

v.

CITY OF NEWARK, et al.,
Defendants.

LINARES, District Judge.

This matter comes before the Court by way of Plaintiff Darren Nance's Order to Show Cause and Motion for Judgment. (ECF No. 323). Defendant City of Newark has submitted an opposition (ECF No. 324), which Plaintiff has replied to (ECF No. 325). The Court decides this matter without oral argument pursuant to Rule 78 of the Federal Rules of Civil Procedure. For the reasons set forth below, the Court denies Plaintiff's application in its entirety.

FACTS

Plaintiff was formerly employed as a police officer by Defendant. However, due to various alleged reasons, Plaintiff was terminated on September 3, 1996. (*See* Plaintiff's Complaint (ECF No. 1) at ¶ 52). Believing his termination was improper, Plaintiff instituted the within action on December 18, 1997. On June 9, 2010, the action was tried before the Honorable Dennis M. Cavanaugh and on June 25, 2010 a jury returned, a verdict in Plaintiff's favor. (*See* ECF Nos. 195, 215). The jury awarded Plaintiff \$350,000 in compensatory damages and \$250,000 in punitive damages. (*See* Jury Verdict Sheet (ECF No. 215)). The Jury Verdict Sheet explicitly advised that

of the award (from date and to date) and amount of award” in order for him to collect his pension and receive years-of-service credits for the period between his termination and the jury award. (ECF No. 297-1). Additionally, the award also needed to include the total value of mitigated damages Plaintiff was awarded. (*Id.*). Because the jury verdict sheet did not contain this information, Plaintiff was incapable of having his pension reinstated with back pay and service. (*Id.*). Therefore, this Court entered an Order on June 25, 2015 delineating, “the period of time applicable to the jury award of \$350,000 ... and that the amount of mitigated wages [was] \$350,000.” (ECF No. 298).

On November 25, 2015, Plaintiff, through counsel, submitted additional correspondence regarding the total amount of mitigated wages and seeking an Amended Order. (ECF No. 299). Specifically, Plaintiff submitted a letter “from the State of New Jersey with the correct amount of mitigated wages of \$980,942.97 instead of the \$350,000” that was referenced in the June 25, 2015 Order. (*Id.*). Therewith, Plaintiff enclosed a Proposed Amended Order which read, in pertinent part, “that the amount of mitigated wages [was] \$980,942.97.” (ECF No. 299-1). This Court executed the Amended Order on November 30, 2015. (ECF No. 300).

Thereafter, Plaintiff brought an Order to Show Cause on March 23, 2016. (ECF No. 301). There, Plaintiff sought to “enforce compliance with the” November 30, 2015 Order. (*Id.* at 4). Defendant opposed the application and the Court entertained oral argument on May 31, 2016.

November 30, 2015 Order and denied the application in its entirety. (*Id.*).

Plaintiff now brings this nearly identical Order to Show Cause and Motion for Judgment claiming that he is owed the mitigated wages of \$980,942.97 referenced in the November 30, 2015 Order as back pay. (ECF No. 323).

ANALYSIS

In essence, the pending application asks this Court to award Plaintiff additional monies not contemplated by the jury. Said differently, Plaintiff asks this Court nearly six-and-a-half years later to amend a jury's determination of his damages. Plaintiff's application fails for numerous reasons. Plaintiff's argument that the Court needs to enforce the additional award of nearly one-million dollars as a part of his jury award is unpersuasive. According to Plaintiff, this additional sum constitutes his unpaid wages for the period of time from when he was improperly terminated through the date of the jury award. Accepting this logic would require the Court to give Plaintiff additional damages that the jury did not actually award Plaintiff. His entire argument rests on the premise that this Court entered an Order which stated that Plaintiff's mitigated wages were equal to \$980,942.97. However, the jury was presented with the question regarding lost wages and determined that Plaintiff's total compensatory award, including any lost wages, was \$350,000.¹

¹ A true and accurate copy of the Jury Verdict Sheet (ECF No. 215) is annexed hereto as **Exhibit A**. Question 1(a) specifically instructed the jury to calculate compensatory damages "which ... include[d] physical harm, emotional and mental harm *and lost wages (income)*. See **Exhibit A** (emphasis added).

award must indicate the period of the award (from date to date) and amount of award. If member receives mitigated wages the award must indicate mitigated wages.” (*Id.*). Based on Plaintiff’s request this Court issued the June 25, 2015 Order to assist Plaintiff with complying with the Division of Treasury’s requirement.³

Thereafter, on November 25, 2015, Plaintiff’s counsel submitted a request for an Amended Order regarding Plaintiff’s mitigated wages.⁴ Attached to Plaintiff’s counsel’s letter was a letter by Plaintiff where he explained that his pension system “notified him that [the] one (1) specific line concerning the mitigated wage amount in the Order that reads, ‘**ORDERED that the amount of mitigated wages is \$350,000**’ had been inadvertently inserted. *The pensionable mitigated wage amount was not available to us when this Order was drafted...* Therefore, the compensatory jury verdict amount of \$350,000 should not have been entered as the mitigated wage amount... *The correct 14-year mitigated wage amount has been calculated by the City of Newark and totals: \$980,942.97, this is the amount that needs to be reflected in the amended Court Order.*” (*Id.* (bold in original, italics added)). Plaintiff goes on to explain that “the pension board [] advised [him] that due to the conflict between the [] Order[’s] mitigated wage amount and the calculated (base

² A true and accurate copy of Plaintiff’s February 2, 2015 Correspondence, with Exhibits from New Jersey’s Department of Treasury, is annexed hereto as **Exhibit B**.

³ A true and accurate copy of the June 25, 2015 Order is annexed hereto as **Exhibit C**.

⁴ A true and accurate copy of Plaintiff’s November 25, 2015 Correspondence, with Exhibits from New Jersey’s Department of Treasury, is annexed hereto as **Exhibit D**.

Plaintiff fails to recognize that Order had nothing to do with the award of damages awarded by the jury. In fact, that Order was issued at the request of Plaintiff solely based on his representations that such an Amended Order was necessary and required by the State of New Jersey. Once again, the only purpose of the November 30, 2015 Order was to provide the State of New Jersey with Plaintiff's pensionable mitigated wages amount, based on a figure which was provided to the Court by Plaintiff, with the indication that said Order was needed to assist in the processing of his pension. In no way did this Court intend to increase Plaintiff's damages by that amount.

The Court reaches the same result if it were to view Plaintiff's application as a Motion to Alter or Amend the Judgment. First, "[a] motion to alter or amend the judgment must be filed *no later than 28 days after the entry of the judgment.*" Fed. R. Civ. P. 59(e)(emphasis added). Here, the judgment was entered on June 25, 2010. Thus, if this application were to be construed as a Motion to Alter or Amend the Judgment, it is untimely. Additionally, nowhere within Plaintiff's application does he explain how the jury award, as it stands, results in a "manifest injustice." See *North River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995)(quotations omitted). Hence, Plaintiff's application is insufficient and denied for these reasons.

⁵ A true and accurate copy of the November 30, 2015 Amended Order is annexed hereto as Exhibit E.

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