

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DOCKETING STATEMENT

Case Name: **Tudor et al. v. Se. Okla. State Univ. et al.**

Appeal No.: **18-6102**

Court/Agency Appealing From: **Western District of Oklahoma**

Court/Agency Docket No.: **15-cv-324-C** District Judge: **Cauthron, J.**

Party or Parties Filing Notice of Appeal/Petition: **Dr. Rachel Tudor (Plaintiff-Appellant)**

I. TIMELINESS OF APPEAL OR PETITION FOR REVIEW

A. APPEAL FROM DISTRICT COURT

1. Date notice of appeal filed: June 6, 2018

- a.** Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing notice of appeal: **No.**
- b.** Is the United States or an officer or an agency of the United States a party to this appeal? **No.**

2. Authority fixing time limit for filing notice of appeal:

Fed. R. App. 4 (a)(1)(A) <u>X</u>	Fed. R. App. 4(a)(6) _____
Fed. R. App. 4 (a)(1)(B) _____	Fed. R. App. 4(b)(1) _____
Fed. R. App. 4 (a)(2) _____	Fed. R. App. 4(b)(3) _____
Fed. R. App. 4 (a)(3) _____	Fed. R. App. 4(b)(4) _____

Fed. R. App. 4 (a)(4) _____ Fed. R. App. 4(c) _____
Fed. R. App. 4 (a)(5) _____
Other: _____

3. Date final judgment or order to be reviewed was **entered** on the district court docket:

Dr. Tudor appeals the orders denying her reinstatement and awarding only partial front pay: ECF No. 275 (entered on January 29, 2018); ECF No. 278 (entered February 12, 2018); ECF No. 286 (entered April 13, 2018); and ECF 292 (entered June 6, 2018). She also appeals the order entering final judgment, ECF No. 293 (entered on June 6, 2018).

4. Does the judgment or order to be reviewed dispose of **all** claims by and against **all** parties? *See* Fed. R. Civ. P. 54(b).

Yes.

5. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).

- a. Give the filing date of any motion that tolls the time to appeal pursuant to Fed. R. App. P. 4(a)(4)(A) or 4(b)(3)(A):

N/A

- b. Has an order been entered by the district court disposing of any such motion, and, if so, when?

N/A

6. Cross Appeals.

- a. If this is a cross appeal, what relief do you seek beyond preserving the judgment below? *See United Fire & Cas. Co. v. Boulder Plaza Residential, LLC*, 633 F.3d 951, 958 (10th Cir. 2011) (addressing jurisdictional validity of conditional cross appeals).

N/A

- b. If you do not seek relief beyond an alternative basis for affirmance, what is the jurisdictional basis for your appeal? *See Breakthrough Mgt. Group, Inc. v. Chukchansi Gold Casino and Resort*, 629 F.3d 1173, 1196-98 and n. 18 (10th Cir. 2010)(discussing protective or conditional cross appeals).

N/A

II. LIST ALL RELATED OR PRIOR RELATED APPEALS IN THIS COURT WITH APPROPRIATE CITATION(S).

State of Texas et al. v. United States et al. and Dr. Rachel Jona Tudor, 16-1534 (5th Cir.)

III. GIVE A BRIEF DESCRIPTION OF THE NATURE OF THE UNDERLYING CASE AND RESULT BELOW.

This is an employment discrimination case arising under Title VII of the Civil Rights Act of 1964.

Dr. Tudor underwent a gender transition from male to female while employed as an Assistant Professor—a tenure-track position—at Southeastern Oklahoma State University (“Southeastern”), which is under the governance of the Regional University System of Oklahoma (“RUSO”). Tudor endured sex discrimination and retaliation in connection with her applications for tenure. (Prior to trial, the District Court repeatedly held that Tudor stated claims for sex discrimination and retaliation under *Etsitty v. Utah Transit. Auth.*, 502 F.3d 1215 (10th Cir. 2007). *See, e.g.*, ECF No. 34 [order denying motion to dismiss]; ECF No. 219 [order denying summary judgment]).

In November 2017, a unanimous jury found that Defendants-Appellees’ reasons for denying Tudor’s 2009-10 tenure application were pretext for sex discrimination and Defendants-Appellees’ reasons for refusing to allow Tudor to reapply for tenure in the 2010-11 cycle were pretext for sex

discrimination and retaliation. (Tudor did not prevail on a related environmental claim for which she does not seek appeal.) To compensate Tudor for her injuries, the jury gave an omnibus award of \$1,165,000 on a verdict form that did not allow for delineation of damages that was supplied by the District Court and which Defendants approved at trial.

After trial, Tudor moved for reinstatement as an Associate Professor with tenure at Southeastern or, in the alternative, for front pay for her remaining work life expectancy (approximately 22 years) which she claimed was necessary to make her whole absent reinstatement since undisputed evidence showed she had no prospects of obtaining a tenured professorship elsewhere and her employment prospects were otherwise bleak.

The District Court denied Tudor's request for reinstatement and interrelated motions for reconsideration and to supplement. The District Court ultimately clarified that reinstatement was denied because Defendants-Appellees opposed Tudor's reinstatement and, specifically, that Defendants-Appellees' contention that Tudor was "not qualified to be a tenured professor" created hostilities rendering reinstatement infeasible (ECF No. 292 at 3).

The District Court awarded Tudor front pay in the amount of \$60,040.77, which it deemed to compensate Tudor for 14-months of salary and benefits. Tudor moved for reconsideration, pointing out that (i) 14-months was insufficient to make her whole given bleak job prospects for non-tenured professorships and the impossibility of obtaining a tenured-professorship elsewhere; and (ii) the undisputed evidence showing that a 14-month period of front pay is actually \$90,080.58. Tudor's reconsideration motion was denied.

The District Court also remitted the jury's omnibus award from \$1,165,000 to \$360,040.77 on the premise that the omnibus award must be remitted even though Defendant-Appellees previously waived and acquiesced to non-application of 42 U.S.C. § 1981a's cap. *De novo*, the District Court assessed the evidence the parties presented at trial and post-trial, and independently determined that Tudor's back pay award should be \$60,040.77 (the same amount as her front pay award). The District Court went on to hold that, despite the fact that the verdict form did not allow the jury to delineate kinds of damages, the whole jury award less the District Court's calculation of backpay should be remitted to the cap threshold of \$300,000.

IV. IDENTIFY TO THE BEST OF YOUR ABILITY AT THIS STAGE OF THE PROCEEDINGS, THE ISSUES TO BE RAISED IN THIS APPEAL.

(a) Whether Title VII's preferred remedy of reinstatement is infeasible where the employer previously disavowed hostilities, the jury rejected a hostile work environment claim, but the employer nevertheless sought to create post-trial hostilities by opposing reunion on the pretext that it rejects the jury's findings of liability, yet the employee contends any hostilities are one-sided and nevertheless wishes to return.

(b) Whether in a situation where the aggrieved employee would have been given life tenure but for discrimination and/or retaliation and she otherwise has no prospects of an equivalent job elsewhere, and reinstatement is denied, front pay compensating the employee for her full remaining work life expectancy is necessary so as not to frustrate the make-whole purpose of Title VII.

(c) Whether the District Court erred when it awarded Dr. Tudor front pay in the amount of \$60,040.77 for a purported 14-month period where (i) there is evidence that Tudor cannot be made whole in that period and (ii) the District Court miscalculated Tudor's undisputed salary and benefits for that period, which should be \$90,080.58.

(d) Whether a defendant-employer's failure to plead 42 U.S.C. § 1981a's cap as an affirmative defense results in waiver of the cap. Alternatively, whether a defendant-employer's failure to request a verdict form delineating damages subject to and not subject to 42 U.S.C. § 1981a's cap results in acquiescence to non-application of the cap where an omnibus jury award which is over the cap results.

(e) Whether a Seventh Amendment violation is shown where a district court artificially allocates damages in an omnibus jury award based on its *de novo* review of evidence and arguments presented at trial, it deems some amounts subject to a statutory cap and others not, then applies a cap on basis alone.

V. ATTORNEY FILING DOCKETING STATEMENT:

Name: **Ezra Ishmael Young, Esq.** Telephone: **(949) 291-3185**

Firm: **Law Office of Ezra Young**

Email Address: **ezra@ezrayoung.com**

Address: **30 Devoe Street #1A, Brooklyn, NY 11211**

PLEASE IDENTIFY ON WHOSE BEHALF THE DOCKETING STATEMENT IS FILED:

A. Appellant

B. **PLEASE IDENTIFY WHETHER THE FILING COUNSEL IS:**

Retained Attorney

/s/ Ezra Young 6/21/18

Signature

Date

CERTIFICATE OF SERVICE

I, Ezra Young hereby certify that on June 21, 2018, I electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Ezra Young

Ezra Ishmael Young, Esq.

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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-15-324-C
)	
SOUTHEASTERN OKLAHOMA)	
STATE UNIVERSITY and)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Plaintiff brought the present action asserting that Defendants violated Title VII during the course of her employment as an associate professor at Southeastern Oklahoma State University (“Southeastern”). The matter was tried to a jury, which found in favor of Plaintiff. Plaintiff has now filed a post-trial motion requesting the Court reinstate her to her position as associate professor at Southeastern and grant her tenure. Plaintiff’s request comes pursuant to 42 U.S.C. § 2000e-5(g). Plaintiff also requests the Court award front pay from the date of the jury’s verdict to the date of her reinstatement. Plaintiff notes that in the event the Court denies her request for reinstatement she may request additional front pay damages. Defendant objects to Plaintiff’s request for reinstatement, arguing that the relationship between Plaintiff and Southeastern is such that reinstatement is impractical and that even if the Court were to consider reinstatement that granting Plaintiff tenure

would be inappropriate, as that is a decision that should be made by Southeastern, rather than by the Court.

It is clear that reinstatement is the preferred remedy. See Jackson v. City of Albuquerque, 890 F.2d 225, 231 (10th Cir. 1989) (quoting EEOC v. Prudential Assoc., 763 F.2d 1166 (10th Cir. 1985)). Plaintiff has the burden of establishing her entitlement to reinstatement; however, this burden is met where she demonstrates that she has prevailed on her discrimination claim. See Donnellon v. Fruehauf Corp., 794 F.2d 598, 602 (11th Cir. 1986). Where Plaintiff has met her burden, the Court must determine if “reinstatement or front pay is the appropriate remedy.” Abuan v. Level 3 Commc’ns, Inc., 353 F.3d 1158, 1176 (10th Cir. 2003). Reinstatement is not feasible where there is continuing hostility between Plaintiff and the employer or its workers. Prudential, 763 F.2d at 1172.

In support of her request for reinstatement, Plaintiff states that she desires to return to Southeastern and believes that she can be successful teaching in that environment. Plaintiff argues that she did well while she was teaching there and has continued to develop her skills as a professor and stay current in her line of expertise. Plaintiff then offers a number of other personal reasons which reinstatement to Southeastern would satisfy. Plaintiff also notes that all of the former members of administration with whom she had problems while teaching at Southeastern have now left and that she feels positive the new administration will support her role as an associate professor.

In response, Defendants offer testimony from Dr. Randy Prus, who is currently the Chair of Southeastern’s Department of English, Humanities, and Languages, the Department to which Plaintiff wishes to be reinstated. Dr. Prus argues that Plaintiff should

not be reinstated, as neither her tenure packet nor her teaching style merit appointment as an associate professor or promotion to tenure. Indeed, Dr. Prus voted against granting her tenure during the 2009-10 process. Defendants point to Dr. Prus's testimony at trial where he noted that he did not believe Plaintiff's return to Southeastern would be a positive thing, for the university or the students. Defendants also note that Plaintiff's work since leaving Southeastern demonstrates that her work performance is insufficient to merit reinstatement.

To determine whether reinstatement is appropriate, the courts must conduct a fact-based assessment of feasibility. Greenbaum v. Svenska Handelsbanken, NY, 979 F. Supp. 979, 986 (S.D.N.Y. 1997). Further, "reinstatement may not be an appropriate remedy where hostility or animosity between the parties, as a practical matter, makes a productive and amicable working situation [im]possible." Thornton v. Kaplan, 961 F.Supp. 1433, 1437 (D. Colo. 1966). After considering the evidence offered by the parties, the Court finds that reinstatement is simply not feasible in this case. As has been the case throughout this litigation, there is clear evidence of ongoing hostility between the parties apparent in the briefs and the evidence. Whether as a result of counsel or the parties, there are repeated unnecessary attacks on individuals and their character or credibility. Neither side is blameless in this matter. However, the Court finds that the repeated occurrences offer at least some evidence that reinstating Plaintiff to Southeastern would only create an ongoing environment of hostility. Such an environment would be patently unfair to the students at that school. Next, Defendants have offered substantial competent evidence demonstrating that they are convinced that Plaintiff's teaching abilities and academic pursuits do not rise to the level which would warrant a tenured professorship at Southeastern. According to

Defendants, Plaintiff does not appear to have published anything in the last six years and her work at Collin College ended based on that university's determination that she was not a good teacher. Dr. Prus noted during his trial testimony that Plaintiff's lack of scholarly activity was one of the reasons he voted against granting her tenure in the 2009-10 process. Placing Plaintiff back into an environment where she is considered unworthy would lead to renewed litigation between the parties and again, that result is unacceptable.

Other than her own testimony, Plaintiff's only evidence in favor of reinstatement was the testimony of Dr. Meg Cotter-Lynch; however, Dr. Cotter-Lynch was not privy to Plaintiff's tenure application packet and has admittedly never seen her teach in class. Thus, her testimony in favor of granting Plaintiff reinstatement and tenure must be measured against these facts.

Accordingly, for the reasons set forth herein, Plaintiff Dr. Rachel Tudor's Motion for Reinstatement (Dkt. No. 268) is DENIED. Plaintiff shall file any request for front pay within 15 days of the date of this Order.

IT IS SO ORDERED this 29th day of January, 2018.


ROBIN J. CAUTHRON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-15-324-C
)	
SOUTHEASTERN OKLAHOMA)	
STATE UNIVERSITY and)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA,)	
)	
Defendants.)	

ORDER

Plaintiff seeks reconsideration of the Court’s Order denying her request for reinstatement. Every issue raised by Plaintiff’s Motion was considered and rejected by the Court in its Order denying her request for reinstatement. Accordingly, her request will be denied.

Plaintiff also seeks additional time to address the issue of front pay. Plaintiff requests an additional 30 days from any Order resolving her Motion to Reconsider. Plaintiff will be granted additional time, but not 30 days.

Plaintiff’s Motion for Reconsideration (Dkt. No. 276) is DENIED. Plaintiff’s Motion to Extend Briefing Deadline (Dkt. No. 277) is GRANTED in part. Plaintiff shall file any request for front pay within 15 days of the date of this Order.

IT IS SO ORDERED this 12th day of February, 2018.



 ROBIN J. CAUTHRON
 United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR,)
)
 Plaintiff,)
)
 v.) Case No. CIV-15-324-C
)
 SOUTHEASTERN OKLAHOMA)
 STATE UNIVERSITY and)
 THE REGIONAL UNIVERSITY)
 SYSTEM OF OKLAHOMA,)
)
 Defendants.)

MEMORANDUM OPINION AND ORDER

Plaintiff brought the present action asserting that Defendants violated Title VII during the course of her employment as an associate professor at Southeastern Oklahoma State University (“Southeastern”). The matter was tried to a jury, which found in favor of Plaintiff. Plaintiff filed a post-trial motion requesting reinstatement. The Court denied that request, finding that the relationship between the parties was so fractured as to make reinstatement infeasible. Plaintiff then filed a motion to reconsider, re-urging many of the same arguments raised in her original motion. The Court denied that request as well. Plaintiff has now filed yet another motion requesting reconsideration of the Court’s denial of her request for reinstatement. Plaintiff has also filed several motions to supplement her request. Finally, Plaintiff requests in the event reinstatement is denied that she be awarded front pay.

Defendants object to each of Plaintiff's requests and argue that none of the evidence presented by Plaintiff provides a basis to alter the Court's previous determination that reinstatement is infeasible and that Plaintiff's request for back pay is extreme.

The primary basis for Plaintiff's latest request for reconsideration of the Court's denial of reinstatement is that she has been invited to speak at Southeastern. Plaintiff argues this clearly demonstrates that the relationship between her and the university is not as fractured as found by the Court. Plaintiff's argument lacks any merit. As Defendants note, the evidence makes clear that the invitation to speak did not come from the university, but from an independent entity which was using Southeastern's facilities to present its seminar. Nothing about that event offers any evidence about the relationship between Plaintiff and Southeastern. Plaintiff again cites an affidavit from an employee at Southeastern and reiterates her same arguments about the feasibility of reinstatement. Each of these arguments, and the testimony of the witness, has been thoroughly considered and rejected by the Court on numerous occasions. Plaintiff's request for reinstatement is denied.

Plaintiff argues, in the event she is denied reinstatement, that she be awarded front pay in the sum of \$2,032,789.51. While the Court finds that some award of front pay is appropriate, Plaintiff's request stretches the bounds of reasonableness beyond recognition. Plaintiff's request is premised on unrealistic and unsupportable assertions about potential future performance at Southeastern had she remained there. Indeed, much of the evidence Plaintiff relies upon to increase the amount of "lost wages" is directly contrary to the actual

evidence of her previous work while employed at Southeastern. Regardless, Plaintiff's request for a multi-million dollar award of front pay fails for a more fundamental reason.

The Tenth Circuit has set forth the factors to be considered in determining when and how much front pay should be awarded. Whittington v. Nordam Grp. Inc., 429 F.3d 986, 1002, 1001 (10th Cir. 2005). These factors are (1) work life expectancy, (2) salary and benefits at the time of termination, (3) any potential increase in salary through regular promotions and cost of living adjustment, (4) the reasonable availability of other work opportunities, (5) the period within which the plaintiff may become re-employed with reasonable efforts, and (6) methods to discount any award to net present value. In this instance, the Court finds that items (4) and (5) dictate the proper determination of the amount of front pay to be awarded to Plaintiff. In her Motion, Plaintiff argues that she should be awarded front pay until age 75, essentially asserting that because of Southeastern's actions she will be unemployable for the remainder of her work life. The evidence before the Court simply does not support this assertion. Following her separation from Southeastern, Plaintiff gained employment teaching at a different college. Her pay at that college exceeded what she had made at Southeastern. Plaintiff's employment at Collin College ended based upon that entity's determination that her teaching skills were inadequate. There is no suggestion or any evidence from which the Court could determine that the discrimination at Southeastern, as found by the jury, ultimately led to or even played a role in Collin College's determination to terminate Plaintiff. Rather, that entity determined, based on her performance there, that her teaching did not meet its requirements.

The Tenth Circuit has made clear that front pay must be calculated by “tak[ing] into account any amount that the plaintiff could earn using reasonable efforts.” Carter v. Sedgwick Cnty., Kan., 929 F.2d 1501, 1505 (10th Cir. 1991). Because Plaintiff gained similar employment at Collin County, any front pay to which Plaintiff is entitled must end with the beginning of her employment there. Plaintiff argues that the Defendants’ reliance upon the Collin College employment is after-acquired evidence and they should be prohibited from relying upon it because Defendants stipulated they would not rely on after-acquired evidence. Plaintiff misunderstands the doctrine of after-acquired evidence. As Defendants explain in their brief, after-acquired evidence is a doctrine that provides an employer with a basis to terminate an employee based on information learned after the termination. That is simply not the case with the Collin College employment. It is not after-acquired evidence, it is evidence of Plaintiff’s mitigation of damages and evidence related to her employability following her separation from Southeastern. Nothing in Defendants’ agreement not to rely on after-acquired evidence prohibits the Court from considering that information.

Plaintiff ended her employment with Southeastern in May of 2011. She then began employment with Collin College in August of 2012. Thus, she is entitled to front pay for the 14 months between those jobs. Plaintiff has provided a pay analysis in her Motion which provides information regarding her base salary, retirement benefits, and any additional income she may have received for teaching. (See Dkt. No. 279, Ex. 8.) Defendants do not object to the specifics of this document, not have they provided any evidence as to Plaintiff’s pay during her tenure at Southeastern. Accordingly, the Court

will use the pay information provided in Scenario 4 as that which most closely resembles Plaintiff's typical teaching while at Southeastern. That document sets Plaintiff's compensation at \$51,463.52 per year. Dividing that by 12 renders a monthly salary of \$4,288.63. Multiplying that by the 14 months between the end of her employment at Southeastern and the beginning of her employment at Collin College results in compensation of \$60,040.77. The Court finds this amount adequately represents the amount of front pay to which Plaintiff is entitled and judgment will be entered in her favor in that amount.

For the reasons set forth more fully herein, Plaintiff Dr. Rachel Tudor's Motion in Support of Reconsideration of Reinstatement or, Alternatively, for Front Pay (Dkt. No. 279) is GRANTED in part and DENIED in part. Plaintiff's request for reinstatement is DENIED; Plaintiff's request for front pay is GRANTED in the amount of \$60,040.77. Plaintiff's Motions to Supplement (Dkt. Nos. 280, 281, and 282) are STRICKEN as moot. The Court considered the evidence presented in those Motions but found it does not warrant any alteration of her request for reinstatement. A separate Judgment will issue.

IT IS SO ORDERED this 13th day of April, 2018.


ROBIN J. CAUTHRON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-15-324-C
)	
SOUTHEASTERN OKLAHOMA)	
STATE UNIVERSITY and)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Plaintiff brought the present action asserting that Defendants violated Title VII during the course of her employment as an associate professor at Southeastern Oklahoma State University (“Southeastern”). The matter was tried to a jury, which found in favor of Plaintiff. Plaintiff filed a post-trial motion requesting reinstatement. The Court denied that request, finding that the relationship between the parties was so fractured as to make reinstatement infeasible. Plaintiff then requested the Court to award front pay damages. The Court agreed an award of front pay was appropriate and calculated an appropriate amount. The Court then directed the parties to address any alteration that should be made to the jury’s determination of damages prior to entry of judgment. In response to that Order, Plaintiff has filed a Motion to Reconsider the calculation of front pay. Defendants have filed a Motion requesting the Court to apply the statutory cap on damages, found at 42 U.S.C. § 1981a, to the jury’s verdict. With these filings, the time has come to finalize the matters in this case and enter judgment.

Initially, the Court will address the issues raised by Plaintiff in her request for reconsideration. Plaintiff argues the Court improperly calculated front pay by awarding lost wages for the period between the end of her employment with Defendant and the start of her employment with Collin College. Perhaps the Court's language was not as clear as it could have been. But the Court is aware that front pay is an award for future damages, not compensation for the period between the end of employment and the trial. However, as the Court noted in its Order, the 4th and 5th factors outlined by the Tenth Circuit in Whittington v. Nordam Group, Inc., 429 F.3d 986, 1002, 1001 (10th Cir. 2005), are determinative in this case. Those factors direct the Court to consider the reasonable availability of other work opportunities and the period within which the Plaintiff may become re-employed with reasonable efforts. The Court's determination was that Plaintiff's subsequent employment at Collin College provided a clear factual basis to answer those two questions. Thus, a 14-month time period of front pay represented a reasonable period to make Plaintiff whole. See Carter v. Sedgewick County, Kan., 929 F.2d 1501, 1505 (10th Cir. 1991). Contrary to Plaintiff's current arguments, the Court relied on her subsequent employment at Collin College solely to provide a bright line point at which the Court finds the effects of Defendant's discriminatory acts ended. Because those effects ended at that point, any future economic loss was the result of something other than Defendants' wrongful conduct. For these reasons, Plaintiff's arguments regarding the purported inconsistency of the use of the Collin College information and the decision that Defendants could not rely on after-acquired evidence is without merit.

Plaintiff also argues that the Court miscalculated the amount of damages that should have been awarded. According to Plaintiff, the amount listed on Dkt. No. 279, Ex. 8 reflected only a partial year salary. However, Plaintiff's affidavit stated: "During the last year of my employment at Southeastern, I was paid approximately \$51,279 in salary." (Dkt. No. 279, Ex. 3, ¶ 6.) The Court elected to use the slightly higher salary listed on Ex. 8 given Plaintiff's use of the term "approximately." Thus, the evidence presented to the Court does not support Plaintiff's current argument.

Finally, Plaintiff misstates the Court's determination regarding Plaintiff's qualification to teach. The Court found that reinstating Plaintiff at Southeastern was not feasible because of ongoing hostility between the parties. One example of that ongoing hostility was evidenced by Defendants' argument that Plaintiff was not qualified to be a tenured professor. The Court's decision on that issue was limited to recognizing that placing Plaintiff back into that environment would likely foster future conflict between the parties and that fact supported the Court's determination that reinstatement was not feasible. The Court's rulings are not irreconcilable.

For the reasons outlined herein, Plaintiff's request for reconsideration will be denied.

Defendants request the jury award be capped at \$300,000 pursuant to 42 U.S.C. § 1981a. Plaintiff raises several arguments, none of which merit much discussion. First, it is clear from not only Defendants' filings in this matter but the statements of Plaintiff's counsel that there was no question about Defendants' intent to raise the statutory cap. Thus, Plaintiff's arguments of waiver are without merit. As for Plaintiff's argument related to

the general nature of the verdict form, the Court finds that position disingenuous. Plaintiff also agreed to the form of verdict as it was submitted to the jury. Thus, those grounds raised by Plaintiff to not apply the cap are rejected by the Court.

The parties agree that the cap applies to compensatory damages but not to back pay. Defendants argue the jury could not have intended its verdict to include back pay damages because there was no evidence to support such an award. Alternatively, Defendants argue that in the event some back pay is awarded it must be limited to the period between the end of Plaintiff's employment with Defendant and the start of her employment at Collin College. Defendants assert that if the Court determines a back pay award is warranted, the amount is properly reflected by the Court's previous calculation of wages lost during this period.

Plaintiff argues any application of the cap will result in a Seventh Amendment violation because the jury rendered a general verdict. On this point, Plaintiff is mistaken. Statutory damage caps do not violate the Seventh Amendment as they are not a reexamination of the verdict but implementation of legislative policy about the amount of damages that should be recoverable. Estate of Sisk v. Manzanares, 270 F.Supp. 2d 1265, 1278 (D. Kan. 2003) (gathering cases at note 45). Here, the evidence before the jury related to damages that are not subject to the statutory cap was very limited. At most, the jury could have awarded some measure of back pay damages. The remaining evidence presented on the issue of damages sought recovery for items subject to the cap. While the Court is not persuaded that the jury had sufficient evidence from which to award back pay damages, that doubt is not sufficient to set aside the verdict on that issue. Accordingly, the

Court will award Plaintiff \$60,040.77 in back pay, apply the cap to the remainder of the verdict, resulting in an award of \$360,040.77. Defendants' arguments for further reduction are rejected, as they lack sufficient evidentiary or legal support.

For the reasons set forth more fully herein, Plaintiff Dr. Rachel Tudor's Motion Seeking Reconsideration of Front Pay (Dkt. No. 288) is DENIED. Defendants' request for application of the 42 U.S.C. § 1981a cap is granted. Plaintiff is awarded \$360,040.77 in back pay and compensatory damages and \$60,040.77 in front pay. A separate Judgment will issue.

IT IS SO ORDERED this 6th day of June, 2018.


ROBIN J. CAUTHRON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

DR. RACHEL TUDOR,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-15-324-C
)	
SOUTHEASTERN OKLAHOMA)	
STATE UNIVERSITY and)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA,)	
)	
Defendants.)	

JUDGMENT

Upon consideration of the Jury’s Verdict, and the Court’s subsequent Orders,

IT IS ORDERED, ADJUDGED, AND DECREED that Judgment be entered in favor of Plaintiff and against Defendants in the amount of \$360,040.77 in back pay and compensatory damages, and \$60,040.77 in front pay damages.

DATED this 6th day of June, 2018.



 ROBIN J. CAUTHRON
 United States District Judge