

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

DIANA G. AGRON,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 97-6184
	:	
AYDIN CORPORATION, and	:	
MOHAMMAD JALIL,	:	
Defendants.	:	

MEMORANDUM

R.F. KELLY, J.

APRIL , 1999

Plaintiff, Diana Agron ("Agron") brought this action against her former employer, Aydin Corporation ("Aydin") for sexual harassment, and against her former co-worker Mohammad Jalil ("Jalil") for assault. The jury returned a verdict in favor of Agron and against Aydin for \$30,000 in compensatory damages and against Agron in favor of Jalil for assault. On April 15, 1998, this Court entered judgment on the jury verdict.

In a civil rights action, "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." 42 U.S.C. § 1988(b). Plaintiff's attorneys, Anthony Mazullo and Robert Stengel, have filed a fee petition seeking fees and costs for the successful prosecution of this action. Aydin challenges the number of hours claimed, the hourly rate, the costs, and the alleged degree of success.

The lodestar is presumed to be the reasonable amount of

attorney's fees to which the prevailing party in a civil rights action is entitled. Brennan v. Springfield Township, No. 97-5217, 1998 WL 792180, at *4 (E.D. Pa. Nov. 10, 1998)(citing Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990)(citations ommitted)). To reach the lodestar, a reasonable hourly rate is multiplied by a reasonable number of hours. Brennan, 1998 WL 792180, at *4 (citing Rode, 892 F.2d at 1183). Agron, the party seeking attorney's fees, has the burden to prove that her request is reasonable. Rode, 892 F.2d at 1183. To meet this burden, Agron must "submit evidence supporting the hours worked and rates claimed." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). Aydin, the party opposing the fee award, has the burden to challenge, by affidavit or brief with sufficient specificity to give fee applicants notice, the reasonableness of the requested fee. Bell v. United Princeton Properties, Inc., 884 F.2d 713 (3d Cir. 1989).

The total amount of fees Plaintiff seeks is unclear.*

For convenience, I will consider Mr. Mazullo's request to be

*Mr. Mazullo has submitted a billing summary which reflects a total amount of \$48,272.55, that is: 311.65 hours of attorney time at \$150 (\$46,747.50); 6.2 hours of paralegal time at \$50 (\$310); and \$1,215.05 in costs. Mr. Mazullo's Petition, however, requests \$49,544.07, that is: 268.9 hours of attorney time at \$175.00 per hour (\$47,057.50); \$1,281.52 for hotel, meals and mileage; and \$1,215.05 for costs. The difference is \$1,205.05. When Mr. Mazullo's request for \$175 per hour and for \$1281.52 for hotel, meals and mileage is considered, the total figure requested amounts to \$57,063.80, well above the \$49,544.07 requested in the Petition.

\$57,345.32, that is: 311.65 hours of attorney time at \$175 (\$54,538.75); 6.2 hours of paralegal time at \$50 (\$310); \$1,215.05 in costs; and \$1,281.52 for hotel, meals and mileage. Counsel for Aydin objects to both the number of hours and the rate charged by Mr. Mazullo.

As to the billing rate of \$175 per hour, Mr. Mazullo has submitted the affidavit of Martha Sperling, Esquire which states that \$175 per hour is reasonable compensation. In her affidavit, Ms. Sperling states that she is a civil rights attorney who practices in that area of law. Ms. Sperling does not suggest that either Mr. Mazullo or Mr. Stengel specializes in civil rights litigation. Further, Ms. Sperling's affidavit states that she has known Mr. Stengel for 15 years and that his reputation for skill and knowledge in the law generally is exemplary, but makes no reference to Mr. Mazullo.

Whether the requested rate is reasonable "is to be calculated according to the prevailing market rates in the relevant community." Rode, 892 F.2d at 1183 (citing Blum v. Stenson, 465 U.S. 886, 895-96 n.11 (1984)). Consideration is to be given to the attorney's experience and skill compared to that of other attorneys performing similar services in the same community. Rode, 892 F.2d at 1183 (citing Student Public Interest Research Group v. AT & T Bell Laboratories, 842 F.2d 1436, 1447 (3d Cir. 1988)). Furthermore, "[t]he prevailing party

has the burden of establishing by way of satisfactory evidence, 'in addition to [the] attorney's own affidavits,' that the requested hourly rates meet this standard." Washington v. Phila. Court of Common Pleas, 89 F.3d 1031, 1035 (3d Cir. 1996)(citing Blum, 454 U.S. at 895 n. 11); Brennan, 1998 WL 792180, at *1.

I find that neither Mr. Stengel nor Mr. Mazullo specializes in civil rights litigation. The billing summary submitted by Mr. Mazullo shows that his rate is \$150 per hour. Although at the low end, this amount is reasonable based on prevailing market rates. Brennan, 1998 WL 792180, at *2 (finding a range between \$150 and \$250 for attorneys representing plaintiffs in civil rights actions in this district). Mr. Mazullo's request for \$175 per hour is denied.

Plaintiff's attorneys have submitted billing records documenting that 311.65 hours were spent on this litigation. Aydin seeks to reduce those hours because: (1) several entries relate to collateral matters; (2) 59.7 hours to respond to a Motion for Summary Judgment is excessive; (3) several tasks performed by a paralegal are clerical in nature and should be included in overhead; and (4) because Mr. Stengel's attendance at trial was unnecessary. Each argument is discussed below.

Plaintiff's counsel seeks to recover fees for time spent on unemployment compensation appeals and carpal tunnel claims. Specifically, in the petition for fees, Plaintiff's

counsel has included the following entries:

<u>Date/Slip#</u>	<u>Description</u>	<u>Hours/Rate</u>	<u>Amount</u>
10/24/96 #1493	Review Unemployment Compensation Appeal telephone client re company response	.4 hours 150.00	60.00
1/13/97 #1620	Telephone Conference with Mrs. Agron re Unemployment Compensation Appeal	.2 hours 150.00	30.00
1/21/97 #1644	Review client's statements; Telephone client re Unemployment Compensation Appeal and further incident with Mohammad	1 hour 150.00	150.00
9/5/97 #2114	Telephone conference with client re increased medical insurance costs and carpal tunnel claim.	.20 150.00	30.00

(Pl.'s Pet. for Counsel Fees at Ex.1.) These entries, totalling 1.8 hours of time, were spent on matters collateral to the civil rights litigation. These fees are not recoverable. Peters v. Del. River Port Auth. of Pa. and N.J., No. 91-6814, 1993 WL 496675, at *3 (E.D. Pa. Aug. 13, 1993). Plaintiff's Petition will be reduced accordingly.

Counsel for Aydin contends that the billing records submitted by Plaintiff's counsel reflect that together, Mr. Mazullo and Mr. Stengel spent 59.7 hours responding to Aydin's Motion for Summary Judgment. Counsel for Aydin contends that this is excessive and seeks a reduction. After reviewing the

billing summary I find that Mr. Mazullo and Mr. Stengel spent 38.98 hours on this task. This is an unreasonable length of time, and, as counsel for Aydin points out, Mr. Stengel duplicated Mr. Mazullo's efforts in this regard. I will reduce the hours billed to 20.00.

Included in Plaintiff's fee petition are 6.2 hours of paralegal time. Counsel for Aydin contends that these hours reflect clerical tasks that should be included in office overhead. I disagree. Although the same individual performed clerical tasks in conjunction with paralegal services for the same documents, the billing summary reflects separate entries for these tasks. Plaintiff's request for 6.2 hours of paralegal time at \$50 per hour will not be disturbed.

Trial in this matter began on November 16, 1998. From November 15 through November 19, 1998, Plaintiff's billing summary reflects the following:

<u>Date/Slip#</u>	<u>Decription</u>	<u>Hours/Rate</u>	<u>Amount</u>
11/15/98 #5821	RMS Stengel/Prepared Prepare for trial	4.00 150	600.00
11/15/98 #5828	AMJ Mazullo/Prepared Prepare for trial	4.00 150	600.00
11/16/98 #5822	RMS Stengel/Attended Preparation for and attend trial in Philadelphia	15.00 150	2,250.00
11/16/98 #5829	AMJ Mazullo/Attended Preparation for and	15.00 150	2,250.00

	attend trial in Philadelphia		
11/17/98 #5823	RMS Stengel/Attended Attend trial in Philadelphia	14.00 150	2,100.00
11/17/98 #5830	AMJ Mazullo/Attended Attend trial in Philadelphia	14.00 150	2,100.00
11/18/98 #5824	RMS Stengel/Attended Attend trial in Philadelphia	14.00 150	2,100.00
11/18/98 #5824	AMJ Mazullo/Attended Attend trial in Philadelphia	14.00 150	2,100.00
11/19/98 #5826	RMS Stengel/Attended Attend trial in Philadelphia	8.00 150	1,200.00
11/19/98 #5832	AMJ Mazzulo/Attended Attend trial in Philadelphia	8.00 150	1,200.00

(Pl.'s Pet. for Counsel Fees at Ex.1.) As reflected above, Mr. Mazullo and Mr. Stengel submitted identical bills for attending the trial of this matter. Counsel for Aydin suggests that Mr. Stengel's attendance was unnecessary, evidenced by the fact that his participation was limited to attending sidebar conferences and seeks to deduct the number of hours billed by Mr. Stengel for attending the trial. I agree that Mr. Stengel's attendance at trial was unnecessary considering the relative simplicity of the matter and will reduce Plaintiff's Fee Petition by 55.00 hours. Rank v. Balshy, 590 F. Supp. 787, 795 (E.D. Pa. 1984), abrogated on other grounds by, West Virginia Univ. Hosp. v. Casey, 898 F.2d

357, 366 (3d Cir. 1990).

Mr. Mazullo has included \$1,281.52 for hotels, meals and mileage in his Fee Petition. These expenses do not appear on Plaintiff's billing summary and are not explained in Plaintiff's petition. "Hours that are not properly billed to one's client are not properly billed to one's adversary pursuant to statutory authority. Rank, 590 F. Supp. at 791 (quoting Hensley, 461 U.S. at 434 (1983)(quoting Copeland v. Marshall, 641 F.2d 880, 891 (D.C. Cir. 1980)(en banc))). Because these costs are inadequately documented and appear unnecessary, they are not recoverable. Plaintiff's Petition will be reduced accordingly.

Counsel for Aydin contends that Mr. Mazullo seeks to recover witness fees paid to five witnesses as part of his costs. Counsel for Aydin objects to two of these fees because the witnesses did not testify at trial. The billing summary does not reflect payment of any witness fees, thus, the reduction requested is denied.

Finally, counsel for Aydin seeks to reduce the fees requested by one-half because of Plaintiff's limited success at trial. Plaintiff recovered \$30,000 in compensatory damages for her discrimination claim and recovered nothing for her assault claim. Costs and fees for unsuccessful claims are not recoverable if those claims are distinct in all respects from the successful claims. Hensley, 461 U.S. at 435. Agron's claim for

assault is distinct from the harassment claim, however, the amount of time Plaintiff's counsel spent on the assault claim is not apparent from the billing summary. Accordingly, I will reduce the amount of fees by \$1,500.00, an amount representing 10 hours of time reasonably attributed to the assault claim.

An Order follows.

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DIANA G. AGRON,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 97-6184
	:	
AYDIN CORPORATION, and	:	
MOHAMMAD JALIL,	:	
Defendants.	:	

ORDER

AND NOW, this day of April, 1999, upon consideration of Plaintiff, Diana Agron's Petition for Counsel Fees and Defendant Aydin Corporation's Response thereto, it is hereby ORDERED that Plaintiff is awarded \$31,082.50 in fees and \$1,215.00 in costs.

BY THE COURT:

Robert F. Kelly, J.