

[J-91-2017]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

RALPH M. BAILETS	:	No. 126 MAP 2016
	:	
	:	Appeal from the Order of the
v.	:	Commonwealth Court at No. 265 MD
	:	2009 dated December 1, 2016.
	:	
PENNSYLVANIA TURNPIKE	:	ARGUED: November 29, 2017
COMMISSION, ANTHONY Q. MAUN,	:	
(DIRECTOR OF ACCOUNTING), AND	:	
NIKOLAUS H. GRIESHABER, (CHIEF	:	
FINANCIAL OFFICER)	:	
	:	
	:	
APPEAL OF: PENNSYLVANIA	:	
TURNPIKE COMMISSION	:	

OPINION

JUSTICE DOUGHERTY

Decided: March 27, 2018

This is a direct appeal by defendant/appellant Pennsylvania Turnpike Commission (“PTC”) from the Commonwealth Court’s order entering judgment on a \$3.2 million verdict in favor of plaintiff/appellee Ralph M. Bailets (“Bailets”) following a non-jury trial of his claims arising under the Whistleblower Law, 43 P.S. §§1421-1428 (“Law”). The verdict included \$1.6 million in non-economic damages. PTC presents a question of first impression in Pennsylvania: whether non-economic damages for items such as embarrassment, humiliation, loss of reputation and mental anguish are available to plaintiffs in actions brought under the Law. Additionally, if non-economic damages are authorized under the Law, PTC asks us to determine whether the verdict amount was excessive in this case. We conclude non-economic damages are available

to successful plaintiffs under the Law and the trial court did not err or abuse its discretion in entering a verdict amount of \$1.6 million. Accordingly, we affirm the judgment.

A. Background

Bailets was employed by PTC for ten years prior to his termination in November 2008. He was the Manager of Financial Systems and Reporting, responsible for a staff of programmers and business analysts, and it was his duty, among other things, to ensure PTC's financial reports were produced accurately and in a timely fashion. Bailets reviewed submissions in response to requests for proposals PTC issued seeking bids for the creation and implementation of a computerized financial reporting system. He voiced concern to his immediate supervisor, Director of Accounting, Anthony Q. Maun ("Maun"), that one of the bidders for the implementation contract, Ciber, Inc. ("Ciber"), had an unfair advantage over other vendors/bidders, because Ciber had previously been awarded a \$3.4 million contract to identify the requirements upon which any implementation would be based. In 2005, despite having submitted the highest bid, Ciber was awarded a \$53.8 million implementation contract. Maun told Bailets not to make waves regarding Ciber or his job would be in jeopardy.

After Ciber secured the implementation contract, Bailets voiced numerous complaints to Maun regarding Ciber's poor performance, including high turnover and absenteeism of Ciber consultants, testing failures, and lack of knowledge transfer from Ciber consultants to PTC employees. In 2007, Bailets reported to Maun that senior management should be informed implementation problems were being caused by Ciber's deficient performance, particularly in the area of knowledge transfer, *i.e.*, Ciber

consultants failed to deliver information to PTC employees regarding how the computerized financial reporting system actually operated.

Bailets also complained about Ciber's performance to a co-worker, Nikolaus H. Grieshaber ("Grieshaber"). Grieshaber acknowledged Ciber was politically connected within the PTC hierarchy, and warned Bailets to tread lightly in his complaints about Ciber. The problems with implementation of the system continued and by June 2008, the roll-out of the system was three months behind schedule. In June 2008, Grieshaber was promoted to the position of CFO, becoming Maun's immediate superior. Shortly after his promotion, Grieshaber sent an email to PTC's COO, George Hatalowich, stating, among other things, that Grieshaber had "a lot of misgivings about ... Bailets[.]" and that PTC needed to "keep a short leash on him." Trial Ct. Op., 10/6/16 at 9 (citing Trial Ex. 137).¹ In July 2008, Bailets was reassigned to the purchasing department. In August 2008, Ciber was awarded an additional \$19.7 million contract to conduct knowledge transfer. Bailets continued to complain to Maun regarding Ciber's deficiencies. On November 20, 2008, PTC's Human Resources Director informed Bailets his position was being eliminated for budgetary reasons. Bailets was directed to immediately pack his personal belongings and was escorted from the building.

Believing he was terminated in retaliation for his reports of wrongdoing and waste, Bailets filed a complaint in the Commonwealth Court's original jurisdiction, alleging a single claim under the Law against PTC.² PTC filed a motion for summary

¹ Trial took place in the Commonwealth Court from May 23, 2016 to May 26, 2016, following remand by this Court from a prior appeal. See *Bailets v. Pa. Turnpike Comm'n*, 123 A.3d 300 (Pa. 2015). We refer to the Commonwealth Court's unpublished opinion in support of its verdict as "Trial Ct. Op."

² The parties filed a pre-trial stipulation of discontinuance as to additional named defendants Anthony Q. Maun and Nikolaus H. Grieshaber.

judgment claiming Bailets was terminated, along with fourteen other employees, in an organization-wide effort to reduce expenses. In an unreported single-judge opinion, the court held the decision to terminate Bailets was “a management discretionary action, motivated by legitimate employer objectives[.]” and granted summary judgment in favor of PTC. *Bailets v. Pa. Turnpike Comm’n*, No. 265 MD 2009, unpublished memorandum at 11 (Pa. Cmwlth. February 4, 2014). Bailets appealed and this Court reversed, reasoning Bailets’s complaint clearly presented *prima facie* evidence of violations of the Law which “at the very least created material issues of fact to preclude the grant of summary judgment[.]” and remanded to the Commonwealth Court for further proceedings. *Bailets v. Pa. Turnpike Comm’n*, 123 A.3d 300, 309-10 (Pa. 2015).

A four-day non-jury trial in the Commonwealth Court ensued in May 2016 at which Bailets presented evidence in support of his claim he was fired by PTC due to his reports of waste and wrongdoing. With respect to evidence of economic damages, Bailets presented the expert testimony of economist Andrew Verzilli, who, among other things, testified the accumulation of Bailets’s past and future lost earnings resulting from his termination amounted to an “overall loss of \$1,649,316[.00].” N.T. 5/25/16 at 514. With respect to non-economic damages, Bailets testified the emotional impact of losing his PTC employment was “devastating[.]” “humiliating[.]” “painful[.]” “very demeaning[.]” and “very difficult emotionally[.]” which caused him “no end of sleepless nights[.]” N.T. 5/23/16 at 190. Bailets specifically testified to the humiliation he felt because of the way he was fired — “being walked out of your employer with a box in your hand and being escorted out.” *Id.* He further explained it was “certainly humiliating to use an unemployment card at [a] local grocery store” and testified he suffered mental distress contemplating “paying basic bills, repairs on an aging family van, [educational] expenses for my three daughters[.] . . . retirement savings, medical costs, all of those

things, you know, kept me awake many nights and laid heavily on me.” *Id.* at 190-91. Bailets anguished over facing his father-in-law to inform him “I was no longer a provider for his daughter and his grandchildren.” *Id.* at 190. He testified it was painful to tell his thirteen-year-old triplet daughters he no longer had a job and it “broke [his] heart” when one of his daughters later apologized to him “for needing new cleats because she outgrew them.” *Id.* at 194.

Mrs. Ann Bailets testified her husband was terminated shortly before the Thanksgiving holiday and “he was embarrassed and humiliated about facing the members of my family . . . and telling them . . . he no longer had a job.” N.T. 5/25/16 at 536. Mrs. Bailets additionally testified her husband initially took a minimum wage job as a driver at an automobile dealership just to have “some income,” and in hopes of making business contacts that might lead to a better employment opportunity. *Id.* at 537-38. However, he became “frustrated” by his lack of success in securing adequate employment, and “he cried on occasions because he began to wonder if he was ever going to get a job.” *Id.* at 538. Additionally, on a number of occasions he expressed his “guilt[] for putting our family through this.” *Id.* Specifically, “he said that . . . maybe he should never have notified his employers of these things that were going wrong[.]” because if “he hadn’t done that, . . . he would still be there.” *Id.* At the same time, she testified he said he “wanted to be able to look in the mirror” and “know that . . . he had done what he thought was the right thing to do.” *Id.*

The trial court concluded Bailets met his burden under the Law of proving he made a good faith report of PTC’s wrongdoing and waste and PTC fired him in retaliation for making the report. In determining the issue of damages, the court first noted the Law permits the recovery of “actual damages,” Trial Ct. Op. at 19, *quoting* 43

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