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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 CLAUDE BROWN,

9 Plaintiff,

10 v.

11 KING COUNTY,

12 Defendant.

C16-1340 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable
14 Thomas S. Zilly, United States District Judge:

15 (1) Having reviewed Plaintiff's objections to the Court's proposed set of jury
16 instructions, *see* docket no. 113, the Court enters the following order:

17 (a) Plaintiff's first objection to the proposed jury instructions for
18 inclusion of the *former* Instruction No. 9 is DENIED as moot;

19 (b) Plaintiff's second objection to the proposed jury instructions for
20 exclusion of an instruction that the denial of promotional opportunities to Plaintiff and his
21 removal from the Acting Technical Trainer ("ATT") position are adverse employment
22 actions *as a matter of law*, is DENIED. Defendant characterizes its actions as "split[ting]
23 the ATT position between" Plaintiff and the only other interested employee, not as a
"removal." Def. Response to Plaf. Motions in Limine (docket no. 96 at 1). Genuine
issues of material fact preclude Plaintiff's requested ruling and jury instruction. *See*
Kirby v. City of Tacoma, 124 Wn. App. 454, 465, 98 P.3d 827 (2004) ("An actionable
adverse employment action must involve a change in employment conditions that is
more than an 'inconvenience or alteration of job responsibilities,'" such as "reducing an
employee's workload and pay" or "a demotion or adverse transfer") (citing
DeGuiseppe v. Vill. of Bellwood, 68 F.3d 187, 192 (7th Cir. 1995));

1 (c) Plaintiff's third objection to the proposed jury instructions for
2 exclusion of an instruction that Plaintiff's informal acts, e.g., oral complaints of racial
3 discrimination to his managers, might constitute protected activity is DEFERRED to trial.
4 The Court has ruled that it will exclude any evidence concerning alleged protected
5 activities other than those pleaded in the First Amended Complaint ("FAC"), docket
6 no. 16. See Minute Order (docket no. 101 at 3). The Court's review of the FAC does not
7 reveal any allegations relating to informal acts that are alleged to be protected activity;
8 and

9 (d) Plaintiff's fourth objection to the proposed jury instructions is
10 GRANTED in part, as indicated in the Court's revised proposed Instruction No. 16D,
11 which is attached to this Minute Order.

12 (2) The Court has also attached to this Minute Order its revised proposed
13 verdict form;

14 (3) The Court will hold a conference during trial with regard to the proposed
15 jury instructions and verdict form, and any objections thereto, before entering the Court's
16 final jury instructions and verdict form; and

17 (4) The Clerk is directed to send a copy of this Minute Order to all counsel of
18 record.

19 Dated this 10th day of June, 2021.

20 William M. McCool
21 Clerk

22 s/Gail Glass
23 Deputy Clerk

1 INSTRUCTION NO. 16D

2 Limit on Recoverable Damages

3
4 The law requires a Plaintiff to bring a claim within a certain time limit. I will now
5 instruct you concerning the effect of this time limit.

6 As to Plaintiff's first claim for discrimination based on race and his third claim for
7 retaliation, both brought under WLAD, Defendant can only be held liable on these claims
8 for conduct that occurred on or after May 26, 2013.

9 As to Plaintiff's second claim for discrimination based on race and his fourth
10 claim for retaliation, both brought under § 1981, Defendant can only be held liable on
11 these claims for conduct that occurred on or after July 25, 2012.

12 To the extent that you heard evidence on events occurring before these dates, it
13 was admitted for the limited purpose to consider Defendant's employees' motive or intent
14 relating to their conduct occurring during the permitted time period.

15 You may only award damages on any claim for conduct that occurred on or after
16 May 26, 2013, for the state law claims, and on or after July 25, 2012, for the federal
17 § 1981 claims.

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VERDICT

13 We, the jury, answer the questions submitted by the Court as follows:

14 **Question No. 1**

15 Do you find for Plaintiff on his first claim for discrimination under WLAD?

16 **Answer:**

17 (1) By removing Plaintiff from the Acting Technical Trainer position in July

18 2013:

19 Yes

20 No

1 (2) By denying Plaintiff's applications for the Rail Supervisor in Training
2 position in the October 2012 recruitment:

3 Yes

4 No

5
6 (3) By denying Plaintiff's applications for the Rail Supervisor in Training
7 position in the May 2014 recruitment:

8 Yes

9 No

10 Your verdict must be unanimous. You must all agree on 1, 2, 3, or all to find for
11 Plaintiff on this claim.

12
13 **Question No. 2**

14 Do you find for Plaintiff on his second claim for discrimination under federal law
15 (§ 1981)?

16 **Answer:**

17 (1) By removing Plaintiff from the Acting Technical Trainer position in July
18 2013:

19 Yes

20 No

1 (2) By denying Plaintiff's applications for the Rail Supervisor in Training
2 position in the October 2012 recruitment:

3 Yes

4 No

5
6 (3) By denying Plaintiff's applications for the Rail Supervisor in Training
7 position in the May 2014 recruitment:

8 Yes

9 No

10 Your verdict must be unanimous. You must all agree on 1, 2, 3, or all to find for
11 Plaintiff on this claim.

12
13 **Question No. 3**

14 Do you find for Plaintiff on his third claim for retaliation under WLAD?

15 **Answer:**

16 (1) By removing Plaintiff from the Acting Technical Trainer position in July 2013:

17 Yes

18 No

19 (2) By denying Plaintiff's applications for the Rail Supervisor in Training
20 position in the May 2014 recruitment:

21 Yes

22 No

1 Your verdict must be unanimous. You must all agree on 1, 2, or both to find for
2 Plaintiff on this claim.

3
4 **Question No. 4**

5 Do you find for Plaintiff on his fourth claim for retaliation under federal law
6 (§ 1981)?

7 **Answer:**

8 (3) By removing Plaintiff from the Acting Technical Trainer position in July 2013:

9 Yes

10 No

11 (4) By denying Plaintiff's applications for the Rail Supervisor in Training
12 position in the May 2014 recruitment:

13 Yes

14 No

15 Your verdict must be unanimous. You must all agree on 1, 2, or both to find for
16 Plaintiff on this claim.

17
18 *If your answer to Question Nos. 1, 2, 3, and 4 was "No," then date and sign the*
19 *Verdict form. If your answer to Question Nos. 1, 2, 3, or 4 was "Yes," then proceed to*
20 *Question No. 5.*

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Question No. 5

What amount of damages, if any, do you award Plaintiff:

Answer

Economic damages \$ _____

Non-economic damages \$ _____

If your answer to Question Nos. 1, 2, 3, or 4 was “Yes,” and you awarded an amount of damages for Question No. 5, then date and sign the Verdict form. If your answer to Question Nos. 1, 2, 3, or 4 was “Yes,” but the jury determined that Plaintiff failed to prove actual damages caused by Defendant, then proceed to Question No. 6.

Question No. 6

Amount of nominal damages (not to exceed \$1.00) \$ _____

DATED this ____ day of June, 2021.

_____ Presiding Juror