

11:45 (JB)

Verdict returned ~~10:45 pm~~

2/24/09

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

SAGUN TULI, Plaintiff, v. BRIGHAM & WOMEN'S HOSPITAL, et al., Defendants. GERTNER, D.J.: Civil Action No. 07cv12338-NG

VERDICT SLIP

I. Disparate Treatment

1. (BWH) Has Dr. Tuli proven by a preponderance of the evidence that discriminatory intent was a motivating factor in the following decisions on the part of BWH?

- a) Lack of promotion Yes ___ No [check]
b) Pay Yes ___ No [check]
c) Failing to support her research Yes ___ No [check]
d) Requiring her to be evaluated at Provider Health Services Yes ___ No [check]

If any of your answers to 1(a)-(d) is "Yes," proceed to question 2 on those subparts.

2. (BWH; Affirmative Defense) Has BWH proven by a preponderance of the evidence that it would have taken each of the following actions even if they had not considered Dr. Tuli's national origin or sex?

- a) Lack of promotion Yes ___ No ___
b) Pay Yes ___ No ___
c) Failing to support her research Yes ___ No ___
d) Requiring her to be evaluated at Provider Health Services Yes ___ No ___

Proceed to question 3.

3. **(Dr. Day)** Do you find that BWH is liable (answering both "yes" to question 1 and "no" to question 2 as to (a), (b), (c), or (d)), in whole or in part, because of the conduct of Dr. Day in connection with the following actions:

- a) Lack of Promotion Yes _____ No _____
- b) Pay Yes _____ No _____
- c) Failing to support her research Yes _____ No _____
- d) Requiring her to be evaluated at Provider Health Services Yes _____ No _____

4. Damages (BWH):

If you answered "No" to question 2, or any part of it -- that BWH or Dr. Day has not proved it would not have taken the same action in the absence of discriminatory animus -- then you may choose to award damages as to that action:

a) What amount of compensatory damages, if any, do you award the Dr. Tuli?

Amount in words: _____

Amount in dollars: _____

b) What amount of punitive damages if any do you award to the Dr. Tuli?

Amount in words: _____

Amount in dollars: _____

II. Retaliation (BWH)

5. Do you find that Dr. Tuli established by a preponderance of the evidence that BWH retaliated against her in BWH's decision to require her to be evaluated by PHS because she complained about discriminatory conduct towards her and other employees?

Yes No _____

If you answered "Yes" to question 5, you may choose to award compensatory damages.

6. What amount of compensatory damages, if any, do you award the plaintiff?

Amount in words: Six-Hundred Thousand Dollars

Amount in dollars: \$ 600,000.00

III. Hostile Work Environment (BWH)

7. Do you find that Dr. Tuli has established by a preponderance of the evidence that she was subjected to a hostile work environment?

Yes No

If you answered "Yes" to question 7, you may choose to award compensatory damages:

8. What amount of compensatory damages, if any, do you award the plaintiff?

Amount in words: ONE Million Dollars

Amount in dollars: \$ 1,000,000.00

IV. Unequal Pay (BWH)

9. **(Federal Claim)** Do you find that Dr. Tuli has established by a preponderance of the evidence that Dr. Tuli was paid lower than male workers in jobs requiring substantially equal skill, effort and responsibility and performed under similar working conditions?

Yes No

If your answer is "yes," proceed to Question 10.

10. **(Federal Claim; Affirmative Defense)** Do you find that BWH has established by a preponderance of the evidence that Dr. Tuli was paid different compensation based on either a) a seniority system, b) a merit system, c) a system which measures earnings by quantity or quality of production or d) a differential based on any factor other than sex?

Yes No

Proceed to 11.

11. **(State Claim)** Do you find that Dr. Tuli has established by a preponderance of the evidence that Dr. Tuli was paid lower than male workers in jobs that had comparable skill, effort, and responsibility and comparable working conditions?

Yes _____ No

If your answer is "yes," proceed to Question 12.

12. **(State Claim; Affirmative Defense)** Do you find that BWH has established by a preponderance of the evidence that Dr. Tuli was paid different compensation based on a seniority system?

Yes _____ No _____

If you answered "yes" to Question 9 and "no" to Question 10 (finding federal equal pay act liability) or "yes" to Question 11 and "no" to Question 12 (finding state equal pay act liability), you may proceed to Question 13 and consider damages.

13. Damages:

Federal Equal Pay Act

a) If you found federal equal pay act liability, do you also find that the violation was willful?

Yes _____ No _____

b) If you find the violation was willful you should consider pay and benefits from the period December 20, 2004, until today. If you find the liability was not wilful, you must consider the time from December 20, 2005, to today.

Amount in words: _____

Amount in dollars: _____

If you have awarded damages under the Federal Equal Pay Act – 13(a) or (b) – skip ahead to Question 14.

State Equal Pay Act

c) If you found that there was no violation of the Federal Equal Pay Act ("no" to question 9, or "yes" Question 9 and yes to question 10) but that there was a violation of the

state equal pay act ("yes" to Question 11 and "no" to Question 10), you should consider pay and benefits from the period December 20, 2006 to today.

Amount in words: _____

Amount in dollars: _____

V. Massachusetts Health Care Whistleblower Act (BWH)

14. Do you find that Dr. Tuli has established by a preponderance of the evidence that she was retaliated against under the Massachusetts Health Care Whistleblower Act?

Yes No

If you answer "yes" to Question 14, proceed to Question 15 and consider damages.

15. What amount of damages, if any do you award to the plaintiff?

Amount in words: ONE DOLLAR _____

Amount in dollars: \$ 1.00 _____

VI. Intentional Interference with Advantageous Relations (Dr. Day)

16. Did the defendant Dr. Day intentionally interfere with the plaintiff's business relationship with BW by impeding her referral relationship with the South Shore hospital and/or by his negative evaluation of her to the Credentialing Committee?

Yes No

If "yes," proceed to 17.

17. Did Dr. Day's intentional interference cause the plaintiff to sustain any economic loss?

Yes No

If "yes," proceed to 18 and 19.

If "no," proceed to 20.

18. **(Damages -- economic harm)** What amount of money do you find fairly and adequately compensates the plaintiff for any economic harm which you find is causally related to the intentional interference with advantageous relations by Dr. Day?

Amount in words: Twenty-Thousand Dollars

Amount in dollars: \$ 20,000.00

19. **(Damages -- non-economic harm)** What amount of money do you find fairly and adequately compensates the plaintiff for any harm or damages other than economic harm which you find is causally related to the intentional interference with advantageous relations claim by Dr. Day?

Amount in words: ONE DOLLAR

Amount in dollars: \$ 1.00

VII. Slander (Dr. Day)

20. Did plaintiff prove by a preponderance of the evidence that Dr. Day slandered her?

Yes No

21. What amount of nominal damages do you award?

Amount in words: ONE DOLLAR

Amount in dollars: \$ 1.00

Dated: FEB. 24, 2009

Raymond A. Swyzal
JURY FOREPERSON