

United States Court of Appeals For the First Circuit

No. 25-1210

DANTE A. DIFRONZO,

Plaintiff, Appellee,

v.

CITY OF SOMERVILLE; JOSEPH CURTATONE, Mayor;
DAVID FALLON, Chief of Police; BERNARD COTTER, Police Captain,

Defendants, Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. F. Dennis Saylor, IV, U.S. District Judge]

Before

Gelpí, Rikelman, and Aframe,
Circuit Judges.

Leonard H. Kesten, with whom Alexander Kesten, Michael V. Glennon, and Brody, Hardoon, Perkins & Kesten, LLP, were on brief, for appellants.

Peter A. Brown, with whom Brown Legal PLLC, Timothy M. Burke, Jared S. Burke, and Law Offices of Timothy M. Burke, were on brief, for appellee.

September 21, 2026

AFRAME, Circuit Judge. This appeal primarily involves the question of when a party may conform its pleadings to the trial evidence. The Federal Rules of Civil Procedure afford parties the right to know in advance the claims and defenses asserted against them and the grounds on which those claims and defenses rest. Thus, absent consent, a party may not try unpleaded issues without amending the complaint. That principle provides the basis for partially reversing the judgment in this employment dispute.

Plaintiff Dante DiFronzo, a City of Somerville, Massachusetts, police officer, was terminated from his public employment for alleged on-duty misconduct. DiFronzo fought the termination on two fronts. He sued Somerville Mayor Joseph Curtatone, Somerville Police Chief David Fallon, and Somerville Police Captain Bernard Cotter (together, the "defendants") claiming, inter alia, that they terminated his employment in retaliation for his exercise of constitutional rights, 42 U.S.C. § 1983, and interfered with his advantageous relations with the City of Somerville in violation of Massachusetts law. He also challenged the termination via an arbitration proceeding commenced under the City's collective bargaining agreement with the police union of which DiFronzo was a member.

While DiFronzo's case proceeded in federal court, the arbitrator ordered DiFronzo reinstated to his position, determining that there was no just cause for his termination.

Mayor Curtatone responded to that order by placing DiFronzo on paid administrative leave. DiFronzo never sought to amend his complaint to allege liability based on Curtatone's decision to place him on paid leave but nevertheless was permitted to present evidence at trial about the paid-leave decision as a basis for damages. Although the defendants consistently objected that the paid-leave issue could not be a basis for damages because it was not alleged in the complaint, the district court permitted the jury to consider the paid-leave decision for that purpose. That was error. The motive for the paid-leave decision was an unpleaded issue; absent an amended complaint or the defendants' consent, the issue should not have been tried. Accordingly, we reverse the judgment insofar as it awarded DiFronzo damages based on Curtatone's decision to place him on paid leave.

I. BACKGROUND

The dispute between DiFronzo and the defendants commenced over a decade ago. In the winter of 2015, DiFronzo worked as a Somerville police detective and was assigned to investigate a burglary in which an individual named Henry Alvarez was a suspect. DiFronzo needed to locate Alvarez and used an informant named Jonathan Machado to help him do so.

Machado was independently trying to locate Alvarez because Machado believed that Alvarez had stolen marijuana from him. Machado told DiFronzo that he intended to harm Alvarez if he

found him. Nevertheless, DiFronzo continued to solicit Machado's help and provided Machado with information about Alvarez's location. Machado eventually found Alvarez and attacked him with a machete. DiFronzo was also responsible for investigating the attack on Alvarez but did not immediately inform his police colleagues about his contacts with Machado, including Machado's desire to locate and harm Alvarez. DiFronzo arrested Machado for assaulting Alvarez about three weeks after the incident and still did not disclose his involvement with Machado.

Eventually, DiFronzo obtained search warrants for Machado's telephone as part of the investigation into the attack on Alvarez. A Massachusetts state trooper conducted the search. In reviewing the phone data, the trooper saw text messages between Machado and DiFronzo suggesting that DiFronzo had helped Machado find Alvarez, even after Machado disclosed his intent to harm Alvarez. The trooper reported this information to the Middlesex County District Attorney's Office and the Somerville Police Department.

After this disclosure, on September 29, 2016, then-Somerville Police Chief David Fallon placed DiFronzo on administrative leave while the District Attorney's Office investigated DiFronzo's conduct. On March 23, 2017, the District Attorney's Office provided the Somerville Police Department with a copy of a so-called Brady letter about DiFronzo, with a

coversheet indicating that the District Attorney's Office would provide the letter to defense lawyers in any case in which DiFronzo would testify.¹ The letter described DiFronzo's misconduct in relation to the Alvarez assault, including that DiFronzo had made material omissions in relevant police reports.

Just over two months later, on May 31, 2017, Chief Fallon further penalized DiFronzo by suspending him for five days without pay because he concealed his role in the attack on Alvarez. Fallon notified DiFronzo that he was also recommending to Mayor Curtatone that DiFronzo's employment be terminated. In August 2017, while the termination recommendation was pending, Chief Fallon assigned Captain Bernard Cotter to formally investigate DiFronzo's conduct.

On October 26, 2017, while Captain Cotter's investigation proceeded, DiFronzo wrote to Mayor Curtatone complaining about certain practices at the Somerville Police Department that he thought "should be brought to the attention of an outside public body." For example, DiFronzo alleged that the Police Department had not discharged other employees who had engaged in misconduct that DiFronzo believed was more serious than the allegations against him. DiFronzo specified that one of these

¹ The letter is named after the United States Supreme Court's seminal opinion in Brady v. Maryland, 373 U.S. 83 (1963), which imposed a due process obligation on the government to disclose favorable information to the defense in criminal cases.

officers was spared discipline because he was "personally close" to Curtatone.

A month later, on November 27, 2017, DiFronzo wrote again to Mayor Curtatone alleging that the City was retaliating against him for his earlier letter by keeping him "in limbo" on mandatory leave while Chief Fallon's termination recommendation remained pending. In his second letter, DiFronzo stated that he was compelled to report the alleged "violations of law" within the Police Department to the Massachusetts Attorney General.

In December 2017, Captain Cotter completed his investigation, which DiFronzo labeled a "sham," and concluded that DiFronzo had violated several Somerville Police Department rules and regulations. Chief Fallon adopted Cotter's findings and issued amended administrative charges against DiFronzo. Mayor Curtatone then hired a local attorney to hold hearings to examine the misconduct allegations against DiFronzo. Those hearings lasted from February to April 2018, and they concluded with the attorney recommending DiFronzo's discharge. On May 8, 2018, Curtatone ordered DiFronzo's termination from the Police Department. Soon after, Curtatone and Fallon were quoted in a Boston Globe article about DiFronzo's firing as accusing him of having committed a crime.

Following the termination, DiFronzo appealed the decision through neutral arbitration as provided for in the

collective bargaining agreement between the City and the police union. The arbitration began in October 2018 and lasted until June 2021.

While the arbitration was pending, on March 26, 2021, DiFronzo filed a complaint in Middlesex Superior Court alleging, inter alia, claims against the defendants for terminating his employment (1) in retaliation for his exercise of his First Amendment rights under 42 U.S.C. § 1983, and (2) for tortious interference with contractual and advantageous relations in violation of Massachusetts law. The complaint noted the existence of the pending arbitration proceedings but made no further allegations about it. The defendants removed the case to federal court.

On June 4, 2021, about three months after DiFronzo initiated his court case and over three years since his termination, the arbitrator released his decision. The arbitrator ordered DiFronzo (1) reinstated to his position as a Somerville Police Department detective but (2) denied him back pay for the three-year period since his termination. In other words, the arbitrator found that while there was no just cause for DiFronzo's termination, there was a sufficient basis to have denied DiFronzo his pay from May 2018 through June 2021. The City challenged the arbitration decision in state court, and that case apparently is ongoing.

Following the arbitration decision, the Middlesex District Attorney's Office issued a second Brady letter stating that, "[b]arring extraordinary circumstances," it would not call DiFronzo to testify in any future case. After this letter issued, Mayor Curtatone instructed the new police chief (Chief Fallon had retired at this point) to place DiFronzo on paid administrative leave until further notice. DiFronzo received notice of that decision on July 1, 2021. Curtatone left office in January 2022. The new mayor, Katjana Ballantyne, kept DiFronzo on paid leave. DiFronzo's placement on paid leave denied him the opportunity to earn overtime and other additional compensation opportunities.

In January 2023, the defendants moved for summary judgment in the federal court case. In their motion, the defendants noted that DiFronzo never amended his complaint "to include any claims related to the City's decision to place [him] on paid . . . leave in July 2021" following the arbitration decision that ordered his reinstatement. Thus, the defendants asserted it was not their "responsibility to recast [DiFronzo's] claims as alleged" and that they would instead address them "as defined by the four corners of the complaint." The district court agreed with the defendants on this point, stating that it would "not consider evidence concerning events that occurred after the filing of the complaint, as plaintiff has not sought leave to supplement or amend the complaint." Nevertheless, the court denied

the defendants' summary judgment motion on the First Amendment retaliation claim and the tortious interference claims because there were disputed facts related to the motives for the termination decision.²

Prior to trial, the parties filed a joint memorandum. In relevant part, DiFronzo's portion of the memorandum described the facts surrounding the decision to place him on paid leave after the arbitration decision, which he characterized in a later filing as "highlight[ing]" the City's "retaliatory animus" against him. The defendants also recited their version of the City's actions in response to the arbitration decision but noted that this information was provided "[f]or purposes of background" because the "issues before the court . . . based on what was pleaded" were limited to the termination decision. The defendants further noted that the trial should be limited to the decision to terminate DiFronzo's employment because "other issues that postdate that decision were . . . not encompassed by the pleadings."

Much of the trial focused on the defendants' motivations for DiFronzo's termination. Mayor Curtatone's decision to place DiFronzo on paid leave post-arbitration first arose during Curtatone's direct examination in the defense case:

² The district court granted the defendants summary judgment on other claims and still others were dismissed at trial. We discuss only the First Amendment and tortious interference claims because those are the only claims that reached the jury.

Defense counsel: Do you recall that after the arbitrator's decision, the District Attorney's [Office] sent a second letter to the department, a Brady letter?

Curtatone: I do recall that. I do remember that.

Defense counsel: Do you recall they said they were never going to call [DiFronzo] to testify?

Curtatone: I do recall it clearly, yes.

Defense counsel: And as a result of the second Brady letter, did you then tell [the] Chief . . . to put [DiFronzo] on []paid leave . . . ?

Curtatone: Paid leave, yes.

On cross-examination, Curtatone was briefly questioned again on this topic:

Plaintiff's counsel: [D]o you remember reviewing the arbitrator's decision that was issued with regard to the discipline imposed upon Detective DiFronzo?

Curtatone: Yes.

Plaintiff's counsel: And when the decision came out, were you still mayor?

Curtatone: Yes.

Plaintiff's counsel: And were you involved in the decision to not allow Detective DiFronzo to

return to work as ordered
by the arbitrator?

Curtatone: Yes.

Plaintiff's counsel: Again, [DiFronzo] had complained about your behavior, not only are you making the decision to terminate him, now subsequent to that, you're making the decision to not allow him to return to work, correct?

Curtatone: Correct.

Whether the jury could consider Mayor Curtatone's decision to place DiFronzo on paid leave as a basis for awarding damages came to a head during the charge conference. In a discussion about the damages instruction, the defendants noted that DiFronzo "never amended" to say that the decision to place him on paid leave after the arbitration decision was unlawful, and they therefore argued that the jury could not award damages for that decision because "it's a different case."

DiFronzo disagreed, claiming that the paid-leave issue was "part and parcel of what is before this . . . jury." DiFronzo amplified Mayor Curtatone's testimony that "he was involved in the decision not to allow Detective DiFronzo to be reinstated" and that Curtatone is "a defendant in this case." The defendants replied, "all you have to do is look at the

complaint [T]his is why you need to amend if you want to make a new claim."

Ultimately, the district court permitted the jury to award damages based on Mayor Curtatone's post-arbitration decision to place DiFronzo on paid leave. The court, however, asked the jury to specify any damages it was awarding for Curtatone's paid-leave decision so that if "an appellate court concludes that it was wrong to have anything after July 2021[,] [the date of the paid-leave decision], we will have a record of what the jury's verdict was."

The jury returned a verdict that was largely in DiFronzo's favor. It found the defendants liable for First Amendment retaliation and tortious interference with advantageous relations claims. For conduct occurring before July 2021, the jury awarded no lost compensation damages and \$300,000 in emotional distress damages. For conduct occurring after the paid-leave decision, it also awarded \$200,000 in lost compensation damages and \$300,000 in emotional distress damages against Mayor Curtatone.

The defendants subsequently moved for a new trial, renewing the contention that it was improper to award damages based on Mayor Curtatone's paid-leave decision because DiFronzo "fail[ed] to amend his pleadings to include allegations" about

post-arbitration events. The court denied the motion and rejected the argument:

It is true, as a general matter, that pleadings must be amended in order to assert new claims or defenses. However, new developments, or new facts relevant to claims alleged in an original complaint, are routinely adduced through discovery and trial testimony. A common example is the ongoing occurrence of damages (such as medical expenses) arising from a personal injury.

Here, plaintiff did not amend the pleadings, instead electing to present post-2021 evidence to the jury as part of an ongoing harm arising from the claim he initially pleaded, rather than as an independent claim. And at trial, defendant Curtatone's testimony on cross-examination provided a link between his 2021 decision not to reinstate plaintiff and plaintiff's prior, protected conduct. . . . A reasonable jury could therefore award damages for harm arising in and after 2021 as a result of defendant Curtatone's conduct.

II. DISCUSSION

On appeal, the defendants renew the argument that the district court incorrectly allowed the jury to award damages based on Mayor Curtatone's decision to place DiFronzo on paid leave in July 2021. Before addressing that issue, we consider the defendants' additional argument that the district court should have excluded from evidence the arbitration decision ordering DiFronzo's reinstatement.

A. The Arbitration Decision

We review a preserved challenge to an evidentiary ruling for an abuse of discretion. Lech v. von Goeler, 92 F.4th 56, 63 (1st Cir. 2024). An abuse of discretion occurs "when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed, but the court makes a serious mistake in weighing them." Id. (quoting Ruiz-Troche v. Pepsi Cola of P.R. Bottling Co., 161 F.3d 77, 83 (1st Cir. 1998)). An error of law is an abuse of discretion. Id. at 64.

Prior to trial, the defendants sought to exclude evidence about the arbitration decision. They argued that such evidence was unduly prejudicial because the federal case was about DiFronzo's termination, which occurred before the arbitration decision issued.

The district court partially disagreed. It ruled that understanding the arbitration decision was necessary context for the jury to evaluate the effect of the termination decision on DiFronzo's potential damages. Because the arbitrator ordered DiFronzo reinstated, that order ended the period for which DiFronzo went unpaid due to his termination. Nevertheless, because the arbitrator declined to order back pay, the termination decision still resulted in DiFronzo losing pay for the three-year period between the termination decision and the reinstatement order.

Thus, the court concluded that "to make sense of the damages claim," the jury needed to know "that the arbitrator ordered [DiFronzo] reinstated with pay but . . . that he not receive back pay." The court held, however, that it would preclude the jury from hearing the arbitrator's reasoning for his decision because such evidence would be unduly prejudicial.

On appeal, the defendants argue against the limited admission of the arbitration decision on two grounds. First, they contend that the district court misapplied the Supreme Court's decision in Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974), and second, that the court abused its discretion in admitting the evidence under Fed. R. Evid. 403. We reject both arguments.³

In Gardner-Denver, the Supreme Court held that a plaintiff who seeks to vindicate his rights under a nondiscrimination clause of a collective-bargaining agreement may also pursue a claim under a federal anti-discrimination statute. Id. at 49. In reaching that conclusion, the Court provided guidance on when a court may substantively use an arbitrator's decision in deciding the merits of a subsequent statutory claim. See id. at 60 & n.21. In this regard, the Court gave guideposts to consider in deciding the "weight to be accorded an arbitral"

³ DiFronzo contends that the defendants did not adequately preserve the Gardner-Denver argument in the district court. We bypass the preservation issue because even if we assume the argument was preserved, it fails.

ruling. Id. at 60 n.21. These include: (1) whether the provisions of the collective bargaining agreement "conform substantially with Title VII"; (2) "the degree of procedural fairness in the arbitral forum"; (3) the "adequacy of the record with respect to the issue of discrimination"; and (4) "the special competence of particular arbitrators." Id. The Court noted that where an arbitral decision "gives full consideration to an employee's Title VII rights, a court may properly accord it great weight," especially when the issue presented "is solely one of fact." Id.

The defendants contend that the district court abused its discretion because it admitted the arbitration decision without analyzing the Gardner-Denver factors. This argument misunderstands the purpose of these factors. They guide a district court's evaluation of arbitration decisions as substantive evidence of discrimination when adjudicating a similar case under a federal anti-discrimination law. Here, the court did not admit the arbitration decision as substantive evidence of retaliation. Rather, the court admitted only the arbitrator's bottom-line order of reinstatement without back pay to provide context for the jury in calculating damages for the termination decision. The court, however, prevented the jury from hearing the arbitrator's reasoning precisely because it did not want the jury's substantive judgment to be influenced by that reasoning. Because the Gardner-Denver factors are directed toward the "weight" that

should be afforded an arbitration decision in deciding the merits of a discrimination claim, those factors are inapposite here given the limited, non-substantive purpose for which the court admitted the arbitration decision. See id.

For similar reasons, the district court acted well within its discretion by admitting the arbitration decision for a limited purpose under Fed. R. Evid. 403. That Rule requires exclusion of evidence when the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. United States v. Villa-Guillen, 102 F.4th 508, 518 (1st Cir. 2024). "A district court . . . is afforded especially wide latitude in making Rule 403 determinations, which are disturbed only rarely -- and in extraordinarily compelling circumstances." United States v. Armenteros-Chervoni, 133 F.4th 8, 28 (1st Cir. 2025) (citation modified).

Courts have sometimes excluded arbitral awards on Rule 403 grounds when a party seeks to introduce the arbitrator's decision as substantive evidence in support of the claim before the court. See, e.g., Jackson v. Bunge Corp., 40 F.3d 239, 246 (7th Cir. 1994). Indeed, the District of Massachusetts did so recently in Hayes v. Town of Dalton because "[t]he arbitrator's decision address[ed] questions that [were] at the core of this case and there [was therefore] a risk that a jury would afford the arbitrator's decision undue weight." No. 3:21-cv-30055, 2025 WL

918684, at *6 (D. Mass. Mar. 25, 2025). The defendants argue that we should apply the Hayes court's reasoning here to find an abuse of discretion.

Again, the defendants ignore the limited purpose for which the district court admitted the arbitration decision in this case. The parties had not agreed on the compensatory damages that would follow from concluding that DiFronzo was unlawfully terminated. Thus, the jury was responsible for determining both liability and, if necessary, damages. The jury would be unable to make a damages calculation without knowing that the arbitrator had ordered DiFronzo reinstated but also had declined to order back pay for the time that he was out of work because of the termination decision. In other words, knowledge of this aspect of the arbitral decision was necessary so the jury would not inadvertently over- or undervalue damages. The court admitted the evidence only for this purpose. And to make that point clear, the court provided the following limiting instruction:

The arbitration . . . and this lawsuit are kind of proceeding on parallel paths. The arbitrator made a decision under the collective bargaining agreement.

You are being asked to make a somewhat different decision or set of decisions [regarding] whether Mr. DiFronzo's constitutional rights were violated or whether the defendants improperly interfered with his employment relationship.

Those are different issues with different standards. The evidence in the two proceedings overlaps quite a bit, but you are to make your own separate independent decision. Your decision could align with the arbitrator or it could be completely different or it could be different in part. It's totally up to you, but you should not assume that the arbitrator got it right, that he had better information or evidence than you had or had better judgment.

This instruction effectively dispels the defendants' concern that admitting the arbitration decision "invited the jury to substitute [the arbitrator's] legal and factual conclusions for their own." We have noted before that a "careful limiting instruction given by the trial court" to the jury "as to the limited purpose for which [evidence] was to be considered" can have a "salutary effect" that alleviates the impact of unfair prejudice. United States v. Smith, 292 F.3d 90, 100-01 (1st Cir. 2002). That is the circumstance here. The jury was told not to use the arbitration decision in deciding the merits of DiFronzo's claims, and we presume that jurors follow instructions.⁴ See

⁴ Despite failing to object contemporaneously to the limiting instruction quoted above at trial, the defendants now attempt to challenge it on appeal. Specifically, they critique the instruction's wording, claiming that it misstates the jury's role by suggesting that the jury should decide whether it agreed with the arbitration decision and that the instruction, taken as a whole, encourages the jury to "align" with the arbitration decision. Even assuming that this challenge is preserved, the claim fails. We review an objection to the form and wording of an instruction for an abuse of discretion. United States v. Gonzalez, 570 F.3d 16, 21 (1st Cir. 2009). The instruction plainly told the jury that it was to make a "separate and independent decision" on

United States v. Freeman, 208 F.3d 332, 344 (1st Cir. 2000). Given the limited purpose for which the arbitration decision was admitted and the clear instruction delineating that purpose, we see no abuse of discretion in allowing the jury to learn the basics of the arbitral decision so that it could understand that decision's relationship to potential damages arising from DiFronzo's termination.⁵

B. The Paid-Leave Decision

We turn now to whether the district court erred in permitting the jury to award damages based on Mayor Curtatone's July 2021 decision to place DiFronzo on paid leave following the arbitration decision ordering his reinstatement. The defendants argue that the paid-leave decision was not part of the case because

the claims before it, even though it learned of the arbitrator's ruling on related claims. We do not see how the district court could have been clearer in explaining that the jury was not to give weight to the arbitration decision in conducting its own evaluation of the evidence.

⁵ On appeal, the defendants identify a hodgepodge of testimony which they argue should have been excluded as inadmissible hearsay. These arguments are unpreserved because the defendants either made no objection at all during the trial or offered only a general objection specifying no grounds. See United States v. Holmquist, 36 F.3d 154, 168 (1st Cir. 1994) (stating that a party does not preserve a claim regarding the admission of evidence by offering only a general objection to the district court). Thus, to the extent any review is available, it would be for plain error. Id. at 168 n.15. The defendants, however, have not addressed any of the plain-error factors and, in any event, their arguments as to each identified piece of testimony are cursory at best. We therefore deem these hearsay claims waived. See United States v. Baxter, 179 F.4th 73, 91 (1st Cir. 2026).

DiFronzo filed his complaint prior to the arbitration decision and never sought to amend the complaint to add allegations that the subsequent paid-leave decision was unlawful. DiFronzo responds that the complaint was sufficient to encapsulate the paid-leave decision, and in any event, he was not required to amend the complaint because the paid-leave decision related to the overall employment dispute addressed in the complaint; the paid-leave decision was explored in discovery; and Curtatone was not prejudiced from having to defend the paid-leave decision at trial.

Resolution of this issue turns on two rules of Federal Civil Procedure, Rules 8 and 15(b).⁶ Rule 8(a) describes the requirements for stating a claim for relief. Rule 15(b) describes when unpleaded issues may be presented at trial.

We begin with Rule 8. In the federal system, a pleading asserting a claim need only provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). And a court construing a complaint should do so "generously, paying more attention to substance than to form." Rodriguez v. Doral Mortg. Corp., 57 F.3d 1168, 1171 (1st Cir.

⁶ The defendants also argue that the district court's decision to permit the jury to award damages for the decision to place DiFronzo on paid leave following the arbitration ruling violated their due process rights. Because we conclude that the defendants prevail on their challenge to this aspect of the jury verdict based on their Rule 15(b) arguments, we do not reach their due process argument.

1995); see also Fed. R. Civ. P. 8(e). Nevertheless, a "fundamental purpose of pleadings under the Federal Rules of Civil Procedure is to afford the opposing party fair notice of the claims asserted against [them] and the grounds on which those claims rest." Rinsky v. Cushman & Wakefield, Inc., 918 F.3d 8, 17 (1st Cir. 2019) (quoting Rodriguez, 57 F.3d at 1171). That includes the facts on which liability is premised. Artuso v. Vertex Pharms., Inc., 637 F.3d 1, 5 (1st Cir. 2011) (stating that a complaint must include "factual content" showing "that the defendant is liable for the misconduct alleged" (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009))).

DiFronzo does not contend that his complaint specifically alleges that Mayor Curtatone unlawfully placed him on paid leave after the arbitration decision. Of course, he does not do so because there was no arbitration decision until several months after DiFronzo filed his complaint.

Nevertheless, DiFronzo suggests that his complaint contained sufficient allegations to permit him to proceed to trial on the paid-leave decision as a basis for liability because the complaint "expressly alleged . . . that he was seeking damages for the ongoing harm arising from [the defendants'] retaliatory conduct." More specifically, DiFronzo relies on the following complaint allegation as providing notice that the paid-leave decision was a basis for liability: "The damage done to the

[p]laintiff's reputation by his wrongful termination and media exploitation by the [d]efendants continues to this day." DiFronzo suggests that the "damage done . . . continues to this day" language encapsulates everything that Mayor Curtatone did to him, including placing him on paid leave after the partially favorable arbitration decision.

While we read pleadings generously, see Rodriguez, 57 F.3d at 1171, DiFronzo's suggestion that the "continues to this day" allegation encompasses Mayor Curtatone's post-arbitration conduct takes this solicitude too far. Fairly read, DiFronzo's pleading refers to continuing damages arising from the termination decision and the media coverage of that decision. When DiFronzo filed his pleading, he was still unpaid because of the termination decision and suffered continuing financial harm from that decision. And the alleged ongoing harm to his reputation was caused by statements that Mayor Curtatone made to the press in relation to the termination decision. Thus, the complaint's reference to damages "continu[ing] to this day" refers to harm arising from the termination decision, not the separate paid-leave decision. As the district court recognized, both when issuing its summary judgment ruling and when ultimately allowing the jury to impose liability based on the paid-leave decision, there is nothing in the complaint suggesting that DiFronzo was claiming damages from that decision.

DiFronzo says that even if his original complaint did not raise the paid-leave issue, he still could raise the issue at trial without filing a supplemental pleading. Rule 15(d) permits a court to allow a supplemental pleading "setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." Fed. R. Civ. P. 15(d). DiFronzo thus could have covered the pleading gap in this case by obtaining the district court's permission to serve a supplemental pleading setting forth the post-arbitration events, including the paid-leave decision. Choosing not to do so was not necessarily fatal; it meant, however, that for DiFronzo to have properly litigated the paid-leave issue at trial, he had to comply with Rule 15(b). See Heinkel ex rel. Heinkel v. Sch. Bd. of Lee Cnty., 194 F. App'x. 604, 607 n.4 (11th Cir. 2006) (per curiam) (stating that even though the plaintiff failed to adhere to Rule 15(d)'s requirements, an unpleaded issue was properly considered at trial because there was compliance with Rule 15(b)).

While it is preferable for the parties to seek to update the pleadings before trial, sometimes that does not happen and thus it "becomes necessary to adjust the pleadings to reflect the case as it actually was litigated in the courtroom." 6A Wright & Miller's Federal Practice & Procedure § 1491 (3d ed. 2026). "Rule 15(b) is designed to serve that purpose." Id. The Rule provides two "quite different" procedures for conforming the pleadings to

the trial evidence. Id. These procedures together are intended to "avoid the tyranny of formalism"; Rule 15(b) is construed "liberally" to achieve this objective. Id. Nevertheless, the Rule "does not offer a failsafe for any and every faulty pleading." Dan Ryan Builders, Inc. v. Crystal Ridge Dev., Inc., 783 F.3d 976, 983 (4th Cir. 2015).

The first procedure appears in Rule 15(b)(1). It authorizes a court to permit amendment of the pleadings when a party objects that evidence introduced at trial is not within the "issues" raised by the pleadings. See Fed. R. Civ. P. 15(b)(1). This subsection encourages courts to "freely permit" such amendments when doing so will aid consideration of the merits and the objecting party has failed to demonstrate prejudice.⁷ Id. Under Rule 15(b)(1), however, "a court may not sua sponte" amend the pleadings when an objection is made; rather, a formal motion

⁷ Rule 15(b)(1) states in full that

[i]f, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

Fed. R. Civ. P. 15(b)(1).

is required. Moncrief v. Williston Basin Interstate Pipeline Co., 174 F.3d 1150, 1163 n.7 (10th Cir. 1999); see also 3 Moore's Federal Practice § 15.18[2] (3d ed.).⁸ Thus, "when proper objections have been made but no Rule 15(b) motion has been filed, the lack of prejudice to a party does not provide a basis for an amendment." Green Country Food Mkt., Inc. v. Bottling Grp., LLC, 371 F.3d 1275, 1281 (10th Cir. 2004).

Rule 15(b)(2) provides the second procedure. Unlike Rule 15(b)(1), it does not require a party to seek to amend the pleadings. See Fed. R. Civ. P. 15(b)(2). Rather, under Rule 15(b)(2), "[w]hen an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings."⁹ Id.

⁸ That is because parties bear the responsibility for articulating their claims. See Dan Ryan Builders, 783 F.3d at 985 ("It is not the responsibility of a trial court to wade through ambiguously or incorrectly labeled allegations in pursuit of any potential basis for awarding relief.").

⁹ Rule 15(b)(2) provides in full that

[w]hen an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move -- at any time, even after judgment -- to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

Fed. R. Civ. P. 15(b)(2).

The district court appears not to have applied Rule 15(b) when permitting the jury to award damages based on the paid-leave decision because it thought that, while "pleadings must be amended in order to assert new claims or defenses," there is no such requirement for the introduction of unpleaded factual theories of liability. That is incorrect.

Rule 15(b) applies to an unpleaded "issue." Fed. R. Civ. P. 15(b). In legal parlance, an "issue" is a "point in dispute between two or more parties." Issue, Black's Law Dictionary (12th ed. 2024). "In federal civil procedure, an issue is a single, certain, and material point arising out of the allegations and contentions of the parties." Id. (citation modified). Consistent with this understanding, on a point in dispute, the Federal Rules of Civil Procedure distinguish "issue" from "claim" in a way that gives "issue" a more factual hue. Cf. Vicor Corp. v. FII USA Inc., 132 F.4th 1, 6 (1st Cir. 2025) (comparing "issue" with "claim" in the context of a 28 U.S.C. § 1659 action and noting that "issue" means "fundamental factual and legal allegations").

For example, Rule 52(c) provides that

[i]f a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue."

Fed. R. Civ. P. 52(c). Rule 52(c) therefore uses "issue" to describe a court's determination that will resolve a "claim" under "controlling law." See id. In other words, "issue" connotes a subsidiary determination necessary to resolve a claim. Such subsidiary findings often involve factual determinations.

Rule 42 draws a similar distinction. Where there is a "common question of law or fact" in multiple actions, Rule 42(a) permits the court to "join for hearing or trial any or all matters at issue in the actions." Fed. R. Civ. P. 42(a)(1). And Rule 42(b) allows a court in a single action to "order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims." Fed. R. Civ. P. 42(b). We read this language to mean that "issue" is not synonymous with "claim."

Thus, consistent with its plain meaning, "issue" as used in the Federal Rules of Civil Procedure operates below the level of a claim, defense, crossclaim, counterclaim, or third-party claim. It refers to the constituent parts of a claim or defense, including central points of factual dispute.

Caselaw applying Rule 15(b) also supports the view that "issue" applies to central points of factual disagreement. In Jimenez v. Tuna Vessel Granada, 652 F.2d 415 (5th Cir. 1981), the Fifth Circuit reversed a judgment where the plaintiff brought a

claim based on one factual predicate, but the court awarded damages based on a different, unpleaded predicate. The plaintiff in Jimenez sought damages based on an injury to his back by asserting a claim that the boat was unseaworthy. Id. at 415-16. Before trial, the plaintiff asserted a sole factual theory of unseaworthiness, i.e., that the navigator's conduct in operating fishing equipment rocked the boat and caused the injury. Id. at 416, 420. At trial, however, the plaintiff introduced another factual theory for his unseaworthiness claim, i.e., that the condition of certain other equipment and bad weather caused the injury. Id. at 420. The district court awarded damages only on the latter theory regarding equipment condition and bad weather. Id. at 418. The Fifth Circuit reversed the judgment on the grounds that Rule 15(b) was not satisfied because there was neither express nor implied consent to try this additional factual basis for liability. Id. at 420-22. The appellate court held that, even though the plaintiff prevailed on his original unseaworthiness claim, the judgment could not stand because he did so by proving an unpleaded issue for how the boat was unseaworthy. Id.

The Fourth Circuit reached a similar conclusion in Dan Ryan Builders, 783 F.3d 976. In that case, the plaintiff brought a breach of contract claim asserting violations of various provisions of an amended purchase agreement. Id. at 979. The district court rejected the plaintiff's argument that Rule 15(b)

permitted him to obtain damages based on the breach of a different contract. Id. at 982-83. The court of appeals affirmed, concluding that because there was no amendment of the pleadings or consent from the defendant under Rule 15(b), the plaintiff could not offer a contract other than the one he pleaded as the basis for his breach-of-contract claim.¹⁰ Id. at 983-84.

These cases demonstrate that Rule 15(b) applies when a party does not change the legal nature of his claim but offers a different factual predicate for the claim. That is what DiFronzo did here. His complaint alleges claims of retaliation for the exercise of constitutional rights and interference with advantageous relations based only on the termination decision; he therefore had to comply with Rule 15(b) to try his case based on the unpleaded paid-leave decision.

We address now whether DiFronzo complied with Rule 15(b). We first will consider Rule 15(b)(2). As a reminder, that provision provides that an unpleaded issue must be treated in all

¹⁰ Finally, we note that sometimes litigants avail themselves of Rule 15(b) "when it is to the party's advantage for issue-preclusion purposes to have the record show that a particular issue has been determined." 6A Wright & Miller's Federal Practice & Procedure § 1491 (3d ed. 2026) (emphasis added). And, of course, issue preclusion -- unlike claim preclusion -- is about the relitigation of a "fact essential for rendering a judgment." Cruz Berrios v. Gonzalez-Rosario, 630 F.3d 7, 12 (1st Cir. 2010) (quoting Gener-Villar v. Adcom Grp., Inc., 417 F.3d 201, 205 (1st Cir. 2005) (per curiam)).

respects as if raised in the pleadings so long as the parties provide express or implied consent to try the issue. Id.

There was no express consent here. The defendants argued throughout this litigation that DiFronzo could not present the paid-leave decision as a basis for damages because it was not a pleaded issue in the complaint. The defendants made this assertion at the summary judgment stage, when filing their pretrial memorandum, at trial, and in post-trial motions.

That leaves us to consider whether, despite these objections, the defendants still provided implicit consent based on their trial conduct. We have recognized that the "trial of unpleaded issues by implied consent is not lightly to be inferred under Rule 15(b) in light of the notice demands of procedural due process." In re Fustolo, 896 F.3d 76, 86 (1st Cir. 2018) (citation modified). As such, "consent to the trial of an [unpleaded] issue may be implied if, during the trial, a party acquiesces in the introduction of evidence which is relevant only to that issue." Rodriguez, 57 F.3d at 1172 (citation modified). However, "the introduction of evidence directly relevant to a pleaded issue cannot be the basis for a founded claim that the opposing party should have realized that a new issue was infiltrating the case." Id. (citation modified). Accordingly, "the record must indicate that the parties understood that the evidence was aimed at an unpleaded issue." Id. (citation modified).

Here, we recognize that despite the defendants' repeated objections to the jury considering the paid-leave issue as a basis for liability, the defendants were the first party to introduce trial evidence about Mayor Curtatone's decision to place DiFronzo on paid leave after the arbitration decision. On our reading, however, the defendants introduced evidence about the paid-leave decision because it related to their motivation for the earlier termination decision, which was the central trial issue based on the pleadings. The defendants contended that the decision to terminate DiFronzo was non-retaliatory because it was an appropriate response to the Middlesex District Attorney's Office's issuance of a Brady letter, which substantially limited DiFronzo's ability to serve as a government witness in future cases.

Mayor Curtatone testified that he made the decision to place DiFronzo on paid leave in response to the District Attorney's Office sending an even more pointed Brady letter after the arbitrator ordered DiFronzo's reinstatement. Thus, as presented by the defendants, the paid-leave evidence showed consistency in Curtatone's conduct, i.e., he acted against DiFronzo each time the District Attorney's Office issued a Brady letter, which suggests that the Brady letter, not retaliatory animus, motivated the termination decision. In this sense, the paid-leave evidence was relevant for the jury to assess motive as it related to the allegation of unlawful termination. The defendants were not

consenting to consideration of the paid-leave decision as a separate basis for liability by asking Curtatone about his reasons for placing DiFronzo on paid leave. Accordingly, the defendants did not expressly or impliedly consent to trying the paid-leave issue as a basis for damages.

That leaves Rule 15(b)(1), which permits the court to allow amendment of the pleadings when a party makes an objection that evidence is not within the issues raised in the pleadings. As mentioned already, the defendants objected at every stage, arguing that DiFronzo should not be allowed to obtain relief based on a factual predicate that he did not plead. For reasons that are not apparent to us, despite the defendants' repeated objections throughout the case, DiFronzo did not seek to amend his complaint at any point to resolve the pleading gap. As we stated already, a court cannot sua sponte amend the pleadings based on a Rule 15(b)(1) objection. Supra at 25.

DiFronzo's final response is that the defendants' conduct demonstrates that they knew the paid-leave issue was lurking throughout the litigation, and therefore there was no prejudice to Mayor Curtatone by requiring him to answer for his post-arbitration conduct. There are at least two reasons why this argument fails. First, whether there was prejudice is not dispositive. As noted earlier, "when proper objections have been made but no Rule 15(b) motion has been filed, the lack of prejudice

to a party does not provide a basis for an amendment." Green Country Food Mkt., Inc., 371 F.3d at 1281; see also Kenda Corp. v. Pot O'Gold Money Leagues, Inc., 329 F.3d 216, 232 (1st Cir. 2003) ("A finding that the nonmoving party would not be prejudiced by an untimely amendment does not compel a determination that the amendment is appropriate." (citation modified)).

Second, in any event, there was prejudice. The defendants' objections demonstrated that they were trying the case based only on the termination decision. Adopting that strategy, the defendants successfully moved to exclude as irrelevant the testimony of Mayor Ballantyne, the official who replaced Mayor Curtatone a few months after he placed DiFronzo on paid leave. Depending on her testimony, Ballantyne could have provided an intervening, non-retaliatory cause for DiFronzo remaining on paid leave after Curtatone left office, which may have reduced the damages award based on the paid-leave decision. Because DiFronzo did not amend the pleadings to include the paid-leave decision, the defendants did not litigate what happened after Curtatone left office. Had DiFronzo successfully amended the pleadings, the district court likely would have granted the defendants the opportunity to litigate the damages, if any, that arose from the paid-leave decision, which could have included evidence about events after Curtatone's departure. See Fed. R. Civ. P 15(b)(1)

(stating that the court may grant a continuance to enable the objecting party to address the previously-unpleaded issues).

To summarize, the district court correctly observed that "new developments, or new facts relevant to claims alleged in an original complaint, are routinely adduced through discovery and trial testimony." But when those new developments or facts inject an unpleaded "issue" into a trial, as they did here, the party relying on the unpleaded issue must satisfy Rule 15(b). Because the defendants did not consent to the unpleaded issue being tried, and DiFronzo did not seek leave to amend his complaint when the defendants objected, DiFronzo failed to satisfy Rule 15(b)'s requirements for presenting an unpleaded issue to the jury. Therefore, the district court erred in permitting the jury to award damages based on the unpleaded paid-leave decision.

There is one loose end. The defendants contend that because of the "cumulative errors," the district court should have granted a new trial. But, as is now apparent, there was only one error -- allowing the jury to award damages based on the paid-leave decision. The court, however, asked the jury to award separate damages for the termination and paid-leave decisions. And the defendants have not argued here how allowing the jury to consider the paid-leave decision could have infected the jury's decision to award emotional distress damages for the termination decision. We

therefore reverse the jury's award only insofar as it awarded damages based on the paid-leave decision.

III. CONCLUSION

For these reasons, we **reverse** the judgment for the amounts awarded as lost compensation and emotional distress damages occurring after July 2021. We **remand** for further proceedings consistent with this opinion. No costs are allocated.