

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>ROLAND CHAMBERS,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 96-174-B</b>
	)	
<b>CITY OF CALAIS,</b>	)	
	)	
<b>Defendant</b>	)	

***ORDER ON EQUITABLE REMEDIES AND OTHER RELIEF***

On May 22, 1997, a jury found that the defendant, the City of Calais, discriminated against the plaintiff, Roland Chambers, because of his age in violation of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 - 634 (1985 & Pamph. 1997) (ADEA). The jury awarded Chambers compensatory damages in the amount of \$180,000.00. He now seeks an award of back pay in the amount of \$35,022.19; an award representing liquidated damages in the same amount, \$35,022.19; an award of front pay in the amount of \$213,154.05; travel costs in the amount of \$21,735.00; a monetary award based on lost sick time in the amount of \$2,661.60; a monetary award based on lost vacation time in the amount of \$1,774.40; and civil penal damages pursuant to the Maine Human Rights Act, 5 M.R.S.A. § 4613(2)(B)(7) (Pamph. 1995) (MHRA), in the amount of \$10,000.00.

**Discussion**

***Back Pay***

The ADEA provides for an award of back pay to the successful plaintiff. 29 U.S.C. § 216(b) (Supp. 1997). Chambers seeks a back pay award of \$35,022.19, representing the wages he lost after he was demoted from his position as foreman of the public works department in the City of Calais

in October 1994, as well as the period after which he was terminated from employment with the City. He also seeks liquidated damages in the form of double back pay in the amount of \$70,044.38. The City of Calais opposes any award of back pay or front pay to Chambers, contending that he failed to prove that his job loss was caused by any discrimination on the part of the City.

As an initial matter, the Court rejects the City's argument that Chambers has failed to prove that he lost his job due to any unlawful discrimination on its part. On the contrary, the Court accepts the jury verdict in this matter expressly finding that the City discriminated against Chambers on the basis of his age. Any argument that causation has not adequately been proven, or that age was not a determinative factor in the City's decision to terminate Chambers's employment, is untenable at this stage of the proceedings.

The Court includes in its calculation of back pay the wages lost by Chambers as a result of his demotion on October 28, 1994, from foreman of the public works department. The Court then adds to this sum the wages lost by Chambers from the date he was terminated from his employment with the City on September 26, 1995, through the date of this order, July 18, 1997. Thus, the Court first multiplies the differential between Chambers's former average weekly pay prior to his demotion and after his demotion ( $\$576.00 - \$365.00 = \$211.00$ ) by the forty-eight weeks Chambers continued to work for the City following his demotion ( $\$211.00 \times 48 \text{ weeks} = \$10,128.00$ ). This results in a wages lost due to demotion figure of \$10,128.00.

Based on Chambers's own testimony and the evidence presented in his brief on the issue, the Court finds that he also is owed back pay for the period of ninety-three weeks representing the time between his termination from employment with the City and the date of this order. The Court thus multiplies a total of ninety-three weeks of lost wages by the figure \$365.00, Chambers's reported

average weekly pay after demotion, for an additional back pay award total of \$33,945.00. The Court adds the \$10,128.00 that Chambers lost in wages as a result of his demotion to this figure for a total back pay award of \$44,073.00. From this amount, the Court shall deduct, when appropriate, any interim earnings by Chambers.

Although it has not squarely addressed the issue, the First Circuit has suggested in dicta that the exclusion of collateral benefits from a back pay award is within the district court's discretion. *See Lussier v. Runyon*, 50 F.3d 1103, 1109 (1st Cir.), *cert. denied*, 116 S.Ct. 69 (1995). It is of course the plaintiff's burden to establish what, if any, damages to which he is entitled. *Kolb v. Goldring, Inc.*, 694 F.2d 869, 873 (1st Cir. 1982). The Court chooses to deduct from the above subtotal the \$892.00 Chambers earned from his employment at REDCO Inc. following his discharge from the City of Calais, as well as the \$31,954.00 the Court estimates he has earned through his employment at Thomas DiCenzo, Inc. over the past few years. The Court arrives at the DiCenzo wages figure by estimating, based on the limited evidence presented by the plaintiff on this issue such as his 1996 W-2 form, an average weekly pay of \$443.81.<sup>1</sup> The Court next multiplies that amount by the seventy-two weeks that Chambers is estimated to have worked at the company, for a total of DiCenzo employment wages of \$31,954.00.<sup>2</sup> Finally, the Court chooses to deduct from

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<sup>1</sup> Chambers's 1996 W-2 form from Thomas DiCenzo, Inc., discloses that he received \$12,426.68 in wages that year. The Court accordingly divides this figure by the twenty-eight weeks the plaintiff claims to have worked there in 1996 to arrive at an average weekly pay figure of \$443.81.

<sup>2</sup> The plaintiff states in his brief that he worked twenty-eight weeks each at Thomas DiCenzo, Inc. in 1995 and 1996. The plaintiff also has stated on the record that he continues to work at DiCenzo, Inc., on a seasonal basis, and that he receives unemployment compensation for the remainder of the year. Without the benefit of any information relevant to this year, the Court estimates that Chambers at least has worked there for sixteen weeks in 1997.

the award the \$1,890.00 that Chambers states he received in unemployment compensation subsequent to his discharge by the City of Calais in 1995, as well as the \$3,315.00 that his 1996 Form 1099-G discloses he received. *See Lussier*, 50 F.3d at 1109 & n.6 (citing, *inter alia*, *Thurber v. Jack Reilly's Inc.*, 521 F. Supp. 238, 242-243 (D. Mass. 1981) (exercising equitable discretion to deduct unemployment benefits from the plaintiff's back pay award), *aff'd*, 717 F.2d 633 (1st Cir. 1983), *cert. denied*, 466 U.S. 904 (1984)); *see also Wilcox v. Stratton Lumber, Inc.*, 921 F. Supp. 837, 843 (D. Me. 1996). Thus, after deducting the above amounts totaling \$38,051.00 from the initial back pay award subtotal of \$44,073.00, the Court arrives at a total back pay award figure of \$6,022.00. The Court accordingly directs that a back pay award in the amount of \$6,022.00 be tendered to the plaintiff by the defendant.

### ***Liquidated Damages***

The ADEA also allows for an award of liquidated damages in cases of willful violations of the Act. 29 U.S.C. § 626(b) (1985). A liquidated damages award is measured by doubling the back pay award. *Id.* § 216(b). The United States Supreme Court has stated that a violation of the Act is willful "if the employer knew or showed reckless disregard for the matter of whether its conduct was prohibited by the ADEA." *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 614 (1993) (quoting *Trans World Airlines v. Thurston*, 469 U.S. 111, 126 (1985) (internal quotation marks and ellipsis in original omitted)). After careful review of the evidence presented at the trial and of the instructions given the jury, the Court finds that a willful violation of the Act occurred in this case, and that the jury so concluded, as well.

The jury verdict in this case certainly may be interpreted as a finding of a willful violation on the part of the City. The evidence presented in this case met the necessary standard that the

employer more likely than not either knew or showed reckless disregard for whether its conduct was prohibited by the ADEA. In view of the above determination regarding back pay, and in light of the fact that a liquidated damages award for an age-based discriminatory employment discharge must be calculated on the net back pay award after the deduction of offsets in favor of the employer, *Meschino v. International Tel. & Tel. Corp.*, 661 F. Supp. 254, 260 (S.D. N.Y. 1987), the Court determines that Chambers is entitled to a liquidated damages award in the amount of \$6,022.00. *See Loeb v. Textron, Inc.*, 600 F.2d 1003, 1020 & n.27 (1st Cir. 1979).

### ***Miscellaneous Costs and Benefits***

In conjunction with the back pay award, Chambers seeks various monies representing the additional costs he has incurred since his departure from municipal employment, as well as some lost fringe benefits. These include: an award based on the additional travel costs he incurred at his new job in the amount of \$21,735.00; an award based on the lost sick time for which he would have been eligible at his former job in the amount of \$2,661.60; and an award representing his lost vacation time at that same job in the amount of \$1,774.40. "The First Circuit has left to district court discretion the determination of whether making the plaintiff whole requires an award of lost fringe benefits." *Wilcox*, 921 F. Supp. at 844 (citing *Earnhardt v. Commonwealth of Puerto Rico*, 744 F.2d 1, 3 (1st Cir. 1984)). Because the Court determines that these lost and future fringe benefits claims "depend too heavily on speculation for the Court to award them," *id.* at 845, and in view of the fact that it determines that the plaintiff already has been made whole, the Court declines to award any money for these claims.

### ***Front Pay***

Front pay may be awarded in an ADEA suit when reinstatement is impracticable or impossible. *Powers v. Grinnell Corp.*, 915 F.2d 34, 42 (1st Cir. 1990). Chambers has not sought, nor has he been offered, reinstatement with the City of Calais since he left his job as a driver/operator in the public works department. Unlike back pay, which is a presumptive entitlement of the successful employment discrimination plaintiff, the decision whether to award front pay, an equitable remedy, is within the sound discretion of the trial court. *Lussier*, 50 F.3d at 1108-1109 & n.7; *Powers*, 915 F.2d at 42-43. Moreover, in an employment discrimination case, a front pay award, if granted, may be tailored by the court to take collateral benefits into account. *Lussier*, 50 F.3d at 1108. "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." *Id.* at 1112 (citing *Barbano v. Madison County*, 922 F.2d 139, 146 (2d Cir. 1990) (holding that the district court acted within its discretion in denying front pay entirely because other relief, including back pay, prejudgment interest, and attorney fees, sufficed to make the plaintiff whole)).

In view of the entire "remedial fabric" fashioned in this case, the Court decides against an award of front pay. Chambers, now aged fifty, requests an award of \$213,154.05, based on his projected earnings over the next fifteen years. The Court determines that such an award would be too speculative, and believes the requested amount would be too generous over such a lengthy period. *See Wilcox*, 921 F. Supp. at 844 (citation omitted). Moreover, although not exactly comparable, Chambers has obtained a position with another company, and the Court is unpersuaded by his contention that he will be unable in the future to obtain a position comparable to his employment with the City of Calais.

#### ***Civil Penal Damages under the MHRA***

"Upon finding that a defendant violated the MHRA, a court may award a plaintiff any equitable relief it deems appropriate, including up to \$10,000.00 in civil penal damages. 5 M.R.S.A. § 4613(2)(B)(7)." *Id.* at 845. The Court concludes, based on the evidence presented at the trial and the resulting jury verdict, that the City of Calais's conduct did violate the MHRA. The Court also concludes, however, "that the back pay award, in conjunction with damages awarded by the jury suffice to make Plaintiff whole and to deter Defendant from engaging in similar conduct in the future." *Id.* The Court thus concludes that an award of \$1,000.00 in civil penal damages suffices in this matter both to acknowledge Calais's violation of the MHRA, and to deter it from further violations. In light of the other equitable relief provided to him, any greater award would, in the Court's estimation, result in excessive relief to Chambers.

#### ***Attorney Fees***

Finally, an award of attorney fees is discretionary with the Court. The parties are directed to Local Rule 54.2.

#### **Conclusion**

The Court accordingly **ORDERS** a back pay award to Chambers in the amount of \$6,022.00; a liquidated damages award in the same amount, \$6,022.00; no award based on other miscellaneous costs or benefits, no award of front pay, and civil penal damages pursuant to the MHRA in the amount of \$1,000.00. The Court thus **ORDERS** the City of Calais to remit to the plaintiff total equitable relief in the amount of \$13,044.00.

***SO ORDERED.***

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Eugene W. Beaulieu  
U.S. Magistrate Judge

Dated this 18th day of July, 1997.