

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JACQUELYN QUINT,)
)
 Plaintiff)
)
 v.) Civil No. 96-0071-B
)
 A.E. STALEY MANUFACTURING)
 COMPANY,)
)
 Defendant)

***FINDINGS OF FACT AND
CONCLUSIONS OF LAW¹***

Following a jury trial in August, 1997, Plaintiff was awarded damages in the amount of \$300,000 on her claim of disability discrimination under the Americans with Disabilities Act. 42 U.S.C. §§ 12101-12213. Thereafter, the Court issued rulings on several requests for equitable relief, one of which was to deny her request for reinstatement to her former job. That denial was overturned by the First Circuit Court of Appeals, and is before the Court now on remand. *Quint v. Staley Manu.*, 172 F.3d 1 (1st Cir. 1999).

¹ This Findings of Fact and Conclusions of Law is being issued without regard to the resolution of the pending Motion to Enforce Settlement. Should the Motion to Enforce Settlement ultimately be granted, this Findings of Fact will be of no force and effect. It is being issued both to permit consolidation of issues on appeal, if necessary, and because the undersigned U.S. Magistrate Judge will retire effective January 21, 2000.

Following a hearing on the remand (or front pay) issue, the Court toured Defendant's facility in Houlton, Maine. In addition to the evidence presented at the hearing, the Court has before it pre-hearing memoranda filed by both parties, and proposed findings of fact and conclusions of law filed by both parties. The Court has carefully considered the evidence and the arguments offered in support of the parties' respective positions, and hereby makes the following findings of fact and conclusions of law.

1. Reinstatement.

The parties agree that the threshold issue facing the Court in connection with Plaintiff's reinstatement is whether there is a position available at Defendant's facility in Houlton. The Court finds the following facts relevant to that question:

- A. Long before Plaintiff was fired in 1994, then-plant manager Kevin Baker was interested in reducing the number of process operators at the plant.
- B. Defendant effected the slow reduction of workers through natural attrition.
- C. At the time of Plaintiff's firing, there were four process operators per shift. Since at least mid-1997, Defendant has employed only three process operators per shift.
- D. At the time of Plaintiff's firing, there were fifty-two union workers at the plant. Since at least mid-1997, there have been thirty-nine union workers at the plant.

- E. No one has been hired to replace Plaintiff.
- F. If Plaintiff's seniority were restored, she would have seniority ("bumping rights") over current process operators at the plant.
- G. There are no current employment vacancies in the process operator position, or in the plant generally.
- H. Any position other than process operator to which Plaintiff might be returned would be created especially for her, and would result in no additional productivity for the plant.
- I. There are no new tasks associated with the process operator position that did not exist at the time of Plaintiff's firing.
- J. There is greater productivity at the process operator position now than at the time of Plaintiff's firing.
- K. There is now a winch available to prevent the need for repetitive lifting by process operators that was not in place at the time of Plaintiff's firing.

The Court of Appeals noted that this Court is constrained by the jury's verdict to find that Plaintiff is capable of doing her process operator job with or without reasonable accommodation. *Quint*, 172 F.3d at 19. Accordingly, in the absence of evidence showing that the position has changed in a material way, it is that position to which the Court must direct its attention. The Court concludes as a matter of law

that the position has not changed in any way that would prevent Plaintiff from returning to that position.

The Court concludes, however, that reinstatement is not an appropriate remedy in this case because there is no position currently available, and an innocent employee would need to be “bumped” in order to return Plaintiff to her job. In fact, in light of the undisputed evidence that there is no available position anywhere in the plant at this time, Plaintiff’s return would either result in an innocent employee being laid off, or Defendant having to create a make-work position for someone at no benefit to production. *See, Selgas v. American Airlines*, 104 F.3d 9, 12 (1st Cir. 1997) (noting that reinstatement may not be available as a remedy when there are conditions at the employer, including the need to bump an innocent employee, that preclude a plaintiff’s return).

2. *Front Pay as an Alternative to Reinstatement.*

Plaintiff seeks front pay in the amount of \$40,000 per year from the date of the Court’s original order denying reinstatement, December 5, 1997 to January 1, 1999, which Plaintiff asserts is the date by which a “reasonable person in plaintiff’s position” would have completed nursing school and obtained employment as an LPN. Thereafter, Plaintiff asserts she is entitled to front pay in the amount of \$17,400 per year plus the cost of nursing school, until the date of her actual reinstatement. The

decision whether to award front pay is within the Court's sound discretion. *Lussier v. Runyon*, 50 F.3d 1103, 1109 & n.7 (1st Cir.), *cert. denied*, 516 U.S. 815 (1995).

The Court of Appeals did not address this Court's earlier decision regarding front pay. The parties have nevertheless proceeded on the assumption that the front pay issue remains open in light of our need to revisit the question of reinstatement.

This Court will do likewise. In that earlier decision, the Court stated:

In view of the entire "remedial fabric"² fashioned in this case, the Court declines to award front pay. Contrary to her contentions, the Court concludes that Quint is not too old or too severely disabled to find a job. Quint's personal testimony as to her job prospects is speculative and is unsupported by any expert testimony. *Wilcox*, 921 F. Supp. at 844. In addition, not only has Quint failed to support her request with adequate evidence, the circumstances of this case counsel against such an award. As noted above, Quint's compensatory damages and back pay more than suffice to make her whole as a result of Staley's conduct. *See id.* Accordingly, the Court exercises its discretion to deny Quint's request for front pay.

On the basis of the evidence presented at the most recent hearing, the Court further finds as follows:

- A. Between December, 1997, and August, 1999, Plaintiff did not apply for any jobs. In August, 1999, she filed two job applications.

² Here, the Court is quoting a First Circuit Court of Appeals opinion, which stated "[a] front pay award—like any other single strand in a tapestry of relief—must be assessed as a part of the entire remedial fabric that the trial court has fashioned in a particular case." *Lussier v. Runyon*, 50 F.3d 1103, 1112 (1st Cir.), *cert. denied*, 516 U.S. 815 (1995) (citation omitted).

- B. Plaintiff has not sought job placement assistance of any kind. Plaintiff began filling out a form to place her resume on line, but stopped because the form was lengthy.
- C. Plaintiff has not sought to further her education except for one college course in general psychology and one in criminal justice.
- D. Plaintiff received a \$40,000 divorce settlement in 1997, and used all of the money to pay bills.
- E. Plaintiff was diagnosed with cancer in 1994. Her last surgery relative to the cancer was a biopsy in 1997 which was negative for the presence of cancer.
- F. Plaintiff's children live with their ex-husband.

The Court declines on the basis of this evidence to award front pay in this case. Plaintiff has yet to demonstrate any difficulty whatsoever in finding suitable employment. Her assertions about putting her health first and wanting to stay home with her children in light of her cancer diagnosis simply do not mesh with her protestation that all she ever wanted was to be working at Staley. Nor do they mesh with the fact that her children are all school-aged and live with her ex-husband.³ In

³ For this reason, the Court assigns no credibility to Plaintiff's assertion that she felt a lower paying job would not be worth her while because of the cost of childcare. When she was attempting to describe how physically limited she is in her housework, she noted her children needed to help carry groceries, but at the same time stated she didn't cook much because she lived alone.

addition, her cancer diagnosis and its affect on her desire to work are not related to her experience at Staley such that Defendant should be required to compensate her for it. Her attacks on Defendant's expert witness's testimony to the effect that she should have availed herself of financial aid and other educational opportunities do nothing to help her cause because she can offer no evidence that she has applied for those things and was denied. There is certainly nothing in this record that would cause the Court to change the earlier conclusion that Plaintiff has already been made whole by her damage award and back pay. Her back pay award was in fact *increased* by the First Circuit Court of Appeals from \$8,019 to \$45,917. The request for front pay in lieu of reinstatement is hereby DENIED.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated on: December 23, 1999