

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**KENDRA LYNN,
APPELLANT-RESPONDENT,
v.**

**TNT LOGISTICS NORTH AMERICA INC., ET AL.,
RESPONDENT-APPELLANT.**

WD68096 Consolidated with WD68135

DATE: November 7, 2008

Appeal From:
JACKSON COUNTY CIRCUIT COURT
THE HONORABLE KELLY JEAN MOORHOUSE, JUDGE

Attorneys:
EDWARD D. ROBERTSON, JR., ESQ., MARY D. WINTER, ESQ., ANTHONY L.
DEWITT, ESQ., JEFFERSON CITY, MO; KIRK D. HOLMAN, ESQ., MARK A.
BUCHANAN, ESQ., KANSAS CITY, MO, **for appellant-respondent.**

MICHAEL F. DELANEY, ESQ., OVERLAND PARK, KS; ERIC P. KELLY, ESQ.,
KANSAS CITY, MO; GERALD P. GREIMAN, ESQ., ST. LOUIS, MO, **for respondent-
appellant.**

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

KENDRA LYNN,

APPELLANT-RESPONDENT,

v.

TNT LOGISTICS NORTH AMERICA INC., ET AL.,

RESPONDENT-APPELLANT

WD68096 Consolidated with WD68135

Jackson County

Before Division Two Judges: Holliger, P.J., Lowenstein and Newton, JJ.

Kendra Lynn appeals the remittitur of the punitive damages awarded by a jury in her sexual harassment case against her former employer, TNT Logistics North America. The jury awarded her \$50,000 in compensatory damages and \$6.75 million in punitive damages. The trial court remitted the punitive damage award to \$450,000.

Lynn appeals, contending the trial court erred in remitting the jury's award without offering her the option of a new trial on the issue of punitive damages. TNT cross-appeals, claiming: (1) Lynn failed to make a submissible case for sexual harassment; (2) the remitted punitive damages award of \$350,000 was excessive and should have been remitted to \$250,000; and (3) the award of prejudgment interest was improper, or, alternatively, that prejudgment should only be awarded on one-half of the punitive damages.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

Division Two holds:

The judgment of the trial court is affirmed as to the portion pertaining to the submission of the sexual harassment claim, the award of compensatory damages and the prejudgment interest thereon, and the submission of punitive damages.

As the trial court stated that the award was “excessive under the evidence,” this court finds that the remittitur was statutory remittitur pursuant to Mo. Rev. Stat. Sections 510.263.6 and 537.068 (2000). The trial court erred in failing to offer Lynn the option of a new trial as to punitive damages in lieu of the remittitur. Moreover, the trial court abused its discretion in remitting the \$6.75 million award to \$450,000. The judgment pertaining to the remitted punitive damages is reversed. This court finds that, upon the facts of the case and the egregious behavior of the employer, that a punitive damages award of \$3.75 million is proper.

The award of prejudgment interest on the punitive damages was proper. However, the State has a statutory lien on one-half of the punitive damages award, pursuant to Mo. Rev. Stat. Section 537.675.3 (2000). Lynn can only acquire a proprietary interest in one-half of the punitive damages. The trial court could only award prejudgment interest on one-half of the punitive damages award. The award of prejudgment interest on the entire punitive damages award is reversed.

If Lynn agrees, within fifteen days of the entry of this court’s mandate, the trial court is ordered to remit the punitive damages award to \$3.75 million and the cause will be remanded to the trial court for entry of the judgment including

prejudgment interest on one-half of that amount. Otherwise, the judgment for punitive damages will be reversed and remanded for a new trial.

Opinion by: Harold L. Lowenstein, Judge

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.