

[Dkt. Ents. 95, 96, 101, 102, 104, 105]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

ROBERT SCULL,

Plaintiff,

v.

THE WACKENHUT CORPORATION,

Defendant.

Civil No. 10-04633 (RMB/AMD)

MEMORANDUM ORDER

APPEARANCES:

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BUMB, UNITED STATES DISTRICT JUDGE

On June 21, 2013, a jury returned a verdict for Plaintiff, Robert Scull (the "Plaintiff" or "Scull"), awarding him \$400,000 in back pay damages on his claim for a violation of the Conscientious Employee Protection Act ("CEPA"). At that time, the Court granted Defendant The Wackenhut Corporation's (the

"Defendant" or "Wackenhut") motion for judgment as a matter of law on the issue of punitive damages, finding that the evidence did not establish that Defendant acted in an especially egregious manner as necessary to support an award of punitive damages.

At trial, Defendant moved for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50(a) at the close of both Plaintiff's case and trial. It has now renewed its motion for judgment as a matter of law and, in the alternative, moves for a new trial. (Dkt. Ent. 104.) For the reasons set forth on the record, the Court finds that the jury verdict was erroneous. The jury relied on improperly-admitted evidence compounded by both a flawed jury charge and confusion between the parties regarding the regulations at issue.

In addition, before the Court are several motions filed by Plaintiff: (1) motion for post-trial equitable relief under N.J. Stat. Ann. 34:19-5(b) and (c), seeking to reinstate Plaintiff's employment (Dkt. Ent. 95); (2) motion to amend the judgment to include prejudgment interest (Dkt. Ent. 96); (3) motion for a new trial on the issue of punitive damages (Dkt. Ent. 101); (4) motion for an award of attorneys' fees and costs under N.J. Stat. Ann. 34:19-5e, as well as a contingency fee enhancement (Dkt. Ent. 102); and (5) motion for taxation of costs and disbursements pursuant to Federal Rule of Civil Procedure

54(d)(1) and 28 U.S.C. § 1920 (Dkt. Ent. 105). For the reasons set forth on the record, these motions are denied.

As set forth on the record, the issues that plagued the trial stem in great part from the lack of clarity as to which regulations were at issue. As the Court clarified on the record, only § 73.50(a)(2) and (3) will be at issue in the new trial.

Admission of § 73.50(a)(1), over Defendant's objection, was in error. Consequently, the Court erred when it instructed the jury as to this regulation. See, e.g., Battaglia v. United Parcel Serv., Inc., 2013 WL 3716939, at *20 (N.J. July 17, 2013)

("Vague and conclusory complaints, complaints about trivial or minor matters, or generalized workplace unhappiness are not the sort of things that the Legislature intended to be protected by CEPA."); Hitesman v. Bridgeway Inc., 63 A.3d 230, 238 (N.J.

Super. App. Div. 2013) ("A plaintiff cannot rely upon 'a broad-brush allegation of a threat to patients' safety[,] because CEPA affords no protection for the employee who simply disagrees with lawful policies, procedures or priorities of the employer."

(quoting Klein v. Univ. of Med. And Dentistry of N.J., 871 A.2d 681, 689 (N.J. Super. App. Div. 2005), cert. denied 878 A.2d 856

(2005)); Klein, 871 A.2d at 689 ("The whistle-blower

legislation is not intended to shield a constant complainer who simply disagrees with the manner in which the hospital is

operating one of its medical departments, provided the operation

is in accordance with lawful and ethical mandates."); White v. Smiths Detection, Inc., No. 10-4078, 2010 WL 4269424, at *4 (D.N.J. Oct. 22, 2010) ("Moreover, simply invoking the term 'national security' does not provide the requisite substantial nexus."); see also Lau v. Plymouth Env't'l, Inc., No. L-0807-04, 2007 WL 4563510, at *7 (N.J. Super. App. Div. Dec. 31, 2007) ("Aside from listing various laws, plaintiff does not proffer any connection between the cited laws and defendant's conduct. Plaintiff relies on the 'widely known' dangers of asbestos as the basis of his argument. These dangers, however, do not assist plaintiff in demonstrating which laws were violated and how defendant's conduct would have violated them."); Eddy v. State, No. L-2106-07, 2008 WL 5118401, at *5-6 (N.J. Super. App. Div. Dec. 08, 2008) ("Plaintiff's manpower complaints are not supported by the litany of broad and generalized legislative, rule and procedural statements. More significantly, plaintiff challenges basic management decisions involving overtime and allocation of resources; decisions that are both lawful and within the province of management of a large organization such as the State Police."), cert. denied 966 A.2d 1080.

A new trial may be ordered under Fed. R. Civ. P. 59 if "the verdict is against the clear weight of the evidence"; damages are excessive; the trial was unfair; and [] substantial errors were made in the admission or rejection of evidence or

the giving or refusal of instructions." Lyles v. Flagship Resort Dev. Corp., 371 F. Supp. 2d 597, (D.N.J. 2005) (quoting Lightning Lube, Inc. v. Witco Corp., 802 F. Supp. 1180, 1186 (D.N.J. 1992)); see also Strauss v. Springer, 817 F. Supp. 1211, 1214 (E.D. Pa. 1992). Moreover, "[w]hen a trial judge is convinced that there has been a miscarriage of justice, it is his or her duty to set aside the verdict." See Lightning Lube, 802 F. Supp. at 1197. It is clear to this Court that the parties were litigating different cases based on their conflicting understandings of which regulations formed the basis of Plaintiff's claim regarding a supervisory staffing shortage. As a result, the Court finds that it would be unfairly prejudicial to the parties to permit the verdict to stand and that the appropriate remedy is to order a new trial.

As to Plaintiff's motion for a new trial concerning punitive damages, this motion is denied with prejudice. Plaintiff already has had an opportunity to put forth any proofs that he believed supported a punitive damages award and this Court issued a detailed decision finding this evidence insufficient to submit the issue to the jury. Those reasons stand.

Plaintiff's motion for an award of attorneys' fees and costs under N.J. Stat. Ann. 34:19-5e, as well as a contingency fee enhancement (Dkt. Ent. 102), is denied as Plaintiff is no

longer the "prevailing party." See McNulty v. Citadel Broadcasting Co., 58 F. App'x 556, 559 n.1 (3d Cir. 2003) (granting new trial on age discrimination claims under Federal and Pa. law and vacating attorneys' fees award as Pl. was "no longer the prevailing party"); Swietlowich v. Bucks County, 620 F.2d 33, 34-35 (3d Cir. 1980) (finding Pl. was not prevailing party under 42 U.S.C. § 1988 where appellate court vacated and remanded for new trial).

The remainder of Plaintiff's motions are denied as moot in light of the Court's decision to vacate the jury verdict and order a new trial.

ACCORDINGLY, FOR THESE REASONS and the additional reasons set forth on the record at the October 29, 2013 hearing,

IT IS on this, the **30th** day of **October 2013**, hereby

ORDERED that Defendant's motion for judgment as a matter of law or, in the alternative, for a new trial, is GRANTED in part and DENIED in part; and it is further

ORDERED that the jury's verdict is vacated and a new trial is ordered to commence on February 10, 2014 (subject to witness availability); and it is further

ORDERED that Plaintiff's motion for post-trial equitable relief under N.J. Stat. Ann. 34:19-5(b) and (c) (Dkt. Ent. 95), motion to amend the judgment to include prejudgment interest (Dkt. Ent. 96), and motion for taxation of costs and

disbursements (Dkt. Ent. 105) are DENIED as moot; and it is further

ORDERED that Plaintiff's motion for an award of attorneys' fees and costs under N.J. Stat. Ann. 34:19-5e, as well as a contingency fee enhancement (Dkt. Ent. 102), is DENIED as Plaintiff is no longer the "prevailing party"; and it is further

ORDERED that Plaintiff's motion for a new trial on the issue of punitive damages (Dkt. Ent. 101) is DENIED with prejudice.

s/Renée Marie Bumb
RENÉE MARIE BUMB
UNITED STATES DISTRICT JUDGE