

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDREW CARNEY, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
INTERNATIONAL BROTHERHOOD OF :
ELECTRICAL WORKERS LOCAL UNION :
98 PENSION FUND, et al., :
Defendants. : No. 00-6270

MEMORANDUM AND ORDER

J. M. KELLY, J.

JULY , 2003

On July 2, 2003, the United States Court of Appeals for the Third Circuit affirmed this Court's May 23, 2002 order granting summary judgment in favor of Plaintiff Andrew Carney ("Carney") in his suit against Defendants International Brotherhood of Electrical Workers Local 98 Pension Fund and its Trustees to recover unpaid employment benefits pursuant to section 502(a)(1) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a)(1). The Third Circuit, however, vacated this Court's August 14, 2002 order awarding Carney attorneys' fees in the amount of \$104,062.50,¹ and remanded the matter to this Court for the entry of judgment awarding fees in accordance with its instructions.

¹ This Court's August 14, 2002 Memorandum and Order included discussion of an attorneys' fee award we previously granted in the amount of \$8,122.50 for time attributable to opposing a motion to compel a medical examination of Carney. Since that amount was awarded in a Memorandum and Order dated May 2, 2002, \$8,122.50 was deducted from the total attorneys' fee award in our August 14, 2002 Order.

When this Court initially considered Carney's attorneys' fee petition, we determined that counsel's claim for a total of 174.7 hours spent preparing for depositions and reviewing deposition transcripts of six Trustees and the Plan Administrator was excessive since the depositions concerned identical subject matter, all occurred within a six-week period, and each lasted between five and seven hours. As a result, we deducted 39.9 hours from the total request to arrive at total of 134.8 hours. We then calculated the lodestar amount by multiplying 134.8 hours by the billing rate of \$225.00 per hour, which reflected counsel's status as an ERISA expert.

On review, the Third Circuit determined that this Court's deduction of 39.9 hours was an insufficient adjustment to compensate for the redundancy of deposition preparation and review, and instructed that we enter an order for a 25% reduction for the remaining hours claimed in connection with the depositions in this case to render an amount to which Carney would be reasonably entitled. After reducing the remaining 134.8 hours by 25%, which is a 33.7 hour reduction, we determine that Carney would be awarded the attorneys' fees for 101.1 hours of time spent in connection with the preparation and review of the depositions in this matter.

With the foregoing amendment, this Court will otherwise reenter our order of August 14, 2002, which reduced the number of

hours originally submitted of 512.8 by 50.2 hours. Since we now deduct an additional 33.7 hours for excessive time spent on preparing for and reviewing depositions, as instructed by the Third Circuit, Carney's attorneys' fee award shall be the total of 428.9 hours multiplied by the billable rate of \$225.00 per hour, which is \$96,502.50. Since we deduct \$8,122.50 in attorneys' fees previously awarded to Plaintiff on May 2, 2002, the total award of attorneys' fees is \$88,380.00.

An appropriate order follows.

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Defendants.	:	No. 00-6270

O R D E R

AND NOW, this day of July, 2003, it is **ORDERED**:

1. The Motion for Reimbursement of Attorneys' Fees and Costs filed by Plaintiff Andrew Carney ("Plaintiff") is **GRANTED**.
2. Judgment is **ENTERED** in favor of Plaintiff and against Defendants International Brotherhood of Electrical Workers Local Union 98 Pension Fund, Scott Ernsberger, John J. Dougherty, Edward Neilson, Joseph Agresti, Thomas J. Reilly, Jr., Dennis Link and William C. Rhodes in the amount of \$88,380.00 plus costs.

BY THE COURT:

JAMES MCGIRR KELLY, J.