

Conducting Investigations and Documenting Workplace Issues, and Litigation

October 27, 2017

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HR'S and MANAGEMENT'S ROLE

LITIGATION *Weekly Alert*



If An Employee Claims Sexual Harassment, Whose Interest Does HR Represent?

From: National Public Radio

“HR IS NOT YOUR FRIEND” Alice Ballard

Verdict

Case 5:14-cv-05171-JLS Document 87 Filed 01/13/16 Page 1 of 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN GERUNDO : CIVIL ACTION
v. : NO. 14-5171
AT&T, INC., et al :

ORDER

AND NOW, this 11th day of January, 2016, IT IS HEREBY ORDERED that a
verdict is entered in favor of plaintiff John Gerundo and against defendant AT&T Services, Inc.
in the amount of **\$370,000**.

BY THE COURT:

JEFFREY L. SCHMEHL
JEFFREY L. SCHMEHL, J.

\$370,000

Fee Petition

Case 5:14-cv-05171-JLS Document 92 Filed 01/25/16 Page 1 of 103

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN GERUNDO :
Plaintiff, : CIVIL ACTION NO. :
5:14-cv-05171-JLS :
v. :
AT&T INC.; AT&T SERVICES, INC. :
Defendants. :

PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT AND THE PENNSYLVANIA HUMAN RELATIONS ACT

Plaintiff, John Gerundo, by and through his undersigned counsel, hereby moves for reasonable attorney's fees and costs under the Age Discrimination in Employment Act, 29 U.S.C. §621, *et seq.* ("ADEA"), and the Pennsylvania Human Relations Act, 43 P.S. §951, *et seq.* ("PHRA"). As the prevailing party at trial in this matter, Plaintiff now seeks an award of **\$651,398 in reasonable attorney's fees** for services performed, and **\$31,597.98 for reasonable costs** incurred, through January 11, 2016, the date on which the jury rendered a verdict in his favor.

\$651,398 in Reasonable Attorney's Fees

\$31,597.98 for Reasonable Costs

Newspaper Story



VERDICTS & SETTLEMENTS
SPECIAL ADVERTISING SECTION: ANALYZES KEY COURT RESULTS OF THE WEEK

Jury Awards \$370,000 To Ex-AT&T Exec in Age Bias Case

Jury Awards \$370K to Ex-AT&T Exec in Age Bias Case
Case No. 13707
\$370,000 Verdict

AT&T Services Inc. has agreed to pay \$370,000 to a former executive who was fired after a jury found the company discriminated against him because of his age. The jury also awarded him \$37,000 in costs. The case was filed in the U.S. District Court for the Eastern District of Pennsylvania in Philadelphia.

The jury's verdict in the case of John Gerundo vs. AT&T Services Inc. was a significant win for the plaintiff. Gerundo, 62, was fired from his position as a senior manager in 2008 after 15 years at AT&T. He claimed that his termination was based on his age. The jury found in Gerundo's favor, awarding him \$370,000 in damages and \$37,000 in costs. The case was heard in the U.S. District Court for the Eastern District of Pennsylvania in Philadelphia.

DAMAGES

State the amount of damages you award to the Plaintiffs.

Wrongful Death \$ 2,000,000.00

Survival \$ 800,000.00

TOTAL: \$ 2,800,000.00

State the amount of damages you award to the Plaintiffs.

\$ 1,057,344.00

Do you award punitive damages against Defendant?

Yes No

If Yes, state the amount of punitive damages against Defendant.

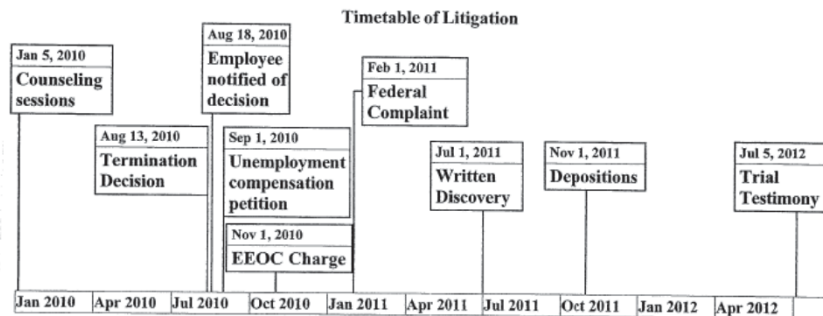
\$ 8,000,000.00



Conducting Investigations and Documenting Workplace Issues, and Litigation

- I. Jury Verdict
- II. Timetable of Litigation
- III. Burden Shifting Analysis
- IV. Warnings
- V. Note-Taking Techniques
- VI. Examples

Timetable of Litigation



WARNINGS

- *Upjohn Co. v. United States*, 449 U.S. 383
- *Johnnie's Poultry Co.*, 146 NLRB 770 (1964)
- *Cleveland Board of Education v. Loudermill, et al.*, 470 U.S. 532 (1985)
- *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975)
- *Garrity v. New Jersey*, 385 U.S. 493 (1967)

Note-taking Technique

- Who, What, When, Where, Why
- Quotes
- Impressions
- Later Input
- Avoid certain writings

Case Number 1

Alice v. Municipality

Alice alleges that:

- she complained to her supervisors and the controller about fraud and waste and theft of time in her department.
- non-exempt employees took vacation but didn't use vacation days, and instead, were paid regular pay for that time off.
- she was discharged because she was a whistleblower and because of her age.

The Municipality claims that:

- it discharged her when she was out of the office for three hours and then did not tell the truth about where she was during that time.

Termination Letter

Department of Human Resources
August 20, 2010

Dear [Alice]:

This is to follow up on the meeting we had Wednesday, August 18, 2010. As we discussed in our meeting of January 2010, you were told you were accountable for your time and to be sure [your boss] knew your whereabouts, especially if you were leaving the department. On August 11, 2010 you signed out and were gone for over three hours. You had no contact with [your boss] before you left. He followed up to ask you where you had been and you stated you were in the Finance department with John. When [your boss] followed up, he could not verify that you were with John as you stated the first time. John was not at work on the day in question. He then asked you on two more occasions where you were. In the end, you did not tell him where you were for over three hours.

As I stated in our meeting, effective immediately your employment with us is terminated. Dishonesty cannot be tolerated. You knew that [your boss] should have been told you were leaving the building, especially for over three hours. You did not tell him and when asked where you had been, in fact you lied to him. He gave you several opportunities to correct the issue and you continued to lie.

I understand you have Township property that needs to be returned immediately. I have made arrangements for you to go to the office on Monday, August 23rd, 2010 at 5 P.M. to return your Township property files, cell phone, anything else you may have and to pick up any personal belongs you have in the office.

DEFENDANT'S EXHIBIT 4

Interrogatory Response

2. With respect to each individual who had any role in the decision to terminate Plaintiff's employment with [Municipality], who are those individuals, what is each of their positions in the Municipality, and what are the details of the role each such individual had in the employment termination decision?

ANSWER

Angela, Director of the Parks Department made the decision to discharge Plaintiff's employment. Michael, Administrator and Division leader for the Division of Health & Welfare, agreed with the decision and gave his approval for the discharge. Kristin, Director of Human Resources, reviewed the decision to ensure that it complied with the Township policies and was consistent with the Township's practices, and agreed with the decision.

GROUP MEETING

- *Pallies v. The Boeing Company*, No. 16-1437 (W.D. Wash. Sep. 6, 2017)

Email

Please remember, I came into this job without any presuppositions about people. While Alice can be an excellent worker at times with some good ideas, **she is often a very miserable and vindictive person**. I figured that one out all by myself. No one had to tell me anything, lest you think I was brainwashed by a “clique”. She developed poor relationships with many, many others in my department (all by herself) prior to my arrival, and has made little effort to repair them. **To put it bluntly, her people-skills stink**. I believe you saw her temper come to a head in January, and I don’t think she’s liked me very much since, despite my more than generous flexibility with her schedule.

PRIVILEGED EMAILS

- *Crabtree v. Experian Information Solutions, Inc.*, No. 16-10706 (N.D. Ill. Oct. 20, 2017)

PRIVILEGE LOG

DISCOVERY PRIVILEGE LOG

Case No.	Document ID	Date	From	To	CC	Subject	Privilege	Comments
17	CRABTREE_0001_0001	10/20/17	Montgomery McCracken	Experian		Request for Production	Attorney-Client Privilege	Request for Production of documents related to the litigation between Experian and Crabtree. The documents are being produced to the court and are being reviewed for privilege. The documents are being produced to the court and are being reviewed for privilege.
17	CRABTREE_0001_0002	10/20/17	Montgomery McCracken	Experian		Request for Production	Attorney-Client Privilege	Request for Production of documents related to the litigation between Experian and Crabtree. The documents are being produced to the court and are being reviewed for privilege. The documents are being produced to the court and are being reviewed for privilege.
17	CRABTREE_0001_0003	10/20/17	Montgomery McCracken	Experian		Request for Production	Attorney-Client Privilege	Request for Production of documents related to the litigation between Experian and Crabtree. The documents are being produced to the court and are being reviewed for privilege. The documents are being produced to the court and are being reviewed for privilege.
17	CRABTREE_0001_0004	10/20/17	Montgomery McCracken	Experian		Request for Production	Attorney-Client Privilege	Request for Production of documents related to the litigation between Experian and Crabtree. The documents are being produced to the court and are being reviewed for privilege. The documents are being produced to the court and are being reviewed for privilege.

PRIVILEGE LOG

Entry #	Doc. ID	Date	From	Sent To	File Name	Privilege	Explanation
1	CRAB-PRIV-000322	1/10/2012	Kristin Scheifhault, Esq.	Jeannine Ford	Western Sierra termination letter	Attorney-Client: e-mail reflects communications between Experian employee and in-house counsel regarding status of investigation launched and conducted at the request of the Legal Department and for the Legal Department; e-mail reflects and contains communications used to facilitate the provision of legal advice and/or services	Email from in-house counsel regarding second stage of WSAC investigation.
2	CRAB-PRIV-000323	12/5/2011	Lori Dietrich	Peter Henke	FW: WSAC and TranzAct	Attorney-Client: e-mail reflects communications between Experian employees regarding investigation launched and conducted at the request of the Legal Department and for the Legal Department; e-mail reflects and contains communications used to facilitate the provision of legal advice and/or services	Email summarizes WSAC investigation and requests additional information related to that investigation

Email

On a personal level, Alice's friend is also truly miserable and as immature as a 10 year-old. I'm actually embarrassed that she is an employee of mine. What I can't believe is she has the nerve to think I have a problem with her age, when there are several others her age (and older) still working in the department who all seem to think I'm treating them just fine. I don't care one bit how old she is, my problems are her loud, obnoxious mouth, her poor personal hygiene, and the fact that she can be plain ole' mean at times.

Newspaper Story

'WHISTLE-BLOWER' TESTIFIES TO VIOLATING PAYROLL POLICIES

* * *

Jurors saw an interoffice email in which Alice's boss lambasted Alice as a "miserable and vindictive person" whose "people skills stink."

In the email, Alice's boss described a second Parks & Recreation department employee as "immature as a 10-year-old" with "poor personal hygiene, and . . . Plain ole' mean at times."

Case Number 2

Peter v. Company

Plaintiff Peter claims that:

- he was discharged because of his national origin;
- everyone else in the group was Caucasian;
- he was set up to fail; and
- he was treated unfairly in completing his first project.

The Company states that:

- he wasn't experienced in the hands-on type of work necessary to complete his project; and
- with his education and experience, as represented in his CV, he should have completed the first project within a few weeks without the need of any assistance.

Email

So, I have set expectations with him that he needs to begin to look for other opportunities...He is definitely not a

9/20/2007



Email

fit for the group but want to cover myself here and ensure we are on the same page when we meet with him. I will fill out that form for Thursday but my expectation is that he begins to look for other opportunities either within or external.

Thanks for your help!

Email

From:
Sent: Monday, July 09, 2007 4:12 PM
To:
Subject: .

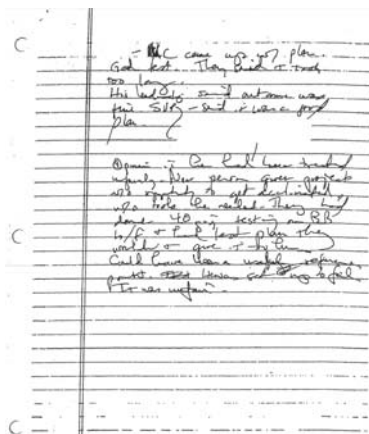
Hey

I don't know if we have enough to support termination or if you have more information that . . .

Thanks!

Manager, Human Resources

Notes of interview



C - MC came up w/ plan
Get test. They said it took
too long.
His leadership said outcome was
fine. SVP - said it was good
plan.

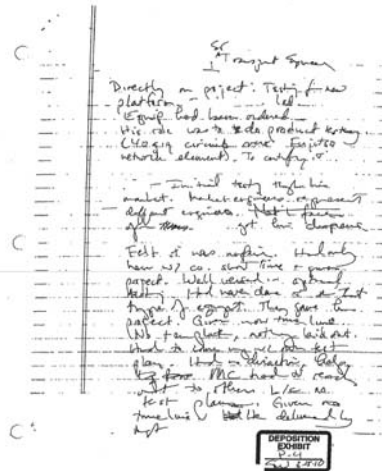
Opinion - He had been treated
unfairly. New person given
projects w/o opportunity to
get acclimated, w/o tools he
needed. They had done 40 gig
testing on BB b/f and had test
plan they wouldn't give it to
him. Could have been a useful
reference point. He was set up
to fail. It was unfair.

Peter came up with a plan.
Good test. They said I took
too long.

His leadership said outcome
was fine. SVP -said it was a
good plan.

Opinion is he had been treated
unfairly. New person given
projects w/o opportunity to
get acclimated, w/o tools he
needed. They had done 40 gig
testing on BB b/f and had test
plan they wouldn't give it to
him. Could have been a useful
reference point. He was set up
to fail. It was unfair.

Notes of Interview



Sr. Transport Engineer
Directly on project: Testing for new platform. _____ led Equip had been ordered. His role was to do product testing (40 gig circuits over _____ network element). To certify it.

_____ Initial testing through his market. Market engineers represent different engineers. got his diagrams.

Felt it was unfair. Had only been w/ co. short time & given project. Well versed in optical testing. Had never done it on that type of equipment. They gave him project. Given now timeline. No template, nothing laid out. Had to come up w/ own test plan. Had no direction, help. MC had to reach out to others b/c no test plan. Given no time line. He delivered by MGT.

Lessons Learned

- Be careful with your writing, especially email
- Prepare, prepare, prepare
- No case is a small case