20, 2008 staff meeting, and (2) did not have a good working relationship with the board. When questioned about these reasons for termination, however, Kate admitted that he had not attended the March 20, 2008 staff meeting and that no one who had attended that meeting spoke to him about it. Further, Kate conceded that the plaintiff always had answered his questions and had provided all requested information relative to the defendant's operations. Additionally, Kate admitted that the plaintiff was com-

petent at running the housing authority and that none of its employees had ever complained to him about the plaintiff.

Kate also testified that the anonymous note, with its accusations regarding an improper personal relationship between the plaintiff and Walsh, "had nothing to do" with the termination of the plaintiff's employment as executive director. Kate admitted that the plaintiff was encouraged to create other sources of income for the defendant's projects, that the board had agreed to hire a person to pursue such funding, that the person hired would be given the title of director, that the board approved of the plaintiff's hiring Walsh for the position, and that the board had approved Walsh's salary. As his final question to Kate, the plaintiff's counsel asked whether Kate could think "of any evidence that was presented to justify [the plaintiff's] termination." Kate responded: "I can't remember."

When Keating testified at trial, he related additional reasons for the termination of the plaintiff's employment. He testified that the plaintiff was insubordinate when he "walked out" of the board's executive session on March 18, 2008, and that he failed to follow the personnel rules when he hired Walsh. When the plaintiff's counsel inquired as to the rule or rules violated in the hiring process, Keating responded that he believed the board had never formally approved the creation of Walsh's position. Keating admitted, however, that the board had given the plaintiff "verbal okays" to hire Walsh; the plaintiff simply did not "go through the formality" of bringing it to the board for a vote. Keating further admitted that the board was well aware that Walsh was working at the main office and that none of the commissioners ever told the plaintiff that he needed formal approval of Walsh's position.

The defendant nevertheless claims that the plaintiff did not satisfy his burden to prove that the reasons for the termination of his employment did not constitute just cause. In addition to the previously noted testimony of Kate and Keating, which was favorable to the plaintiff, the testimony of the plaintiff alone was sufficient to support the jury's determination that his employment was terminated without just cause. The plaintiff related a number of instances in which various politicians had requested favors of him in connection with the hiring of staff or other operations of the defendant. When the plaintiff declined to afford favorable treatment, knowing that to do so would be improper or illegal, he was regarded by a number of the commissioners as not being a "team player . . . ." Kate told the plaintiff that he needed to do favors for others in order for the defendant to receive favors from them.

With respect to the hiring of Walsh as the director of policy and affordable housing development, the plaintiff testified that the feasibility of creating that position

had been discussed with the board since late 2006. He received permission from the board to develop the position and to hire a qualified individual. The plaintiff advertised the position and interviewed candidates. Walsh was one of the applicants, and she already was known to three of the commissioners. These commissioners liked Walsh and supported the plaintiff's decision to hire her for the newly created position at the starting salary for directors. Although the plaintiff did not request a formal vote of approval, he previously had hired a director for information technology and an assistant for that position on the basis of the board's discussions and its verbal approvals.

With respect to the March 18, 2008 board meeting, the plaintiff testified that he did not know that the board intended to discuss the ongoing investigation prompted by the anonymous letter and the negative survey results until the board entered executive session. When asked if he "walked out" of that meeting, the plaintiff testified that he did leave, but only after asking the commissioners if they had any further questions of him. Hearing no responses, the plaintiff indicated that he said: " '[O]kay, well, I'm going to go home,' and—and I left. I went [upstairs], got my things, and I did come back down and opened the door of the boardroom and said, 'If you're going to be staying here, you need to set the alarm when you leave,' so I did leave after asking if they had any more questions of me."

The plaintiff acknowledged that morale was low among the defendant's staff and directors. Morale was an ongoing issue. According to the plaintiff: "It was bad. It was bad continually. I mean, it was up and down. It was a roller coaster." When asked if morale became worse after Walsh was hired, the plaintiff said that the creation of her position did have an adverse impact on morale. He testified that the staff was upset that she was newly hired and receiving a director's salary when they did not get pay increases as requested during the union negotiations. The plaintiff testified that morale also was adversely affected by asset management procedures and the computer conversion project. The plaintiff nevertheless believed that he had a good working relationship with the staff, the directors and the board.

When questioned about his demeanor at the March 20, 2008 staff meeting, the plaintiff testified that he was upset about the allegations in the anonymous letter and that, at times, his voice was "louder than normal." He said that he did "not yell" at anyone. The plaintiff's testimony was corroborated by Walsh, who had attended the staff meeting and testified that the plaintiff "seemed frustrated"; "[t]here were times when his voice was heightened with anxiety or frustration." Robert Counihan, the defendant's finance director at that time, likewise testified that the plaintiff had expressed his

feelings "in a rather loud voice." He characterized the voices in the meeting room as being "[n]ot really yelling, but very loud."

Although the defendant presented witnesses with differing accounts of these events, the jury was free to credit the testimony of the plaintiff and the witnesses favorable to him rather than the evidence presented by the defendant. As previously noted, it was a matter for the trier of fact to determine whether the defendant had just cause to terminate the plaintiff's employment. See *Coelho* v. *Posi-Seal International, Inc.*, supra, 208 Conn. 125. "It is not this court's function to retry any factual issue in this case." (Internal quotation marks omitted.) Id., 124.

The jury reasonably could have concluded that the reasons proffered by the defendant were not credible or substantial reasons to discharge the plaintiff. Accordingly, the trial court did not abuse its discretion in denying the defendant's motion to set aside the verdict.

II

The defendant's next claim is that the court improperly instructed the jury on the element of just cause for termination.[2] The defendant argues that the court's instruction on just cause "was not properly adapted to the issue, nor was it correct in law in that it invited the jury to invade [the defendant's] exercise of legitimate managerial discretion." Specifically, the defendant claims that "an employer seeking to terminate an employee for cause must do nothing more rigorous than proffer a proper reason for dismissal." (Emphasis omitted; internal quotation marks omitted.) The challenged portion of the court's charge, the defendant argues, "inappropriately enlarged the scope of the jury review of [the] defendant's decision to terminate beyond deciding whether or not the termination was arbitrary and capricious." We are not persuaded.

The defendant focuses on the following portion of the court's instruction in support of its claim: "Not every act of insubordination or misconduct justifies an employer firing an employee because if that were the case, if an employee's conduct were less than perfect, he could be discharged for just cause. In the case of a managerial employee who, in particular, whose position gives him some latitude and discretion in working out the details of his service, a failure to immediately and literally comply with the employer's orders may not constitute disobedience. It is a question of fact for the jury to determine whether the limits of that latitude and discretion have been exceeded in this case."

"Our analysis begins with a well established standard of review. When reviewing the challenged jury instruction . . . we must adhere to the well settled rule that a charge to the jury is to be considered in its entirety, read as a whole, and judged by its total effect rather

than by its individual component parts. . . . [T]he test of a court's charge is not whether it is as accurate upon legal principles as the opinions of a court of last resort but whether it fairly presents the case to the jury in such a way that injustice is not done to either party under the established rules of law. . . . As long as [the instructions] are correct in law, adapted to the issues and sufficient for the guidance of the jury . . . we will not view the instructions as improper." (Internal quotation marks omitted.) *Stafford* v. *Roadway*, 312 Conn. 184, 189, 93 A.3d 1058 (2014).

We hold that, in the circumstances of this case, the court's instructions on just cause for termination of the plaintiff's employment were not erroneous. The defendant appears to argue that its reasons for termination, if not "arbitrary and capricious," would constitute good or just cause as a matter of law. The defendant maintains that it proffered proper reasons for dismissal, reasons that were not arbitrary and capricious, and that any additional instructions expanding the jury's consideration of what constituted just cause improperly impinged on managerial discretion.

The defendant ignores our case law on just cause. As previously discussed, the reason or reasons for termination must be *substantial*. *Slifkin* v. *Condec Corp.*, supra, 13 Conn. App. 549. A reason that is less than substantial would be an improper reason for dismissal, i.e., arbitrary and capricious. Aside from the few sentences in the court's instructions challenged on appeal, the remainder of the court's charge tracks the language on just cause or good cause as set forth in *Slifkin* v. *Condec Corp.*, supra, 549. The defendant does not challenge the remainder of the court's charge but, instead, singles out these few sentences and claims that they were harmful and affected the verdict.

Individual instructions are not to be judged in isolation from the overall charge. See *Coelho* v. *Posi-Seal International, Inc.*, supra, 208 Conn. 123. The court properly instructed the jury that good cause is a substantial reason, one that affords a legal excuse or a legally sufficient ground or reason for terminating employment. Further, the court properly instructed that jurors do not have authority to invade an employer's legitimate managerial discretion, but that such discretion to terminate is substantially limited by good cause, requiring a proper reason for dismissal and forbidding the defendant to act arbitrarily or capriciously. The court also correctly instructed the jury that the plaintiff had the burden to prove by a preponderance of the evidence that his employment was terminated without just cause.

The challenged portion of the charge, instructing that not every act of insubordination or misconduct justifies dismissal, is an alternate way of saying that the reason for terminating employment must be a substantial rea-

son. Likewise, charging that "a failure to immediately and literally comply with the employer's orders may not constitute disobedience" restated the requirement that the reason for termination must be substantial. When read in context with the remaining portions of the court's charge on just cause, the challenged portion of the charge was not improper. Accordingly, we conclude that the court's instructions on just cause were correct in law, adapted to the issues[3] and sufficient for the guidance of the jury. See *Stafford* v. *Roadway*, supra, 312 Conn. 189.

III

The defendant's next claim is that the court improperly gave the jury an instruction on emotional distress when the only evidence regarding emotional distress was in relation to the termination of the plaintiff's employment. The defendant argues that "the plaintiff's own testimony linked his emotional distress to his actual termination and the issues resulting therefrom." The defendant maintains that there was no evidence that the plaintiff's emotional distress resulted from the breach of the covenant of good faith and fair dealing, which was required for the award of such noneconomic damages, and that the court therefore should not have instructed the jury that it could award emotional distress damages in this case.[4]

The court instructed the jury that it could "award noneconomic damages to the plaintiff for the emotional harm sustained by [the plaintiff] if you find that he has proven his claim of breach of the covenant of good faith and fair dealing by a preponderance of the evidence." The court further charged that "[i]n connection with this claim, the plaintiff must prove that he has suffered emotional distress that was a natural and proximate result of the breach of the covenant of good faith and fair dealing. Generally, it is the law in our state that emotional distress arising from the mere termination of employment even where it is wrongful, is not, by itself, compensable and is not enough to sustain an award of noneconomic damages to [the] plaintiff . . . ."[5]

The defendant does not claim that the language of the instruction on emotional distress was erroneous. The defendant maintains that the court never should have given the instruction on noneconomic damages because no evidence was presented at trial that would support such an instruction. In support of this claim, the defendant emphasizes that the plaintiff provided the only testimony regarding emotional distress and that such testimony occurred after the following inquiry by his counsel: "I want to ask you now about a—the—the emotional impact that you're being terminated from East Hartford had on you; so, it's been, what, it's been a number of years now since you were terminated and started this lawsuit. Could you describe to the jury what kind of emotional impact that's had?"

As one of the grounds asserted for setting aside the jury verdict, the defendant presented this claim to the trial court. In its memorandum of decision denying the defendant's motion, the court made the following observations: "In response to [his counsel's] question, the plaintiff essentially explained that the process of being terminated had been devastating for him inasmuch as it caused him to experience depression, anxiety, self-doubt and sleeplessness. He also testified regarding the struggle of finding comparable employment.

"Beyond the foregoing exchange between the plaintiff's counsel and the plaintiff, there was substantial evidence whereby the jury could have reasonably concluded that the emotional distress described by the plaintiff in response to his attorney's question was the culmination of all the emotional distress caused by the bad faith acts that precipitated the plaintiff's actual termination. For example, the plaintiff testified, 'When I got the call about not coming back in [from the town attorney], I was in the driveway walking into the house and continued talking to the attorney, and he also relayed that one individual had a concern that I had an affair with this person, with the—with this Walsh, Marlene Walsh. . . . And my wife was sitting right there on the couch. She became very distraught. It got pretty heated, pretty tense. . . . It impacted me 100 percent. It was devastation, and I found myself all of a sudden having to explain all kinds of things, and not knowing still, because what was going to happen, it was still fresh, but I became very depressed, lot of anxiety, lot of self-doubt, lot of, you know, why, what happened, and I kept questioning and going over and over in my mind and, obviously, not a lot of sleep, and things progressed—it did get worse.'

"In addition, it was implicit in the tenor of the plaintiff's testimony concerning all the events leading to his termination that he suffered from emotional distress during this entire period. The plaintiff and others testified that he was extremely upset by the anonymous letter sent to the mayor and the board of commissioners and the fact that the person who wrote it seemed to have information from inside the authority; that Kate and Keating informed him that they were going to discuss the anonymous letter with the town attorney and the mayor but not with him; that the board of commissioners initiated an anonymous survey of his staff in February, 2008, without any input from him, which was responded to by sixteen of the forty-four employees of [the defendant]; that Keating, while excluding the plaintiff from this process, involved the plaintiff's secretary in the survey process; that at a board meeting held on March 18, 2008, the plaintiff was confronted by the allegations of the anonymous letter and negative comments made about him in responses from the anonymous survey and felt attacked; that the plaintiff became

agitated and upset during the March 18, 2008 meeting but never 'disrespectful' or 'insubordinate'; that the plaintiff was upset and raised his voice during the March 20, 2008 staff meeting on the topic of the anonymous letter; that the commissioners called an emergency board meeting without notice to the public or the plaintiff on April 1, 2008, during which they decided to place him on an indefinite administrative leave, a meeting which the Freedom of Information Commission ('FOIC') ultimately determined was illegally convened; that at the hearings held on September 4, 2008, and November 18, 2008, the FOIC found no evidence, 'other than speculation,' to suggest that the plaintiff's behavior created a volatile situation warranting concern for staff safety; that the town attorney telephoned the plaintiff after the April 1, 2008 'emergency' board of commissioners' meeting and informed him that the board wanted him to go away quietly; and that the defendant thereafter initiated an investigation of him by a private investigator, while the plaintiff was on administrative leave, which included interviews of the board of commissioners and [the defendant's] staff. Based on this evidence, as well as the evidence of breach of the plaintiff's employment contract, the jury may have reasonably found that the defendant breached the covenant of good faith and fair dealing implied in the plaintiff's employment contract and that he suffered emotional distress as a result. Therefore, the defendant's argument that the plaintiff failed to present evidence linking the emotional distress to the defendant's bad faith acts is without merit." (Footnotes omitted.) We note that all these events, except for the FOIC determination that the April 1, 2008 board meeting was improper, occurred prior to the termination of the plaintiff's employment on October 21, 2008.

In evaluating the defendant's claim that there was insufficient evidence to show that the emotional distress damages resulted from acts other than the actual termination, "we must determine, in the light most favorable to sustaining the verdict, whether the totality of the evidence, including *reasonable inferences therefrom*, supports the jury's verdict . . . . In making this determination, [t]he evidence must be given the most favorable construction in support of the verdict of which it is reasonably capable." (Emphasis added; internal quotation marks omitted.) *Carrano* v. *Yale-New Haven Hospital*, supra, 279 Conn. 645–46. "Two further fundamental points bear emphasis. First, the plaintiff in a civil matter is not required to prove his case beyond a reasonable doubt; a mere preponderance of the evidence is sufficient. Second, the well established standards compelling great deference to the historical function of the jury find their roots in the constitutional right to a trial by jury." (Footnote omitted.) *Gaudio* v. *Griffin Health Services Corp.*, 249 Conn. 523, 534–35, 733 A.2d 197 (1999).

The trial court was thorough in its analysis of this claim by the defendant, and our review of the trial transcripts and exhibits corroborates the summary set forth in the memorandum of decision. The jury had sufficient evidence from which to conclude that the plaintiff's emotional distress was caused by the actions of the defendant prior to the termination of his employment, i.e., from the actions taken in bad faith in connection with the process culminating in the termination of his employment as the defendant's executive director. Accordingly, we conclude that there was sufficient evidence presented during the trial for the court to include a jury instruction on emotional distress in connection with the plaintiff's claim of breach of the covenant of good faith and fair dealing. The court did not abuse its discretion, therefore, in denying the defendant's motion to set aside the verdict on this ground.

IV

The defendant's next claim is that the court improperly admitted into evidence the final decision issued by the Freedom of Information Commission (FOIC) with respect to the April 1, 2008 board meeting. Prior to trial, the defendant filed a motion in limine to preclude "any evidence regarding the ruling of the [FOIC] . . . in the matter of *Madigan* v. *Keating*, Docket #FIC 2008-281," on the grounds that the findings in that matter were "irrelevant" and would "serve only to prejudice" the defendant. The day before evidence commenced, the court heard argument on the pretrial motions filed by both parties. With respect to the defendant's motion in limine, the court concluded that the evidence relative to the FOIC proceeding was probative of the plaintiff's claim that the defendant acted with malice and breached the covenant of good faith and fair dealing. The motion was denied.

"It is well settled that [t]he trial court's ruling on the admissibility of evidence is entitled to great deference. . . . [T]he trial court has broad discretion in ruling on the admissibility . . . of evidence. . . . [Its] ruling on evidentiary matters will be overturned only upon a showing of a clear abuse of the court's discretion. . . . We will make *every reasonable presumption* in favor of upholding the trial court's ruling, and only upset it for a *manifest abuse of discretion*. . . . Moreover, evidentiary rulings will be overturned on appeal only where there was . . . a showing by the defendant of substantial prejudice or injustice. . . . [T]he defendant . . . must show that it is more probable than not that the erroneous action of the court affected the result." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Van Nest* v. *Kegg*, 70 Conn. App. 191, 201, 800 A.2d 509 (2002).

In its final decision, the FOIC concluded that the purpose stated for the April 1, 2008 board meeting did

not constitute an "emergency" and that the defendant improperly failed to post an agenda, notify the public or notify the plaintiff of the meeting.[6] On appeal, the defendant claims that the court should have precluded the final decision as evidence because it was not relevant and its probative value was outweighed by unfair prejudice to the defendant.

"Evidence is relevant if it has any tendency to make the existence of any fact that is material to the determination of the proceeding more or less probable than it would be without the evidence." (Internal quotation marks omitted.) *Bligh* v. *Travelers Home & Marine Ins. Co.*, 154 Conn. App. 564, 577, A.3d (2015). "Relevant evidence is evidence that has a logical tendency to aid the trier in the determination of an issue. . . . One fact is relevant to another if in the common course of events the existence of one, alone or with other facts, renders the existence of the other either more certain or more probable. . . . Evidence is not rendered inadmissible because it is not conclusive. All that is required is that the evidence tend to support a relevant fact even to a slight degree . . . ." (Internal quotation marks omitted.) *Drake* v. *Bingham*, 131 Conn. App. 701, 708, 27 A.3d 76, cert. denied, 303 Conn. 910, 32 A.3d 963 (2011).

As part of his claim regarding the breach of the covenant of good faith and fair dealing, the plaintiff alleged in his complaint that the commissioners "create[d]" and "searched for pretext[s]" to terminate his employment, and that they acted in "bad faith . . . ." In support of those allegations, the plaintiff alleged that the defendant held a meeting on April 1, 2008, without notice to the public or to the plaintiff, for the purpose of discussing the plaintiff's employment, and that the defendant contended that an emergency existed in order to avoid compliance with the notice requirements of the Freedom of Information Act. See General Statutes § 1-200 et seq. At the conclusion of the emergency meeting, the plaintiff alleged, the defendant placed him on administrative leave in order to search for "pretexts to terminate [him]."

The circumstances surrounding the April 1, 2008 meeting constituted one factor among many that had been proffered by the plaintiff in support of his claim that he had been discharged in bad faith. The plaintiff filed a complaint with the FOIC challenging the "secret meeting on April 1, 2008 . . . to discuss the [plaintiff's] employment and then voting to place him on administrative leave." After a contested hearing, the FOIC determined that the defendant's claim that an emergency existed that justified the holding of that meeting without notice was not supported by the evidence. The FOIC concluded that the defendant violated the Freedom of Information Act, ordered Keating to pay a civil penalty of $500, and declared the defendant's action in placing

the plaintiff on administrative leave to be null and void.

Evidence of the defendant's conduct in calling the April 1, 2008 meeting, as set forth in the final decision of the FOIC, had a logical tendency to aid the jury in the determination of an issue in this case, i.e., whether the defendant acted in bad faith and breached the covenant of good faith and faith dealing inherent in the plaintiff's employment agreement. Because the plaintiff offered such evidence to establish bad faith, the FOIC's finding that the defendant's reason for calling an emergency meeting was based on "speculation" was material to the jury's determination of whether the defendant breached the implied covenant of good faith and fair dealing. We cannot conclude that the court improperly admitted the final decision of the FOIC for that purpose.

The defendant maintains, however, that even if the evidence was relevant, its probative value was outweighed by the danger of unfair prejudice. "It is well established that relevant evidence may be excluded if it has a tendency to prejudice unduly the minds of the jurors. . . . To be unfairly prejudicial, evidence must be likely to cause a disproportionate emotional response in the jury, thereby threatening to overwhelm its neutrality and rationality to the detriment of the opposing party. . . . We have recognized four situations in which the potential prejudicial effect of relevant evidence would suggest its exclusion. These are: (1) where the facts offered may unduly arouse the [jurors'] emotions, hostility or sympathy, (2) where the proof and answering evidence it provokes may create a side issue that will unduly distract the jury from the main issues, (3) where the evidence offered and the counterproof will consume an undue amount of time, and (4) where the defendant, having no reasonable ground to anticipate the evidence, is unfairly surprised and unprepared to meet it." (Internal quotation marks omitted.) *Drake* v. *Bingham*, supra, 131 Conn. App. 710.

The defendant claims that evidence of the FOIC's decision after a contested hearing on the plaintiff's complaint would be unduly prejudicial because "it would be used by the jury to conclude that since the FOIC determined the [defendant] did something wrong in placing the plaintiff on [administrative] leave, then [it] must have done something wrong in terminating him. . . . This was especially prejudicial in light of the fact that the FOIC did not determine that the defendant did anything substantively wrong." (Citation omitted.) It appears that the defendant challenges the admission of the final decision on the ground that "the facts offered may unduly arouse the [jurors'] emotions, hostility or sympathy . . . ." (Internal quotation marks omitted.) *Drake* v. *Bingham*, supra, 131 Conn. App. 710.

During the trial, witnesses testified that certain commissioners believed an emergency existed that justified the calling of the April 1, 2008 emergency meeting, but

that the FOIC concluded that the defendant violated the Freedom of Information Act because the defendant failed to present sufficient evidence to prove the existence of an emergency that would justify the failure to provide notice to the public and to the plaintiff. The FOIC's final decision does not state that the defendant acted in bad faith when it called the emergency meeting. In that decision, the FOIC defines the term "emergency," recites the nature of the emergency as stated in the minutes of the April 1, 2008 meeting, and finds that "there was no evidence produced at the hearing in this matter, other than speculation by [the commissioners and the defendant], that the [plaintiff's] behavior, 'current demeanor' or 'divergence of philosophy,' in any way created a 'volatile situation' that warranted 'concern for the safety of the people who worked,' or fear that 'something dreadful would happen' at the housing authority." For that reason, the FOIC concluded that the situation "did not constitute an 'emergency' within the meaning of [General Statutes] § 1-225 (d) [of the Freedom of Information Act]" and found the defendant in violation of the act's notice requirements.

The defendant does not provide a persuasive argument that such findings would "unduly arouse the [jurors'] emotions, hostility or sympathy"; (internal quotation marks omitted) *Drake* v. *Bingham*, supra, 131 Conn. App. 710; and, thus, it has failed to demonstrate that the probative value of that evidence was outweighed by the danger of unfair prejudice. Accordingly, we conclude that the court did not abuse its broad discretion in admitting the final decision of the FOIC as evidence in this case. See *Van Nest* v. *Kegg*, supra, 70 Conn. App. 201.

V

The defendant's final claim is that the court improperly precluded the defendant's evidence of the low morale among the defendant's staff, employees and directors. Specifically, the defendant argues that "[t]he court improperly denied [the] defendant the right to present relevant evidence regarding the morale at the [housing authority]. This preclusion was harmful especially in light of the trial court's conclusion that the jury could have reasonably found a lack of 'just cause' relating to evidence of the issue of low morale because 'there were several reasons also presented in evidence that may have contributed to this atmosphere.' "

In support of this claim, the defendant refers to three instances during the ten days of testimony when the court sustained objections to questions posed by the defendant's counsel to three different witnesses.[7] The court ruled that the personal opinions of the witnesses were not relevant unless they had been communicated to commissioners or other persons in authority who made the decision to place the plaintiff on administrative leave and to terminate his employment. The court

also explained that it was not prohibiting all inquiries concerning the morale of staff or the claimed hostile work environment, but, instead, was ruling on each individual objection as made over the course of the trial on the ground of relevance.

The central issue in this case was whether the plaintiff's employment as the defendant's executive director had been terminated for just cause. We cannot say that the court abused its discretion by precluding certain personal opinions of the defendant's staff unless those opinions had been communicated to persons in authority who determined the reasons for placing the plaintiff on administrative leave and for terminating his employment. Moreover, on the basis of our review of the record, the morale of the defendant's staff and directors, and the claimed hostile work environment at the housing authority, were testified to at great length during the trial by witnesses for the plaintiff and witnesses for the defendant. Those issues were thoroughly explored, and the jury, as fact finder, chose to credit the testimony favorable to the plaintiff.

The judgment is affirmed.

In this opinion PELLEGRINO, J., concurred.

[1] The plaintiff also had alleged a third count titled "tortious breach of contract" and a fourth count titled "wrongful termination in violation of public policy," but those two counts were not pursued.

[2] The court's entire instruction on just cause provides: "The question of whether an employer has terminated an employee for just cause is a question of fact for the jury to decide.

"Good cause, or just cause, as distinguished from the subjective standard of unsatisfactory service as—is defined as a substantial reason, which amounts in law to a legal excuse for failing to perform an act otherwise required by law, and one that affords a legal excuse or a legally sufficient ground or reason for not performing a contractual promise.

"The employer rightfully has managerial discretion to make independent, good faith judgments in making such a decision.

"Accordingly, jurors do not possess the authority to invade the employer's legitimate managerial discretion. However, good cause or just cause substantially limits employer discretion to terminate by requiring the employer, in all instances, to proffer a proper reason for dismissal, and by forbidding the employer to act arbitrarily or capriciously.

"*Not every act of insubordination or misconduct justifies an employer firing an employee because if that were the case, if an employee's conduct were less than perfect, he could be discharged for just cause. In the case of a managerial employee who—in particular, whose position gives him some latitude and discretion in working out the details of his service, a failure to immediately and literally comply with the employer's orders may not constitute disobedience. It is a question of fact for the jury to determine whether the limits of that latitude and discretion have been exceeded in this case.*

"In any contract of employment for a fixed period, an employee prematurely discharged without good or just cause may recover damages.

"Now, the burden of proof is on the plaintiff to prove by a preponderance of the evidence that the defendant breached his contract of employment by terminating him without just cause . . . ." (Emphasis added.)

[3] The defendant also claimed that the court's instruction on just cause was not properly adapted to the facts of this case because the plaintiff's employment was not terminated "for failing to immediately and literally comply with the employer's orders." (Internal quotation marks omitted.) By including that challenged language in its instruction, the defendant argues that the court charged on "evidence which did not exist."

The trial court, in denying the defendant's motion to set aside the verdict on this stated ground, concluded that the argument was "hypertechnical

and without merit. The evidence showed that the plaintiff was a managerial employee who exercised discretion in performing his job functions. Further, the defendant presented evidence suggesting that the plaintiff had been terminated for noncompliance with [the defendant's] rules and for failure to work with the board of commissioners. The phrase 'comply with the employer's orders,' which was used in the jury instruction, could be reasonably construed to mean complying with the employer's rules or requests. As such, the court's instruction was proper and cannot reasonably be said to have misled the jury." (Footnote omitted.) We agree with the trial court's analysis of this claim.

[4] "[I]t is axiomatic that the . . . duty of good faith and fair dealing is a covenant implied into a contract or a contractual relationship. . . . In other words, every contract carries an implied duty requiring that neither party do anything that will injure the right of the other to receive the benefits of the agreement. . . . The covenant of good faith and fair dealing presupposes that the terms and purpose of the contract are agreed upon by the parties and that what is in dispute is a party's discretionary application or interpretation of a contract term. . . . To constitute a breach of [the implied covenant of good faith and fair dealing], the acts by which a defendant allegedly impedes the plaintiff's right to receive benefits that he or she reasonably expected to receive under the contract must have been taken in bad faith." (Emphasis omitted; internal quotation marks omitted.) *Landry* v. *Spitz*, 102 Conn. App. 34, 42, 925 A.2d 334 (2007).

[5] "[A] wrongful termination is not, in and of itself, a sufficient basis for a claim of negligent infliction of emotional distress." *Perodeau* v. *Hartford*, 259 Conn. 729, 750, 792 A.2d 752 (2002). Emotional distress damages may arise, however, out of conduct occurring in the termination of employment. See id., 762–63.

[6] At trial, Keating testified that the board believed that the plaintiff's behavior at the March 20, 2008 staff meeting had created a "volatile" situation, which necessitated the calling of an "emergency" meeting almost two weeks later:

"[The Plaintiff's Counsel]: And you thought [the plaintiff] was about to go postal?

"[Keating]: Yes."

[7] The defendant's counsel asked Ilda Rosa, an account clerk employed by the defendant, the following question: "I wanted to ask you about the period of time in 2007 before [Walsh] started at the agency for a moment. Okay? That time frame. Did you have a chance based upon your own personal observation to see what the morale of the agency was at that point?" The plaintiff's counsel objected, and the court sustained the objection: "[I]t's not like observing anger or laughing or, you know, smiling, crying, that kind of thing. It's—so, I'm going to sustain the objection."

The defendant's counsel asked Linda McComber, a former director employed by the defendant, the following question: "After you returned from medical leave on September 17 of [2007], did you have an observation as to the staff's reaction to the hiring of [Walsh]?" The plaintiff's counsel objected, and the court sustained the objection. The court stated: "[I]t's not relevant . . . unless it was communicated to the board of commissioners during the relevant time period."

When the defendant's counsel indicated that he was offering the evidence for the purpose of presenting personal observations as to the hostile work environment at the housing authority, including the staff's reaction to Walsh, the court responded: "I just want to say, you know, that I'm not sustaining an objection to a line of inquiry. I'm sustaining an objection to a question on the grounds of relevance."

Prior to that question, McComber already had testified about the hostile work environment and her negative reaction to the hiring of Walsh as a director. Later, during cross-examination, McComber testified at length about her concerns with respect to the low morale among the staff.

The defendant's counsel asked Rosemary Rogers, a former employee who worked at the defendant's main office, the following question: "[D]id you have a chance to observe from your own—with your own eyes and ears, what was going on at the agency in terms of the morale of the staff in that time before March 20 of [2008]?" The plaintiff's counsel objected on the ground of relevance. The defendant's counsel made an offer of proof through the questioning of the witness outside of the presence of the jury.

The court made the following ruling: "[T]his witness may have observed and communicated to Attorney Alexander and Mr. Keating, and when that happened, out of everything she said, that is what's relevant. That is what's probative—may be probative of the issues in this case, and the rest of it [is] just based on hearsay, and are not—her personal opinions are not relevant, her personal opinions unless they were communicated to those folks in—in a position to make a decision."

The court then indicated that the jury would be brought back to the courtroom, that the defendant's counsel could ask his questions, that the plaintiff's counsel could make his objections, and that the court would rule on each objection as presented. Following that ruling, Rogers testified at length about what she had communicated to Alexander and Keating.