

Pennsylvania Supreme Court Upholds \$3.2M Whistleblower Award Based on Both Economic and Noneconomic Damages

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Pennsylvania whistleblowers received a major win on Tuesday, March 28, 2018, when the Pennsylvania Supreme Court issued a [unanimous decision](#) affirming a \$3.2 million verdict in favor of Pennsylvania Turnpike Commission (“PTC”) whistleblower, Ralph Bailets. The decision was notable for two reasons: (1) it confirmed that noneconomic damages – damages which primarily take the form of “emotional distress” damages – are available to successful litigants under the Pennsylvania Whistleblower Law; and (2) it rejected the defendant’s argument that the \$1.6 million award of noneconomic damages was excessive. This outcome reinforces a principal goal of [whistleblower retaliation](#) remedies—that whistleblowers be made whole.

The Background

Bailets worked for PTC for ten years prior to his termination in November 2008. At the time of his termination, he was the Manager of Financial Systems and Reporting, and was responsible, among other things, for ensuring that PTC’s financial reports were accurate and timely. Between 2005 and 2008, Bailets made a number of internal complaints about the performance of one of PTC’s contractors, Ciber, Inc. The problems he brought to PTC’s attention included the high turnover and absenteeism of Ciber consultants, Ciber’s testing failures, and the failure of Ciber consultants to provide necessary information to PTC employees. Among others, Bailets complained to a colleague named Nikolaus Grieshaber, who warned Bailets to be careful because Ciber had political connections in PTC. In June 2008, Grieshaber became PTC’s Chief Operating Officer and warned PTC leadership that he had “a lot of misgivings about . . . Bailets,” adding that PTC needed to “keep a short leash on him.” On November 20, 2008, PTC informed Bailets that it was eliminating his position for budgetary reasons.

The Claim under Pennsylvania Whistleblower Law

Bailets filed a claim against PTC under the Pennsylvania Whistleblower Law (“PAWL” or “the Law”) alleging that PTC terminated him in retaliation for his reports of wrongdoing and waste. The PAWL states that “[n]o employer may discharge, threaten or otherwise discriminate or retaliate against an employee . . . because the employee . . . makes a good faith report . . . to the employer or appropriate authority an instance of wrongdoing or waste by a public body or an instance of waste by any other employer as defined in this act.” 43 Pa. Stat. § 1423. Following a bench trial, the state court held in May 2016 that Bailets’ termination violated the PAWL. The court determined that Bailets’ past and future lost earnings resulting from his termination amounted to an overall loss of \$1,649,316. The trial court further determined that due to “harm to his reputation, humiliation, and mental anguish, Bailets is entitled to an award equal to that of his economic damages, or \$1.6 million.” PTC appealed and the Pennsylvania Supreme Court reviewed the case to determine whether noneconomic damages are available under the PAWL, and whether the \$1.6 million noneconomic damages award was excessive.

The Pennsylvania Supreme Court first held that noneconomic damages are available under the PAWL. Under 43 Pa. Stat. § 1425, successful litigants are entitled to, among other things, “actual damages.” The parties disputed whether the phrase “actual damages” included noneconomic damages, i.e., damages for reputational harm and emotional distress. The Court found that the PAWL was primarily designed as a “remedial measure intended to ‘enhance openness in government and compel the government’s compliance with the law by protecting those who inform authorities of wrongdoing,’” and that therefore its provisions “must be liberally construed to effect its salutary remedial object.” The Court added that in other contexts, its own jurisprudence has “long recognized non-economic losses are actual losses.”

Finally, the Court addressed PTC’s argument that the legislature intended “actual damages” under the Law to include recovery for economic injury only, and rejected it because “excluding damages for such items of loss as humiliation, embarrassment and mental anguish” would mean “a whistleblower cannot be made whole.”

The Court also concluded that the \$1.6 million award of noneconomic damages was neither excessive nor unsupported by the evidence, noting that a trial court’s damage awards will not be overturned unless “so excessive as to shock the conscience of the court.” Although PTC argued that the emotions Bailets felt after his termination “are typical of anyone’s experience while between jobs” the Court said that “misse[d] the point” because Bailets’ unemployment came as a result of his attempts to do the right thing, resulting in his “dire financial predicament and its impact on his family.” The Court further held that it was a “legitimate inference” for the trial court to have found that Bailets’ non-economic losses were “commensurate with and equal to the economic damages he suffered.”

The Significance for Pennsylvania Whistleblowers

The Court’s broad interpretation of “actual damages,” as well as its emphasis on the importance of making a whistleblower whole and its deference to the trial court’s generous award of damages for reputational and emotional harm, constitute a significant victory for whistleblowers in Pennsylvania. The decision should also strike a cautionary note for Pennsylvania employers, who often expect large trial verdicts to be overturned on appeal.