

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

LOUISE H. COFFIN,)	
)	
<i>Plaintiff</i>)	
)	
v.)	Docket No. 96-374-P-C
)	
MARVIN RUNYON, et al.,)	
)	
<i>Defendants</i>)	

**MEMORANDUM DECISION ON DEFENDANTS’ MOTIONS
IN LIMINE AND TO SUBSTITUTE A PARTY**

Defendants Runyon and Troiano move *in limine* to preclude the plaintiff from asserting any claim for front pay as part of the damages she seeks. Defendants Runyon, Curtis and the United States move to substitute the United States for Curtis and defendant Gary Powers as defendants as to Count V of the complaint. Defendant Runyon moves *in limine* to preclude any award of punitive damages on Counts I or II. The relevant factual background in this case arising out of alleged sexual harassment has been set forth in my Recommended Decision on Motion of Defendant Barry Curtis for Summary Judgment (Docket No. 39) and my Recommended Decision on Defendants’ Motions for Summary Judgment and for Judgment on the Pleadings, issued simultaneously with this opinion. I will repeat specific facts only as necessary in discussing the individual motions.

I. Front Pay

Defendants Runyon and Troiano contend that the plaintiff should not be allowed to present

a claim for front pay as part of her damages, based on her failure to name an expert witness on the issue or to undertake discovery on any related issue. The plaintiff responds that she has obtained all of Judith Coffin's ("Coffin") personnel records and that several witnesses deposed during discovery testified to Coffin's intention to continue working for the United States Postal Service ("USPS"). She does not address the issue of the necessity of expert testimony, merely stating in conclusory fashion that "[t]he record in this case contains sufficient evidence of loss of income into the future to permit the Court to award front pay." Plaintiff's Objection to Defendants' Motion for Summary Judgment on Plaintiff's Entitlement to Front Pay (Docket No. 62) at 3.

Front pay is available on a Title VII claim. *Selgas v. American Airlines, Inc.*, 104 F.3d 9, 12 (1st Cir. 1997). It is an equitable remedy to be awarded within the discretion of the trial court. *Lussier v. Runyon*, 50 F.3d 1103, 1108 (1st Cir. 1995). Expert testimony is not always necessary to support a claim for front pay. *Maxfield v. Sinclair Int'l*, 766 F.2d 788, 797 (3d Cir. 1985) (request for front pay based only upon former earnings history; plaintiff agreed to reduce award by 10% to account for present value). If there is no evidence of past pay increases in the personnel records obtained by the plaintiff and if she intends to claim that Coffin would have obtained promotions and raises in excess of inflation in the future, expert testimony might be necessary, particularly if this issue were to be determined by a jury. *See Kolb v. Goldring, Inc.*, 694 F.2d 869, 873 (1st Cir. 1982) (claim for front pay beyond salary of plaintiff's successor too speculative under circumstances). Expert testimony on the appropriate discount rate for reduction of such awards to present value may be necessary, in the absence of a stipulation by the parties, when the award is determined by the jury. *See Hutton v. Essex Group, Inc.*, 885 F. Supp. 331, 334 (D. N. H. 1994).

The parties on both sides of this motion discuss *Wilcox v. Stratton Lumber, Inc.*, 921 F. Supp.

837 (D. Me. 1996), in which, after a jury verdict in favor of the plaintiff on claims of sexual harassment and discrimination under Title VII, the plaintiff's request for front pay was denied by this court, *id.* at 844. The denial in that case was based on facts specific to that case which are not present here. Nor may this court's reference in *Wilcox* to the fact that an award of front pay in *Scarfo v. Cabletron Sys., Inc.*, 54 F.3d 931, 955 (1st Cir. 1995), was based on expert testimony, 921 F. Supp. at 844, be interpreted as a holding that such testimony is always necessary.

Based on the showing made, the motion in limine is denied. Of course, the trial judge will ultimately determine whether the plaintiff's front-pay evidence is sufficient and, if it is, whether to award such damages.

II. Punitive Damages

Runyon urges this court to change its position on the availability of punitive damages in connection with claims against the United States Postal Service ("USPS")¹ under 42 U.S.C. § 1981a(b)(1), as recently set forth in *Roy v. Runyon*, 954 F. Supp. 368, 381-82 (D. Me. 1997). Runyon correctly points out that the view on this subject expressed in *Baker v. Runyon*, 922 F. Supp. 1296, 1298-99 (N. D. Ill. 1996), which I found to be "the more reasoned one," 954 F. Supp. at 382, that punitive damages are available against the USPS because it is not a "government agency" within the meaning of section 1981a, has subsequently been overruled by the Seventh Circuit. *Baker v. Runyon*, 114 F.3d 668, 669 (7th Cir. 1997). That fact is by no means dispositive, however.

Judge Reed of the District of Nevada has recently pointed out two "infirmities" in the

¹If the court adopts my recommended decision on Defendant Runyon's motion for summary judgment as to Count I, his motion in limine concerning punitive damages will be limited to Count II.

Seventh Circuit's opinion in *Baker* which I agree cast doubt on the value of that decision. *Cleveland v. Runyon*, 1997 WL 468253 (D. Nev. Jul. 21, 1997) at *3. However, I do not find persuasive the ensuing analysis in *Cleveland* of the legislative history of the 1991 amendments that made punitive damages available for violations of Title VII, as it applies to the USPS. *Id.* at *3-*4. In the absence of any other published analysis of this question, and in the absence of authority in this circuit, I continue to believe that the analysis of this issue set forth in *Roy* is correct. The plaintiff may recover punitive damages against the USPS.

III. Motion to Substitute

The United States, defendant Runyon and defendant Curtis renew their motion to substitute the United States for Curtis as to Count V. Defendant Curtis also adopts by reference the motion of defendant Powers for summary judgment on Count V (Docket No. 54), arguing that the claim asserted against him in Count V is subsumed in the claim raised against his employer in Count I. Renewed Motion to Substitute, etc. (Docket No. 55) at 3 n.*. I have recommended in an opinion issued simultaneously with this memorandum opinion that Powers' motion for summary judgment on Count V be granted on that basis. Therefore, any further action on Curtis's motion to substitute should be deferred until the outcome of that recommendation is known. If the court adopts my recommendation on Powers' motion for summary judgment, it can then enter summary judgment for Curtis as well on Count V, based on his request here, and any further consideration of the request for substitution would obviously be moot. If the recommended decision is not adopted, Curtis's request for substitution can be dealt with expeditiously on its merits.

IV. Conclusion

For the foregoing reasons, the motion *in limine* of defendants Runyon and Troiano to exclude front pay is **DENIED**; the motion *in limine* of defendant Runyon to exclude punitive damages is **DENIED**; and action on the motion of defendant Curtis to substitute is deferred as set forth above.

Dated at Portland, Maine this 20th day of October, 1997.

David M. Cohen
United States Magistrate Judge