

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

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

**MEMORANDUM AND ORDER**

**J. M. KELLY, J.**

**AUGUST 13, 2002**

Presently before the Court is a Motion for Reimbursement of Attorney's Fees and Costs filed by Plaintiff, Andrew Carney, following the entry of summary judgment in his favor pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001-1276 (1994). 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 ("Defendants"), were found to be in violation of ERISA when they wrongfully denied Plaintiff his Disability Pension Benefits. See Carney v. International Brotherhood of Electrical Workers, Civ. A. No. 00-6270, 2002 WL 1060652 (E.D. Pa. May 23, 2002). Defendants oppose the awarding of attorney's fees and costs and in the event attorney's fees and costs are awarded, seek to reduce the total amount of fees and costs.

**I. Entitlement to Attorney's Fees and Costs under ERISA**

The district court has discretion to award attorney fees and costs to a successful litigant in

an ERISA action. 42 U.S.C. § 502(g)(1). Factors to consider are: (1) the culpability or bad faith of the offending party; (2) the ability of the offending parties to satisfy an award of fees and costs; (3) the deterrent effect of an award of fees against the offending party; (4) the benefit conferred on members of the pension plan as a whole; and (5) the relative merits of the parties position. See Ursic v. Bethlehem Mines, 719 F.2d 670, 673 (3d Cir. 1983). Applicable factors are to be considered and balanced to determine whether the prevailing party should be awarded attorney's fees and costs. Anthuis v. Colt Indus., 971 F.2d 999, 1012 (3d Cir. 1992).

Upon consideration of the five Ursic factors, the Court finds that the Plaintiff is entitled to an award of attorney's fees and costs under ERISA. Defendants concede that the Plan has the financial ability to pay the attorney's fee but dispute the remaining Ursic factors. In view of this Court's judgment that the Trustees violated ERISA by acting arbitrarily and capriciously with regards to Plaintiff's application for disability benefits, the Court finds that the Defendants are culpable and that the Plaintiff has substantially won the merits of his case. Furthermore, the Court is satisfied that an award of attorneys fees in this case will be effective in deterring Pension Trustees from engaging in arbitrary and capricious decision-making process. The resulting effect is that members of the pension plan as a whole are benefitted since the Trustees will be more responsive and make informed rational decisions rather than arbitrarily denying benefits.

## **II. Reasonableness of Attorney's Fees and Costs**

"The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." Hensely v. Eckerhart, 461 U.S. 424, 433 (1983). The result, known as "lodestar," is presumed to

represent a reasonable award of attorney's fees. Id. "[A] reasonable hourly rate is calculated according to the prevailing market rates in the community." Smith v. Philadelphia Hous. Auth., 107 F. 3d 223, 225 (3d Cir. 1997). A party is entitled to compensation for work that is "useful and of a type ordinarily necessary to secure the final result obtained." Pennsylvania v. Delaware Valley Citizens' Council, 478 U.S. 546, 561 (1986). "Hours are not reasonably expended if they are excessive, redundant, or otherwise unnecessary." Hensley, 461 U.S. at 433.

The party seeking the fees bears the burden of proving that the request is reasonable. Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990). If the request is reasonable, the court cannot reduce the fee amount sua sponte. Bell v. United Princeton Properties, 884 F.2d 713, 719-20 (3d Cir. 1989). Where, however, the opposing party objects with specificity, the court "has a great deal of discretion to adjust the fee award in light of those objections." Rode, 892 F.2d at 1183 (citing Bell, 884 F.2d at 721).

#### **A. Number of Hours Expended**

Plaintiff's counsel submits that he spent a total of 512.8 hours in this action. The time records for 102.7 hours of that time, however, were submitted at a later date. The Court will first address the 410.1 hours since the Defendants specifically objected to portions of these hours which were submitted with the original petition. A review of the records reveals that some of the time Plaintiff's counsel spent is excessive. Specifically, the amount of preparation time for depositions of the various Trustees appears excessive. During oral argument, Plaintiff's counsel indicated that he spent so much time on preparation because of prolonged lags of time between each deposition. The records, however, reveal that the depositions at issue were taken during the

period beginning July 25, 2001 to August 30, 2001, a time period of little over one month.

Counsel is an experienced ERISA attorney who was more than familiar with the details of the case. As such, the Court finds that the preparation time spent on the various Trustee’s depositions are excessive.

In addition, Plaintiff’s counsel submits he spent 44.6 hours to prepare the summary judgment motion. The motion should not have taken so much time for an experienced ERISA attorney such as Plaintiff’s counsel. The record reveals that Plaintiff’s counsel unnecessarily researched the motion over and over. As such, the amount of hours spent on the summary judgment motion is reduced by 10 hours.

Following is a list of the hours specifically excluded from the 410.1 hours originally submitted. A total reduction of 39.9 hours represents approximately 10 % of those hours.

**Specific Exclusions**

| <b><u>Date</u></b> | <b><u>Item</u></b>                    | <b><u>Reduction</u></b> |                     |
|--------------------|---------------------------------------|-------------------------|---------------------|
| 7/25/01            | Deposition of Scott Ernsberger        | 1.2 hrs.                | Excessive Time      |
| 7/26/01            | Deposition of Scott Ernsberger        | .4 hrs.                 | “ ”                 |
| 7/18/01            | Deposition of Joseph Agresti          | 3.8 hrs.                | “ ”                 |
| 8/21/01            | Deposition of Edward Nielson          | 2.5 hrs.                | “ ”                 |
| 8/21/01            | Deposition of William C. Rhodes       | 3.1 hrs.                | “ ”                 |
| 8/23/01            | Deposition of Dennis Link             | 1.3 hrs.                | “ ”                 |
| 8/25-8/26/01       | Deposition of John J. Dougherty       | 8.6 hrs.                | “ ”                 |
| 10/30/01           | Deposition of Thomas J. Reilly        | 3.6 hrs.                | Event did not Occur |
| 8/30/01            | Deposition of Thomas J. Reilly        | 5.4 hrs.                | Excessive Time      |
| 8/7-12/6/01        | Preparing Motion for Summary Judgment | <u>10.0hrs.</u>         | Excessive Time      |
|                    |                                       | 39.9 hrs.               |                     |

As to the additional 102.7 hours spent in May and June of 2001, it appears that these time records were inadvertently left out in the original Petition. Therefore, the Court will allow compensation for this amount of time. These time records, however, seem to lack specificity.<sup>1</sup> The Court's equitable solution, therefore, is to reduce the 102.7 hours by 10%, the percentage of deduction calculated by the number of hours excluded from the 410.1 hours as noted above. The result is that 10.3 hours, which is 10% of 102.7 hours spent in May and June of 2001, will be deducted.

In sum, the total reduction of hours calculates to 50.2 hours which is 39.9 hours plus 10.3 hours. The total number of hours is reduced from 512.8 hours to 464.7 hours.

**B. Reasonable Hourly Rate**

The Court is satisfied that Plaintiff's rate of \$225 per hour is reasonable, as reflected by Plaintiff's attorney's affidavit outlining a survey of rates charged by other ERISA attorneys in the community. Defendants have not presented any evidence to rebut the results of the survey nor shown that the survey is inherently unreliable. Moreover, the Court finds this flat hourly rate as applied to most of the tasks performed by Plaintiff's attorney reasonable.

**III. Conclusion**

The total number of hours shall be reduced from 512.8 hours to 462.5 hours, a reduction

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<sup>1</sup> Some of the 102.7 hours spent in May and June of 2001 are attributable to opposing a motion to compel a medical examination for which Plaintiff was previously awarded \$8,122.50 in attorney's fees. See Memorandum and Order, dated May 2, 2002. This amount will be deducted from the final total.

representing approximately 10% of the total time submitted. With a rate of \$225 per hour, the subtotal for attorney's fees is \$104,062.50. As noted in footnote 1 of this Memorandum and Order, \$8,122.50 previously awarded to Plaintiff must be subtracted from the subtotal. The result is that Plaintiff is entitled to a final total of \$95,940 in attorney's fees. Plaintiff also submitted a bill of costs in the amount of \$3,275.99. Plaintiff is entitled to reasonable costs, but the bill of costs should be submitted to the Clerk of the Court as provided under Local Rule of Civil Procedure 54.1(b).

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**ORDER**

**AND NOW**, this 13th day of August, 2002, in consideration of the Plaintiff's Motion for Reimbursement of Attorney's Fees and Costs (Doc. No. 31) and the Responses thereto of the 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, and upon hearing oral argument, it is **ORDERED**:

1. Plaintiff's Motion for Reimbursement of Attorney's Fees and Costs is **GRANTED**.
2. Judgment is **ENTERED** in favor of Plaintiff, Andrew Carney 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 \$95,940.00 plus costs.

BY THE COURT:

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JAMES MCGIRR KELLY, J.