

2.35 PAST EMOTIONAL DISTRESS IN AN EMPLOYMENT LAW CASE (Approved 03/2014)

NOTE TO JUDGE

In *Battaglia v. United Parcel Service, Inc.*, 214 N.J. 518 (2013), the Supreme Court held that it was error for a court to instruct a jury in an employment law case to consider life expectancy in connection with emotional distress damages where the plaintiff did not offer any expert testimony as to the permanency of the emotional distress. The Court held that while an employment law plaintiff can claim emotional distress damages without expert testimony, such damages are limited to past emotional distress through the time of trial. For an employment law plaintiff to claim future emotional distress, he or she must offer expert testimony as to the permanency of the distress. *Id.* at 551-55.

The following charge is intended for use in cases in which the plaintiff has not offered expert testimony and is claiming damages only for past emotional distress through the time of trial. Charge 2.36 should be used if the plaintiff is claiming future emotional distress based on expert testimony regarding permanency.

If you find for plaintiff, (s)he is entitled to recover fair and reasonable money damages for the full extent of the harm caused, no more and no less.

A plaintiff who is awarded a verdict is entitled to fair and reasonable compensation for any emotional distress (s)he has suffered that was the proximate result of the defendant's unlawful conduct. The plaintiff here is not seeking damages for emotional distress continuing into the future; rather, (s)he is only seeking damages for the emotional distress (s)he has suffered from the date of the defendant's unlawful conduct through the date of your verdict. Emotional distress includes embarrassment, humiliation, indignity, and other mental anguish. The measure of damages is what a

reasonable person would consider to be adequate and just under all the circumstances of the case to compensate plaintiff for his(her) emotional distress.

You should consider the nature, character, and seriousness of any emotional distress. You must also consider the duration of the emotional distress, as any award you make must cover the damages suffered by plaintiff to the present time. Plaintiff has the burden of proving his(her) damages through credible, competent evidence, although (s)he does not have to offer any witnesses to corroborate his(her) emotional distress; the distress need not be permanent; physical or psychological symptoms are not necessary; and plaintiff need not have obtained any type of professional treatment.¹ The plaintiff's testimony standing alone is enough to support an award of emotional distress damages. On the other hand, you are free to disbelieve all or part of the plaintiff's testimony, and if you do, you should act accordingly by either reducing the amount of damages you award for emotional distress or by not awarding any emotional distress damages at all.

The law does not provide you with any table, schedule or formula by which a person's emotional distress may be measured in terms of money. The amount is left to your sound discretion. You are to use your discretion to attempt to make plaintiff whole, so far as money can do so, based upon reason and sound judgment, without any

¹ *Tarr v. Ciasulli*, 181 N.J. 70, 81 (2004).

passion, prejudice, bias or sympathy. You each know from your common experience the nature of emotional distress and you also know the nature and function of money. The task of equating the two so as to arrive at a fair and reasonable award of damages requires a high order of human judgment. For this reason, the law can provide no better yardstick for your guidance than your own impartial judgment and experience.

You are to exercise sound judgment as to what is fair, just and reasonable under all the circumstances. You should consider all of the evidence presented by the parties on the subject of plaintiff's emotional distress. After considering the evidence, you shall award a lump sum of money that will fairly and reasonably compensate plaintiff for any emotional distress you find she has proven.