

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
FIRST DIVISION

CIVIL ACTION NO. 94-CI-2287

KENNETH R. CASEY

FEB 22 1996

PLAINTIFF

vs. **TRIAL, VERDICT, FINAL JUDGMENT AND ORDER**

MILNER ELECTRICAL COMPANY

DEFENDANT

Parties appeared this 17th day of January 1996, and the jury empaneled herein met pursuant to adjournment.

The trial progressed and being concluded the numbers of the thirteen jurors were placed in the jury box and number "920" Theresa Foxx was withdrawn and she was dismissed as the thirteenth juror from further consideration of this action.

The jury retired and returned into Court the following verdict, to wit:

INSTRUCTION NO. 2

Milner Electric Company had the right to terminate the employment of any employee, including, Kenneth Casey, with or without cause; however, Milner Electric Company may not terminate the employment of any employee, including Kenneth Casey, because of his or her pursuit of worker's compensation benefits.

QUESTION NO. A

Do you believe from the evidence that Kenneth Casey's pursuit of worker's compensation benefits was a substantial and motivating factor, but for which Milner Electric Company would not have terminated his employment?

YES XX NO _____

As the verdict was not unanimous the following jurors signed the verdict:

/s/ Marjorie Murray
 Nola Campbell
 Eileen Welch Vifquain
 Robert A. Gayheart
 Lonnie Wright
 Gary Kohenen
 John R. Heflin
 Bruce Narrod
 Virginia Mullins

INSTRUCTION NO. 3

If you have answered "yes" to Question No. A, you will determine from the evidence and award Kenneth Casey a sum or sums of money that will fairly and reasonably compensate him for such of the following damages as you believe from the evidence he has sustained directly by reason of the termination of his employment by Milner Electric Company:

(a) The compensation, including fringe benefits, that Kenneth Casey would have received from his employment with Milner Electric Company during the period between the date of termination of his employment and this date, LESS any compensation, including fringe benefits, during that period of time that he has received from other employment or could have earned through the exercise of reasonable diligence to secure other employment:

\$ \$35,000

(b) The compensation, including fringe benefits, that Kenneth Casey would have received from his employment with Milner Electric Company in the future for such period of time as he is reasonably certain to have continued in the employment of Milner Electric Company, LESS any compensation, including fringe benefits, during that period of time that you believe will receive from other employment or could earn through the exercise of reasonable diligence to secure other employment:

\$ 32,000

(c) Embarrassment, humiliation and mental distress to this date:

\$ 40,000

- (d) Any embarrassment, humiliation and mental distress he is reasonably certain to endure in the future:

\$ 0

INSTRUCTION NO. 4

If you answered "yes" to Question No. A and awarded damages under Instruction No. 3, and if you believe from clear and convincing evidence that Milner Electric Company acted toward Kenneth Casey with oppression and malice, you may, in your discretion, award punitive damages against Milner Electric Company in addition to the damages awarded under Instruction No. 3.

If you award punitive damages, in determining the amount thereof you should consider the following factors:

- (a) the likelihood at the time of such misconduct by Milner Electric Company that serious harm would arise from the misconduct;
- (b) the degree of Milner Electric Company's awareness of that likelihood;
- (c) the profitability of the misconduct to Milner Electric Company;
- (d) the duration of the misconduct and any concealment of it by Milner Electric Company;

AND

- (e) the actions by Milner Electric Company to remedy the misconduct once it became known to it.

If you award punitive damages, you will state the amount separately from the sums or sums awarded under Instruction No. 3.

DEFINITIONS

"Oppression" -- means conduct that was specifically intended by the defendant to subject the plaintiff to cruel and unjust hardship.

"Malice" -- means conduct that was specifically intended by the defendant to cause tangible or intangible injury to the plaintiff.

 We do not award punitive damages.

X We award punitive damages in the sum of \$ 10,000.

As the verdict was not unanimous the following jurors signed the verdict:

/s/ Marjorie Murray
Nola Campbell
Eileen Welch Vifquain
Robert A. Gayheart
Lonnie Wright
Gary Kohenen
John R. Heflin
Bruce Narrod
Virginia Mullins

QUESTION NO. B

Do you believe from the evidence that reinstatement of Kenneth Casey to his employment with Milner Electric Company would be impractical?

YES X NO

As the verdict was unanimous the juror foreperson signed the verdict as follows:

/s/ Marjorie Murray

This matter having come on for hearing on February 16, 1996, regarding *Defendant's Motion for Judgment Notwithstanding The Verdict Pursuant to CR 50 or New Trial to CR 59.01 and Motion to Alter, Amend or Vacate The Judgment of January 17, 1996 Pursuant to CR 59.05* and *Plaintiff's Motion for Attorney's Fees and Costs*, and the Court, having considered the parties' memoranda and submissions, heard argument from the parties' counsel and being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED:**

(1) that defendant's motions are **OVERRULED**;

(2) that plaintiff's counsel of record, Robert L. Abell, reasonably expended 198.5 hours in prosecuting this case on plaintiff's behalf,

(3) that 3.5 hours plaintiff's counsel expended in preparation of the motion and supporting submissions regarding attorney's fees and costs were not expended in prosecuting the case and are not compensable;

(4) that a reasonable hourly rate in this case for Robert L. Abell is \$110 per hour;

(5) that plaintiff is awarded attorney's fees in the sum of twenty-one thousand eight hundred thirty-five dollars (\$21,835.00);

(6) that plaintiff should be awarded his costs and expenses herein incurred in the sum of one thousand nine hundred dollars and fifty-two cents (\$1954.52); and,

(7) that plaintiff Kenneth R. Casey recover, as his costs and reasonable attorney's fees, from defendant Milner Electrical Company, the sum of twenty-three thousand, seven hundred eighty-nine dollars and fifty-two cents (\$23,789.52).

WHEREFORE, IT IS ORDERED AND ADJUDGED that the plaintiff Kenneth R. Casey recover from the defendant Milner Electrical Company, the sum of one hundred forty thousand, seven hundred eighty-nine dollars and fifty-two cents (\$140,789.52), plus interest thereon, from entry hereof at the rate of 12% per annum from date of judgment until paid.

This is a final and appealable order and there is no just cause for delay.

Entered this 22 day of Feb., 1996.

/s/ James E. Keller

A ^{True} Copy
JAMES E. KELLER, JUDGE
FIRST DIVISION

J.E.K.

Prepared and Tendered by:



ROBERT L. ABELL
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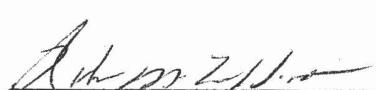
CERTIFICATION OF CLERK

Pursuant to CR 77.04, this is to certify that the foregoing *Trial, Verdict, Final Judgment and Order* has been served upon the parties by mailing true copies to the following counsel of record:

Robert L. Abell
145 W. Main Street, Suite 300
Lexington, KY 40507
COUNSEL FOR PLAINTIFF

Charles W. Arnold
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910 Lexington Financial Center
Lexington, KY 40507
COUNSEL FOR DEFENDANT

on this 22 day of Feb., 1996.



FAYETTE CIRCUIT CLERK