

**IN THE DISTRICT COURT OF BOYD COUNTY, NEBRASKA**

**LEOLA RIESSELMAN,**  
Plaintiff,

vs.

**BOYD COUNTY SCHOOL DISTRICT NO.  
5 a/k/a BUTTE PUBLIC SCHOOL,**  
Defendant.

Case No. CI00-11

**JOURNAL ENTRY  
ON TRIAL**

**DATE OF TRIAL:** July 10-11, 2001.

**APPEARANCES:**

For plaintiff: John P. Heitz with plaintiff.

For defendant: Steve Williams with Larry Hiatt, corporate representative.

**SUBJECT:** Jury Trial.

**PROCEEDINGS:**

The juror orientation video was displayed. After introductory comments by the court, the jury panel was duly sworn for examination. The names of 15 prospective jurors were duly drawn by the clerk and voir dire examination conducted by the court. During the court's examination, seven prospective jurors were excused for cause and replacements duly drawn by the clerk and examined by the court. The panel was admonished and a mid-morning recess was taken.

Voir dire examination was then conducted by counsel for plaintiff. During the plaintiff's examination, on plaintiff's motion, one prospective juror was excused for cause and a replacement duly drawn by the clerk and examined by the court and counsel for plaintiff. The plaintiff passed the panel for cause. Voir dire examination was then conducted by counsel for defendant. The defendant thereafter passed the panel for cause. Peremptory challenges to the panel of 15 prospective jurors were exercised by counsel for plaintiff and counsel for defendant. The trial jury of seven persons was duly sworn and admonished, and the remainder of the panel was excused. Preliminary instructions were given by the court to the jury. Opening statement was presented by counsel for plaintiff. Opening statement was presented by counsel for defendant. The jury was admonished, and recess was taken for lunch.

Following the lunch recess, with all counsel and parties present, and the jury being present,

evidence was adduced for the plaintiff. The plaintiff, Leola Riesselman, was sworn and testified. The jury was admonished and a brief recess was taken. Following the recess, in the absence of the jury, but with all counsel and parties present, the bailiff reported a communication from one of the jurors, including identification of the juror and the substance of the communication. There were no motions by either party, and the court deems that no action is necessary or required in regard thereto.

In the continued absence of the jury, the plaintiff rested. The defendant moved for a directed verdict. Arguments of counsel were heard. The motion was denied. After a brief pause, the jury returned, and the plaintiff rested in the presence of the jury.

Evidence was adduced for the defendant. Larry Hiatt was sworn and testified. The jury was admonished, and a brief recess was taken. Following the recess, Leola Riesselman was recalled and testified further. The defendant rested.

Rebuttal evidence was adduced for the plaintiff. Julie Schuerman was sworn and testified. The plaintiff rested on rebuttal. There was no surrebuttal evidence. After consulting the jury regarding working hours, and a brief bench conference with counsel, the court admonished the jury and excused the jury for the day to return at 9:00 a.m. on Wednesday, July 11, 2001.

An informal instruction conference was held with both counsel in the courtroom.

Thereafter, a formal instruction conference was held with all counsel and parties present. There were no motions for plaintiff at the close of all of the evidence. The defendant renewed the motion for directed verdict made at the close of the plaintiff's evidence. Arguments of counsel were heard or waived. The motion was denied. Proposed instructions Nos. 1 through 11, inclusive, as corrected after the informal conference, and the proposed verdict form were considered. There were no objections by either party and no additional requested instructions. Counsel for plaintiff confirmed that plaintiff has abandoned the second and third theories of recovery stated in the amended petition, and that the court's instructions fully instruct on the remaining theory of breach of contract. Counsel for defendant confirmed that any defenses pleaded in the answer but not included in the instructions are abandoned, and that the court's instructions fully instruct on the remaining defenses. Time limits of 30 minutes per side for closing arguments were established. All counsel stipulated that counsel may be excused during jury deliberations, and that in their absence any written communication may take place between the court and the jury and further written

instructions may be given, and the verdict may be received in the absence of counsel and the absence of the parties without further notice. The court approved the stipulation. The trial recessed until Wednesday, July 11, 2001, at 9:00 a.m.

Wednesday, July 11, 2001:

With all counsel and parties present, the jury returned. Counsel for plaintiff presented closing argument. Counsel for defendant presented closing argument. Counsel for plaintiff presented rebuttal argument. The written instructions were read to the jury. The cause was submitted for commencement of deliberations at 10:10 a.m. The jury retired to the jury room.

A jury question in writing was received by the court from the bailiff. The court consulted with counsel informally regarding the question and the proposed answering instruction. Instruction No. 12 was submitted to counsel. Thereafter, at 11:24 a.m., a formal instruction conference was held with both counsel and the defendant's representative present, and the plaintiff not being personally present. The court considered proposed Instruction No. 12, and there was no objection by either party. At 11:26 a.m., the jury returned and Instruction No. 12 was read to the jury and the cause resubmitted at 11:27 a.m. The jury returned to the jury room.

At 1:02 p.m., with both counsel and all parties or party representatives present, the jury returned and announced that it had reached verdict. The verdict form was duly filed by the clerk, and read aloud by the clerk in open court, wherein the jury found for the plaintiff in the amount of \$8,000.00. Upon inquiry by the court if it was their unanimous verdict, all 7 jurors joined in an affirmative response. Further polling of the jury was waived by both counsel. The verdict was accepted by the court. Separate judgment will be entered thereon by the court in writing, after consideration of post-trial motions. The jury was discharged with the thanks of the court. Post-trial motions will be heard in chambers at O'Neill, Holt County, Nebraska, on Monday, August 6, 2001, at 10:30 a.m.

Dated: July 11, 2001.

If checked, the Court Clerk shall:

: Mail a copy of this order to all counsel of record and to any pro se parties.

9 Done on \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_\_.

9 Enter judgment on the judgment record.

9 Done on \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_\_.

9 Mail postcard/notice required by § 25-1301.01 within 3 days.

9 Done on \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_\_.

9 (Trial docket entry dictated.)

Mailed to:

BY THE COURT:

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William B. Cassel

District Judge