Appendix

United States Court of Appeals, Third Circuit.

Ronald WATSON

v.

LLOYD INDUSTRIES, INC., Appellant

Nos. 19-2066 & 19-252519-2525

Submitted Pursuant to Third Circuit L.A.R. 34.1(a) May 21, 2020(Opinion Filed: August 19, 2020)

On Appeal from the United States District Court for the Eastern District of Pennsylvania (D.C. No. 2-17-cv-01049), District Judge: Honorable Michael M. Baylson

Attorneys and Law Firms

Samuel Dion, Dion & Goldberger, Philadelphia, PA, for Plaintiff-Appellee

Keith J. Cohen, Esq., Law Offices of Keith J. Cohen, Blue Bell, PA, Theodore C. Forrence, Jr., Esq., Philadelphia, PA, for Defendant-Appellant

Before: McKEE, BIBAS, and NYGAARD, Circuit Judges

OPINION[*]

McKEE, Circuit Judge.

**710* Lloyd Industries challenges an allegedly excessive award of damages and attorneys' fees. Because we find there were reasonable grounds for each and that the punitive damage award satisfies the constitutional bar, we will affirm.[1]

I.

We remain "mindful that our scope of review of a damages award is exceedingly narrow."[2] Likewise, we review a district court's award of attorneys' fees for abuse of discretion.[3] However, the constitutionality of a punitive damage award is reviewed *de novo*.[4]

II.

Appellant challenges the emotional damages award ($50,000) on the grounds that Watson failed to describe sufficient emotional harm to warrant the jury's award. Evidence sufficient to sustain a jury award for such damages does not necessarily have to be "compelling," but it must exist.[5] Here there is testimony from Watson and his wife that his termination left emotional scars. In particular, there is evidence that the unprofessional behavior by Prendergast when informing Watson of his termination caused a lasting impact.[6] This testimony is sufficient evidence to support the emotional damages award. This is particularly true given our narrow scope of review. We must avoid seconding-guessing the fact-finder. "Evidence of pain and suffering is particularly ill-suited to review upon only a written record."[7]

Next, Appellant argues the punitive damage award, at five times the compensatory award, was excessive and inadequately supported by the district court's analysis.

We must determine "whether the punitive damage award is so 'grossly disproportional' to [Appellant's] conduct as to amount to a constitutional violation."[8] Reviewing *de novo*, we find no violation. The ratio between the compensatory ($99,600) and punitive ($500,000) damages awarded here is 1:5, a single digit ratio, which falls within the Supreme Court's guidance.[9] The argument to the contrary ignores evidence of overtly racial bias that the jury found credible.

Finally, Appellant protests the attorney fee award on the grounds that Watson's counsel never submitted a fee schedule and that the district court awarded a single ***711** hourly rate for all of that counsel's services, rather than differentiating between the skilled legal work and more mundane tasks that should not command a premium rate. The district court did rely on the Community Legal Services fee schedule,[10] and we cannot say that declining to delineate separate fee rates based on that framework was an abuse of discretion.

Thus, we will affirm the district court.

Footnotes

*This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

1The district court held subject matter jurisdiction under 28 U.S.C. § 1331. This Court has appellate jurisdiction over the "final decision" of the district court under 28 U.S.C. § 1291.

2*Cooper Distrib. Co., Inc. v. Amana Refrigeration, Inc.*, 63 F.3d 262, 277 (3d Cir. 1995) (quotation omitted).

3*Krueger Assoc., Inc. v. Am. Dist. Tel. Co. of Pa.*, 247 F.3d 61, 69 (3d Cir. 2001).

4*Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 436, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001).

5*Bolden v. Se. Pa. Transp. Auth.*, 21 F.3d 29, 34 (3d Cir. 1994).

6App. 395-96. Watson testified that when asked why he had been picked to be laid off, Prendergast told him, "because I can." App. 395.

7*Walters v. Mintec/Intl.*, 758 F.2d 73, 81 (3d Cir. 1985) (quotation omitted).

8*Brand Mktg. Grp. LLC v. Intertek Testing Serv., N.A., Inc.*, 801 F.3d 347 (3rd Cir. 2015).

9*State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 410, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003).

10App. 69-80.

United States District Court, E.D. Pennsylvania.

Ronald WATSON

v.

LLOYD INDUSTRIES, INC.

CIVIL ACTION NO. 17-1049

Filed 04/11/2019

Attorneys and Law Firms

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MEMORANDUM RE: POST-TRIAL MOTIONS

Baylson, District Judge

*1 This memorandum follows upon this Court's March 19, 2019 memorandum regarding Defendant's post-trial motion for judgment as a matter of law or a new trial. (ECF 40.) Because the briefing did not sufficiently address the issues relevant to the damages award, we requested the parties supplement their briefing. (ECF 41; ECF 42 & 42, Suppl. Briefs) This memorandum incorporates the factual recitation from that memorandum. (ECF 40, pp. 1-8.)

The jury awarded Watson $ 50,000 in compensatory damages for "any injury he actually sustained," $ 49,960 in back pay from October 29, 2015 through April 9, 2018, and $ 750,000 in punitive damages. Defendant

requests that we grant a new trial on back pay, that we strike, remit, or grant a new trial on the compensatory damages, and that we strike or remit the punitive damage award. (Def.'s Suppl. Br. at 5-6.)

I. Compensatory damages

The compensatory damage award consists of both emotional harm and back pay. Defendant asserts that the only evidence of Plaintiff's emotional distress "consisted of his own self-serving conclusory testimony." (ECF 28, Post-Trial Mot. Memo. at 17-18.)

" 'In general, the determination of compensatory damages is within the province of the jury and is entitled to great deference.' ... However, '[t]he district judge is in the best position to evaluate the evidence presented and determine whether or not the jury has come to a rationally based conclusion.' " Dee v. Borough of Dunmore, 474 Fed. Appx. 85 (3d Cir. 2012) (quoting Spence v. Bd. Of Educ., 806 F.2d 1198, 1204, 1201 (3d Cir. 1986)). In Spence, the plaintiff was transferred out of her position as an art teacher to a position at a different school in retaliation for the exercise of her First Amendment rights. The Court of Appeals affirmed the district court's remittitur of all emotional distress damages in the case because "neither the circumstances nor the testimony established that there was a 'reasonably probability, rather than a mere possibility, that damages due to emotional distress were in fact incurred.' " 806 F.2d at 1201. The Court of Appeals declined to decide "whether a verdict for emotional distress may ever be supported solely by a plaintiff's own testimony." Id.

A remittitur is "a device employed when the trial judge finds that a decision of the jury is clearly unsupported and/or excessive." Cortez v. Trans Union, LLC, 617 F.3d 688, 715 (3d Cir. 2010) (quoting Spence, 806 F.2d at 1201.)

We reject Defendant's contentions here that the compensatory damage award is against the weight of evidence. Plaintiff's claim for emotional suffering damages was supported by his own testimony, which the jury found credible. His claim was also supported by the credible testimony of his long-time partner, Zenetta Ruffin, who testified that after Watson was laid off, "his mood was different, he was sad, like I said, he was depressed. It was difficult for us financially because like I said we just bought the home, and we had to adjust a lot of things to compensate for the loss of income." (Tr. Day 1 178:24-179:3.) The credible testimony of Watson and Ruffin created a sufficient basis upon which the jury awarded its compensatory damages. Similarly, Watson's testimony that he lost approximately $ 457.24 per week for about two and a half years provided a sufficient basis for the jury's award of back pay.

II. Punitive damages

*2 The punitive damage award of $ 750,000 is a multiple of 7.5 over the compensatory damages award. We must determine whether this punitive damage award is "so 'grossly disproportional' to the defendant's conduct as to amount to a constitutional violation." Willow Inn, Inc. v. Public Service Mut. Ins. Co., 339 F.3d 224 (3d Cir. 2005) (quoting Cooper Indus., Inc. v. Leatherman

Tool Group, Inc., 532 U.S. 424, 431 (2001)). "The Due Process Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor." State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 417 (2003).

Defendant urges us to find that no punitive damages are justified, contending that there was no evidence of conscious wrongdoing by Defendant and no evidence from which the jury could infer that the Defendant knew it was violating federal law. (Post-Trial Mot. Memo. at 21.) Alternatively, Defendant argues that we should reduce the award to a nominal amount because the award violates Lloyd Industries' due process rights. (Id. at 22.)

Both parties agree that we must examine the three "guideposts" of BMW of North America, Inc. v. Gore, 517 U.S. 559, 575-86 (1996) to determine whether the punitive damage award comports with due process: (1) degree of reprehensibility of the defendant's conduct; (2) the ratio of actual harm to punitive damages; and (3) the comparison of punitive damages awarded to the civil or criminal penalties that could be imposed.

With regard to the first Gore guidepost, we find that Plaintiff has demonstrated that Defendant's behavior was reprehensible. Racial discrimination is illegal and repugnant. We reject Defendant's argument that no punitive damages are proper. On the other hand, Plaintiff's evidence, although compelling, was sparse and did not establish any prior conduct, reckless

indifference, slurs, physical harm, or malicious behavior toward the Plaintiff because he is black.[1]

With regard to the second Gore guidepost, we observe that the punitive damage award here was $ 750,000, which is about 7.5 times the $ 99,960.00 compensatory damages award. Although the Supreme Court has not provided firm guidance on an appropriate ratio, in State Farm, Justice Kennedy wrote for the Court that "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." 538 U.S. at 425. He also noted that in an earlier case affirming a punitive damages award, the Court "concluded that an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety." Id. (discussing Pac. Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 23 (1991)).

Third Circuit precedent does not provide any rule as to specific ratios that may be appropriate. Compare In re Bayside Prison Litig., 339 F.App'x 987, 993 (3d Cir. 2009) (holding that a punitive damage award that was 4.5 times the compensatory damage award in a prisoner civil rights claim was a "close case" and remanding to the district court to re-evaluate) with Brand Mktg. Grp. LLC v. Intertek Testing Servs., N.A., Inc., 801 F.3d 347, 366 (3d Cir. 2015) (holding that a punitive damages award of five times the compensatory damages was not "suspect by itself.").

***3** With regard to the third and final Gore guidepost, although there are no penalties that could be imposed for Defendant's behavior, we must recognize the cap on

punitive and compensatory damages under Title VII. For an employer the size of Lloyd Industries, the sum of these damages would be limited to $ 50,000. 42 U.S.C.A. § 1981a. While Congress chose not to impose a statutory cap on damages under § 1981, the fact that it has imposed this limit for the same behavior is a significant consideration. See, e.g., Zielinski v. SPS Techs. LLC, 2011 WL 5902214, at *12 (E.D. Pa. Nov. 22, 2011) (Baylson, J.) ("[A]n award as large as the one here is troubling in light of the similarity between [Plaintiff's] Title VII and § 1981 claims.")

In light of the analysis above, the similarity between the Title VII and § 1981 claims, and the fact that the punitive damage award here is fifteen times the statutory cap on all damages under Title VII, this court concludes that the punitive damage award of the jury is excessive and does not comport with due process. A punitive damages award that is five times the compensatory damages is reasonable in light of the facts and circumstances of this case and comports with due process. As a matter of law, the punitive damage award will be reduced to $ 499,800. A new trial will not be granted. See Cortez v. Trans Union, LLC, 617 F.3d 688, 716 (3d Cir. 2010) (noting that when a court reduces a damages award to avoid a denial of due process under Gore, "there is no interference with the Seventh Amendment right to have a jury make findings of fact.")

III. Conclusion

For the reasons discussed above, we grant Defendant's post-trial motion for a remittitur of the punitive

damages. We affirm the jury's compensatory damage award.

An appropriate order follows.

Footnotes

1We are guided by the factors used to evaluate the reprehensibility guidepost CGB Occupational Therapy, Inc. v. RHA Health Servs., Inc.:

> (1) the harm caused was physical as opposed to economic; (2) the tortious conduct evinced an indifference to or reckless disregard of the health or safety of others; (3) the target of the conduct had financial vulnerability; (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit, or mere accident.

499 F.3d 184, 190 (3d Cir. 2007) (quoting State Farm, 538 U.S. at 419).

United States District Court, E.D. Pennsylvania.

Ronald WATSON

v.

LLOYD INDUSTRIES, INC.

CIVIL ACTION NO. 17-1049

Filed 03/19/2019

Attorneys and Law Firms

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Keith J. Cohen, Law Offices of Keith J. Cohen, Blue Bell, PA, for Lloyd Industries, Inc.

MEMORANDUM RE: POST-TRIAL MOTIONS

Baylson, District Judge

*1 In this civil rights case, Plaintiff Ronald Watson asserts that his former employer, Lloyd Industries, Inc. discriminated against him on the basis of his race when it laid him off in October 2015, in violation of Title VII and 42 U.S.C. § 1981. After a jury verdict in favor of Plaintiffs, Defendants moved for judgment as a matter of law, a new trial, or remittitur, alleging insufficient proof to sustain the verdict. This memorandum addresses Defendant's motion for judgment as a matter of law and for a new trial.

I. Background

This two-day trial was held in November 2018 after a remarkably quiet pre-trial period where no motions were filed, at all. All evidence was presented on the first day of trial, and the second day of trial consisted of closing arguments, jury instructions, jury deliberation and verdict. The jury deliberated for approximately two hours.

Plaintiff called five witnesses: William Lloyd, Shaun Mathis, Ronald Watson, Fred Braker, and Zenetta Ruffin. Defendant called Thomas Prendergast and recalled William Lloyd. Defendant moved for a directed verdict after an offer of proof had been presented by Plaintiff regarding the subject of the testimony of Zenetta Ruffin. Defendant contended "that plaintiff has not met the burden of proof to establish any racial motivation for the dismissal of Mr. Watson." (Tr. Day 1 171:5-8.) We summarize the nature of each witness's testimony below, reviewing the testimony in the light most favorable to the Plaintiff.

a. William Lloyd

William Lloyd, the founder and CEO of Lloyd Industries, was first called as on cross by Plaintiff. Defendants also called Lloyd later in the trial as a defense witness. Lloyd provided background on the company which manufactures fire protective products for HVAC systems. (Tr. Day 1 21:18-22:7.) Lloyd discussed the union contract that Lloyd Industries has with its employees, including the provision ensuring plant-wide seniority. (Tr. Day 1 22:8-25:23.) He also addressed the difference between an assembler and a

punch press operator, noting that Watson was categorized as both. (Tr. Day 1 27:9-29:2.)

Lloyd testified that the Lloyd Industries' Montgomeryville plant where Watson worked had few black employees because they did not apply for jobs there, but that in Lloyd Industries' Florida plant, about eighty percent of the employees were black. (Tr. Day 1 56:16-57:16.) Lloyd later admitted that only eight of the twenty-five employees at the Florida plant are black. (Tr. Day 1 208:19-209:2.)

Lloyd testified that he and Thomas Prendergast, the plant manager, made decisions to lay off two employees, including Watson, when business got slow. (Tr. Day 1 34:22-35:12.) He stated, however, that Prendergast was the one who decided to lay off Watson, as it was in the "discretion of the plant manager to lay off employees whose departments are lacking work." (Tr. Day 1 35:13-15; 37:11-23.) Lloyd reviewed employment documents confirming that the only three black employees in the factory—Shawn Broadnax, Shawn Mathis, and Watson—left the company between October 26, 2015 and October 30, 2015. (Tr. Day 1 39:1-25.) While Broadnax and Watson were laid off by Prendergast because of an alleged lack of work, Mathis "resign[ed] on his own terms." (Tr. Day 1 39:16-19.) Lloyd stated that the company preferred to lay people off rather than fire them "so they go collect unemployment," and contended that the true reason for Watson's lay off was that he was a subpar employee and had an alcohol problem (Tr. Day 1 41:14-42:7.)

*2 With regard to Watson's record at work, Lloyd testified that he performed assembly work "poorly." (Tr. Day 1 34:5-8.) He stated that Watson would come back from lunch with alcohol on his breath, but admitted that he would permit Watson to operate heavy machinery even when he had alcohol on his breath. (Tr. Day 1 42:8-44:22.) Lloyd never disciplined Watson for any of these alleged performance issues, but also testified that the company has a policy of not giving "writing up" employees. (Tr. Day 1 59:8-60:13.) Lloyd confirmed a statement from his deposition that he laid off Watson to make room for another white employee who needed to move into Watson's department because of medical reasons. (Tr. Day 1 51:3-22.) Like Watson, Broadnax, the other laid off black employee, had performance issues, according to Lloyd. (Tr. Day 1 50:18-24.)

Lloyd testified that a white employee Steve Malloy was hired as an assembler in June 2015, after Watson. (Tr. Day 1 32:5-7.) Despite Malloy having less seniority than Watson, Lloyd stated that Malloy was an assembler and that Watson could not perform Malloy's assembler job "[b]ecause he was a punch-press operator." (Tr. Day 1 46:16-25; 48:20-22.) He testified that the assembly work performed by Malloy was different than the assembly work performed by Watson, although some assembly duties are "easier to learn" than others. (Tr. Day 1 48:1-22.)

b. Shaun Mathis

Shaun Mathis, a former Lloyd Industries employee, testified about the work that he did as an assembler.

(Tr. Day 1 68:1-70:5; 75:10-77:1.) He testified that Prendergast was not friendly with black employees: "being as though that there were only three African-American workers in the shop, from what I noticed, there wasn't much being done as far as conversation as far as those three gentlemen, including myself, and everyone else in the shop." (Tr. Day 1 71:4-8.) Mathis did say, however, that no one ever said anything to him "of a racial nature ... that would make you uncomfortable" when he was working at Lloyd Industries. (Tr. Day 1 86:14-17.)

Mathis testified that he was written up once for being late and was unaware of any company policy prohibiting write-ups. (Tr. Day 1 72:25-73:14.) Mathis eventually resigned after he requested a more flexible schedule to allow him to look for a second job closer to home, and was in turn given a reduced schedule. (Tr. Day 1 77:8-78:3.) He testified that other employees had been given flexibility with their schedules in the past, though he admitted that there were part-time and full-time employees with varying schedules. (Tr. Day 1 83:18-85:6.)

Mathis testified that he worked in the same department as Steve Malloy, who started about a month or two after him. (Tr. Day 1 71:10-16.) He stated that Malloy's work was subpar: "a lot of [Malloy's] work had to be redone.... He would come in maybe two, three times a week late." (Tr. Day 1 72:3-14.) Mathis did not observe a relationship between Prendergast and Malloy. (Tr. Day 1 75:5-9.)

c. Ronald Watson

Ronald Watson testified that he was hired by Lloyd to be a punch press operator in the Lloyd Industries Montgomeryville, Pennsylvania plant in December 2014. (Tr. Day 1 93:22-94:17.) In his eighth month at Lloyd Industries, he became a member of the union. (Tr. Day 1 96:5-21.) Watson stated that he did assembly work forty percent of the time. (Tr. Day 1 94:21-25.) When Watson left the job, he was making $13.50 an hour and was working an average of 33.87 hours per week. (Tr. Day 1 99:19-100:1.) Watson testified that he worked less than 40 hours per week because of health issues. (Tr. Day 1 146:14-24.)

When Watson was hired, he stated that the only other black employee was Broadnax, and that Mathis was hired after him. (Tr. Day 1 97:9-98:7; 99:5-7.) Watson testified that he never was written up and that he received compliments from the shop steward on his performance. (Tr. Day 1 131:1-18.) Watson testified that he had seniority over Steve Malloy and that when Malloy would come into his work area he had to be shown what to do. (Tr. Day 1 162:10-15.)

3 Like Mathis, Watson stated that he never received a comment about his race or background. (Tr. Day 1 152:18-22.) Watson testified that Prendergast "had an attitude that you can feel, and he never spoke to me" unless it was a scheduling issue. (Tr. Day 1 130:8-23.)

The day he was fired, Watson testified

Tom Prendergast said Ron, can I speak with you, because all this was by the time clock. I said yes. I said what's up. He said I'm laying you off. I said what? He

said I'm laying you off. I said what you laying me off for. He said because I can.

(Tr. Day 1 122:11-15.) After this interaction, Lloyd allegedly told Watson to "take the layoff, alright?" and Watson testified that "the way [Lloyd] said it, it was so offensive. And he got in my face. So I just left." (Tr. Day 1 132:13-15.) Watson admitted that he was "very, very angry" and that he said a curse word when he was laid off. (Tr. Day 1 148:13, 150:16-19.) Watson stated that he was upset about the way that he was laid off, and that he would have been fine with being laid off in a "kind and gentle way." (Tr. Day 1 151:15-23.)

After being laid off, Watson signed a grievance form with his union representative, Fred Braker, but he never heard back about Braker's investigation into the grievance. (Tr. Day 1 123:8-12.) He then filed a racial discrimination complaint with the Pennsylvania Human Rights Commission. (Tr. Day 1 134:24-10.)

Watson denied drinking on the job, and stated that he usually clocked out at lunchtime and ate lunch in his car in the parking lot. (Tr. Day 1 126:10-127:14.) He also contended that he did not experience any evidence of a slowing down of work, though he admittedly did not have access to books showing how business was going. (Tr. Day 1 136:12-137:8; 147:9-12.)

Watson explained the way that the layoff affected his life: "I was distraught. I was heartbroken. I was very depressed. I went through a period of depression. I felt like I was a loser. I felt discriminated against. I had no—I wasn't treated fair. And I felt as though

somebody did something to me that wasn't valid." (Tr. Day 1 137:22-138:1.) Watson testified that he collected unemployment and did temporary jobs for two and a half years until he began his current job as a punch press operator at Generation Metal in Trevose, Pennsylvania in April 2018. (Tr. Day 1 92:21-92:5; 138:12-15; 139:3-18.) He told the jury that the amount he lost was "$52,247 and some change." (Tr. Day 1 139:24-140:5.) Watson confirmed that he did not seek treatment for any of his alleged emotional damages. (Tr. Day 1 157:21-158:3.)

d. Fred Braker

Fred Braker, the business representative of the Sheet Metal Workers' International Union, testified that the seniority policy in the union contract at Lloyd Industries is plant-wide. (Tr. Day 1 103:18-105:14.) Braker testified that he attempted to file a grievance on Watson's behalf after he was laid off, but then decided against filing it when he talked to a shop steward who told Braker that Watson "wasn't a very god worker, that he didn't show up a lot and, you know, came back from lunch smelling bad, I think alcohol" and that he "told Mr. Watson, I said, you know, maybe you want to take a layoff instead of, you know, getting terminated. At that point, he said okay." (Tr. Day 1 106:7-109:9.) The grievance mentioned nothing about race discrimination. (Tr. Day 1 119:2-8.)

*4 Braker reviewed an email from nine months after the layoff where he told Prendergast that Watson was the "lowest seniority. Therefore, there was nothing we could do as to the Lloyd Industries firing." (Tr. Day 1

110:18-112:3.) Braker admitted, however, that based upon a separate document showing that there were four others with less seniority than Watson, (including Steve Malloy), Watson was not the lowest in seniority. (Tr. Day 1 112:24-113:12.)

e. Zenetta Ruffin

Zenetta Ruffin, Watson's partner of forty years[1] testified that she only knew Watson to drink beer and wine socially ("at home, dinner, social events, parties"), and that he did not come back from work smelling of alcohol. (Tr. Day 1 175:19-176:20.) Ruffin also testified that the couple had just bought a house so she had to "rearrange everything to compensate for the job loss," including her working extra shifts. (Tr. Day 1 178:6-179:13.) After Watson was laid off, Ruffin stated he was "sad, depressed, the whole household, the mood was difficult during that time." (Id.)

f. Thomas Prendergast

The defense called Thomas Prendergast, the plant manager at Lloyd Industries when Watson was laid off. Prendergast testified that he spoke with Watson when he asked for equipment or time off, and that occasionally the two would chat in the men's room (a claim that Watson denied on rebuttal). (Tr. Day 1 187:5-25.) Prendergast testified that Watson "wasn't the greatest employee, he wasn't a get up and goer, he was a little slow, and he just done his own thing more or less." (Tr. Day 1 188:13-15.)

Prendergast's testimony conflicted with Lloyd's regarding write-ups; Prendergast stated that the

company wrote employees up after they receive a verbal warning. (Tr. Day 1 188:16-189:10.) He also testified that he laid off Watson because of a "little lull" in work and because Watson had the least seniority in his department. (Tr. Day 1 190:22-191:2.) Although Prendergast recognized that the union contract included plant-wide seniority, he stated that it only applies "if he would put in for another job or deem that he could do the job, but this never happened in this case." (Tr. Day 197:25-198:4.)

With regard to the other two black employees, Prendergast stated that he had "trouble" with Broadnax and was not sure if Broadnax was laid off because he was low in seniority. (Try. Day 1 198:22-199:13.) He contended that he never took hours away from Mathis, but that Mathis himself cut down his hours. (Try. Day 1 200:10-12, 201:5-9.) Prendergast stated that he consulted with Lloyd when making the lay off decisions. (Tr. Day 1 203:18-24.)

Prendergast testified that he did not hire Steve Malloy, but that Malloy was hired after him as an assembler. (Tr. Day 1 201:20-202:5.) According to Prendergast, Malloy was rarely late and when he was, he would alert management. (Tr. Day 1 202:9-14.)

II. Legal Standard

Defendants move for entry of judgment as a matter of law pursuant to Rule 50, for a new trial pursuant to Rule 59, or in the alternative, for remittitur. Each of these routes imposes a heavy burden on Defendants.

A post-trial motion for judgment as a matter of law under Rule 50(b) "may be granted 'only if, viewing the evidence in the light most favorable to the nonmovant and giving it the advantage of every fair and reasonable inference, there is insufficient evidence from which a jury reasonably could find liability.' " Mancini v. Northampton Cty., 836 F.3d 308, 314 (3d Cir. 2016) (quoting Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1166 (3d Cir. 1993)). "Although judgment as a matter of law should be granted sparingly, a scintilla of evidence is not enough to sustain a verdict of liability." Lightning Lube, 4 F.3d at 1166. Where a jury returns a verdict in favor of the plaintiff, a court must "examine the record in a light most favorable to the plaintiff, giving her the benefit of all reasonable inferences, even though contrary inferences might reasonably be drawn." In re Lemington Home for the Aged, 777 F.3d 620, 626 (3d Cir. 2015) (quoting Dudley v. S. Jersey Metal, Inc., 555 F.2d 96, 101 (3d Cir. 1977)).

***5** Rule 59 allows a court, after conducting a jury trial, to grant a new trial "for any reason for which a new trial has heretofore been granted in an action at law in federal court." Fed. R. Civ. P. 59(a)(1)(A). However, a court, "should do so only" when "the great weight of the evidence cuts against the verdict and ... [ ] a miscarriage of justice would result if the verdict were to stand." Leonard v. Stemtech Int'l Inc., 834 F.3d 376, 386 (3d Cir. 2016) (quoting Springer v. Henry, 435 F.3d 268, 274 (3d Cir. 2006)) (alterations original).

III. Defendant's Post-trial Motion

a. Judgment as a Matter of Law under Rule 50(b)

Defendant seeks judgment as a matter of law in its favor on the entire verdict. It asserts that this relief is appropriate "because there was no evidence of record showing that Defendant unlawfully discriminated against Plaintiff on the grounds of his race." (Mot. Memo. at 5.) Defendant argues initially that Plaintiff did not make out a prima facie case because Plaintiff did not show that he was treated less favorably than similarly situated employees of a different race. (Id. at 8.) Plaintiff responds that under the plant-wide seniority clause in the union contract (P-21, Article X(A)), Watson should have been retained because he could perform other work at the plant. (Resp. at 14.) Plaintiff also asserts that Steve Malloy, a white employee with less seniority than him, was retained when he was laid off. (Resp. at 16-17.)

For discrimination lawsuits involving layoffs due to a reduction-in-force, as here, a prima facie case of discrimination is established by a demonstration that plaintiff "was in the protected class, he was qualified, he was laid off and other unprotected workers were retained." Marzano v. Computer Science Corp. Inc., 91 F.3d 497, 502 (citing Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994.)) We are more than satisfied that Plaintiff met this standard and made out a prima facie case. Mancini, 836 F.3d at 314.

Defendant also contends that Plaintiff has not shown pretext in light of Lloyd and Prendergast's testimony that there was a lull in business and their testimony that Watson had performance issues. (Mot. Memo. at 11.) Plaintiff responds by pointing to the various

portions of testimony where the credibility of the defense witnesses was questionable. (Resp. at 19-24.)

We must give the evidence all reasonable inferences in favor of Plaintiff. We conclude that there was ample evidence from which a reasonable jury could conclude that Lloyd Industries' proffered reason for laying off Watson—a lull in work—was pretext for racial discrimination. Mancini, 836 F.3d at 314. Most significantly among the possible reasons is the fact that there were only three black employees of the factory with over sixty employees and that all three of these employees were laid off or voluntarily left within the same week. Moreover, Defendant even notes Lloyd's testimony that "were Plaintiff a stellar employee, he would be working at the Montgomeryville plant this very day." (Id. at 14.)

The Court must also note that Mr. Prendergast had an aggressive, somewhat hostile, manner when he testified, which is not reflected in the transcript, that may have warranted the jury to disbelieve his testimony and to make the verdict and award the amount of punitive damages that jury found.

Defendant's motion for judgment as a matter of law with regards to the damage award is reserved for additional briefing in accordance with the accompanying order.

b. New trial under Rule 59(a)

***6** Defendant next moves for a new trial under Rule 59(a). Our latitude with granting a new trial depends upon the basis for doing so. "[N]ew trials because the

verdict is against the weight of the evidence are proper only when the record shows that the jury's verdict resulted in a miscarriage of justice or where the verdict, on the record, cries out to be overturned or shocks our conscience." Klein v. Hollings, 992 F.2d 1285, 1290 (3d Cir. 1993) (quoting Williamson v. Consol. Rail Corp., 926 F.2d 1344, 1352 (3d Cir. 1991)).

For the reasons discussed above, the jury's verdict was not against the weight of evidence or a miscarriage of justice.

IV. Conclusion

In sum, we deny Defendant's motion for judgment as a matter of law or a new trial. We reserve for now our determination of Defendant's motion as to the damage award.

An appropriate order follows.

Footnotes

1.Ruffin was referred to as Watson's wife throughout trial although the two were never formally married. (Tr. Day 1 174:6-10.)

10/7/2020
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 19-2066 & 19-2525

RONALD WATSON,

v.

LLOYD INDUSTRIES, INC.,
Appellant

(E.D. Pa. No. 2-17-cv-01049)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY, PHIPPS and NYGAARD1, Circuit Judges
1 Judge Nygaard's vote is limited to panel rehearing only

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Theodore A. McKee
Circuit Judge

Dated: October 7, 2020
MB/cc: Samuel Dion
Theodore C. Forrence, Jr., Esq.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

- **U.S. Const. amend. V**

  The Fifth Amendment to the United States Constitution states in pertinent part:

  No person shall . . . be deprived of life, liberty, or property, without due process of law . . .

- **U.S. Const. amend. XIV**

  Section 1 of the Fourteenth Amendment to the United States Constitution states in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- **42 U.S.C. § 2000e-2(a)(1)**

  Title VII of the Civil Rights Act 1964, 42 U.S.C. § 2000e-2(a)(1), provides:

  It shall be an unlawful employment practice for an employer-(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race . . .

- **42 U.S.C. § 1981**

  The Civil Rights Act of 1866, 42 U.S.C. § 1981, provides:

  (a) Statement of equal rights. All persons within the jurisdiction of the United States shall have the same right in every State

and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined. For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment. The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

- **42 U.S.C. § 1981a(b)(3)(A)**

42 U.S.C. § 1981a(b)(3)(A), enacted as part of the Civil Rights Act of 1991 as an amendment to Title VII of the Civil Rights Act of 1964, provides:

(3) Limitations. The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party — (A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000;