

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

HOCINE OMARI : CIVIL ACTION
 :
 v. :
 :
 WASTE GAS FABRICATING : NO. 04-796
 COMPANY, INC. :

ORDER AND OPINION

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE

DATE: April 13, 2005

I. Introduction

After a non-jury trial in this employment case, held between December 6 and 8, 2004, I entered judgment on March 4, 2005, in favor of Plaintiff Hocine Omari in the amount of \$58,680.00, and directed Omari's counsel to file a petition for attorney's fees, as permitted by 42 U.S.C. § 20003-5(k).

Counsel has now filed a petition seeking a total of \$73,837.75 in attorney's fees. Defendant Waste Gas Fabricating Company, Inc., ("Waste Gas") has opposed this petition. Nevertheless, as explained below, Counsel's request is reasonable. Therefore, I will award counsel for Omari the \$73,837.75 they request.

II. Relevant Law

The starting point for determining attorneys' fees is the number of hours expended multiplied by a reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). This calculation results in the "lodestar," which is presumptively correct but which may be adjusted should the court find such adjustment appropriate. Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990). In making fee requests, Plaintiff's counsel have the burden of showing that their

request is proper and supported by evidence. Id. “Once the adverse party raises objections to the fee request, the district court has a great deal of discretion to adjust the fee award in light of those objections.” Id.

"Generally, a reasonable hourly rate is to be calculated according to the prevailing market rates in the relevant community." Rode, 892 F.2d at 1183. In making this determination, "the court should assess the experience and skill of the prevailing party's attorneys and compare their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." Id.

In addition, the number of hours set forth by the party requesting fees must be reasonable. Id. In calculating the number of hours expended, the court will exclude excessive, redundant or unnecessary hours as not reasonably expended, as well as those hours not adequately documented by the requesting party. Id.

III. Discussion

A. The Hourly Rates Requested

In this case, Timothy Kolman, the sole name partner at counsel's firm, Timothy Kolman & Associates, has billed his time at \$300 per hour. Petition at Exhibits A and C. Wayne Ely, a senior associate who graduated *cum laude* from Temple in 1990, is in the process of becoming Mr. Kolman's partner, and who acted as first chair in this trial, has asked for \$275 per hour. Petition at Exhibits A and C. Both Mr. Kolman and Mr. Ely practice primarily employment law. Id.

Ari Karpf, a second year associate who – notwithstanding his relatively junior status – ably questioned a number of witnesses at trial, asks for \$215. Petition at Exhibits A and C. Counsel have attached to their petition the affidavit of Sidney Gold, Esq., a well-known plaintiff’s employment lawyer, who states that these are reasonable rates of compensation.

Waste Gas disagrees, however, arguing that Kolman & Associates is a suburban practice, and would be expected to charge lower rates than an urban firm such as Mr. Gold’s. In its response, Waste Gas stated that it would forward an affidavit from another suburban law firm, where fees would be more comparable to those Omari’s lawyers should be paid. Waste Gas’s response was filed on March 31, 2005, however, and no such affidavit has been received or docketed to date. Waste Gas maintains that a \$215 per hour rate for a second year associate is particularly unreasonable.

I do not agree that the fees requested are unreasonably high. They are in line with fees I have awarded in the past. In Devore v. City of Philadelphia, Civ. A. No. 00-3598, 2004 WL 414085 (E.D. Pa. Feb. 20, 2004), I awarded \$350 per hour to an employment law attorney who was “well versed in the case and the applicable law.” In another employment case, Postles v. Longshore & Simmons, Inc., Civ. A. No. 01-2660 (E.D. Pa. Sep. 27, 2002), a claim for attorney’s fees of \$300 per hour went unquestioned. A few years earlier, I found that yet another employment law attorney was entitled to \$300 per hour in Le v. University of Pennsylvania, Civ. A. Nos. 99-1708 and 00-481, 2001 WL 849707 (E.D. Pa. Jul. 13, 2001), aff’d 321 F.3d 403 (3d Cir. 2003). Finally, in O’Neill v. Sears, Roebuck & Co., 108 F. Supp. 2d 443 (E.D. Pa. 2000), I awarded an employment lawyer \$250 per hour, and that was five years ago.

As to Mr. Karpf, it is relevant that he performed more work than is usual for a second-year associate. According to his time records, he defended Omari's deposition, and conducted all but two of the fourteen depositions taken by his firm in this case. Petition at Exhibit A. As mentioned above, he also examined witnesses at trial. When he did so, his lack of experience was not apparent.

Plaintiffs have provided an appropriate affidavit, which has remained unopposed by Defendant. Moreover, during preparation and at trial in this case, Mr. Karpf functioned more like a mid-year associate than a new attorney. In these circumstances, \$215 per hour is an acceptable fee.

B. The Hours Expended

Mr. Kolman has represented that he spent 12.6 hours on this case. Petition at Exhibit A. Mr. Ely has claimed 107.5 hours, and Mr. Karpf 188.35 hours. Id. Thus, a total of 308.45 hours are claimed. Defendants maintain that these hours are excessive, and that the activities performed are in many cases described too vaguely to support a claim for fees.

Again, I cannot agree. This was a three-day trial at which thirteen witnesses testified, of whom five were called by Omari. Therefore, although the legal issues were not particularly novel or complex, there was an usually high number of depositions taken and a good deal of evidence to sift through.

In O'Neill, supra, counsel were compensated for a total of 587.65 hours on a five-day trial, although one which presented more complex issues than those in this trial. DeVore, supra, was an eight-day trial where 679.93 hours were permitted. Omari's counsels' expenditure of 308.45 hours is not out of line with this precedent.

It is also to requesting counsel's credit that there is a marked "pyramid" in the distribution of hours. Mr. Kolman, who bills at the highest rate, spent very few hours on this matter. Mr. Ely spent considerably more time than Mr. Kolman, but Mr. Karpf, who billed at the lowest rate, billed the most hours. I note, as well, that, other than having spent 2.5 hours to draft Omari's complaint, Mr. Ely spent only five blocks of time over one hour, out of approximately 70 billing entries, between December 15, 2003, and the date he began trial preparation on December 2, 2004, four days before trial. The largest of these was a 7-hour period spent compiling a stipulation of undisputed facts as required by my pre-trial order. Petition at Exhibit A.

Mr. Karpf did the bulk of the time-consuming work. He has not, however, billed for administrative work such as compiling exhibit binders or filing documents. Id. Until he personally began trial preparation, five days before the first day of trial, Karpf billed over five hours at a time only on days when he was attending depositions. Id. Indeed, the gross majority of his non-deposition entries were under four hours. Petition as Exhibit A.

Taken as a whole, this represents an economical use of resources. I have considered Waste Gas's complaint that Omari's firm billed a total of 43.2 hours to review the trial transcripts and prepare its proposed findings of fact and conclusions of law. This comprised 18.5 hours spent by Mr. Ely, and 24.7 spent by Mr. Karpf. Given, however, that there were 653 pages of transcript to review, and that counsel's submission was 21 pages long and cited extensively to the transcript, I cannot say this was an unreasonable expenditure of time.

I have also reviewed other entries Waste Gas has called too vague to permit a determination as to whether the work done was reasonable. Waste Gas claims that Mr. Karpf routinely billed hours for "document review", "case review" or "file review", with no further

specificity. However, in the entries to which Waste Gas points, the vague term is aggregated with other activities which, taken together, account adequately for the time spent.¹ Although aggregating entries is not a good practice, there is enough information there to permit a conclusion that time was not wasted. In a September 11, 2004, entry only the term “document review” was used, but the time involved was only one hour. This causes me no concern.

Finally, Waste Gas points out that the lodestar can be adjusted downward to take into account the amount involved in the case and the results obtained. It argues: “An award of attorney’s fees of \$78,837.75 seems hardly reasonable when the client, Hocine Omari, was awarded only \$58,680.00.”

However, the Third Circuit Court of Appeals has expressly forbidden a reduction in counsel fees in a § 1983 action to maintain a particular ratio between the fees and the damages awarded, explaining:

This is not to say that the amount of damages is irrelevant to the calculation of counsel fees. To the contrary, we recently recognized that ‘the amount of the compensatory damages award may be taken into account when awarding attorneys’ fees to a civil rights plaintiff.’ Abrams v. Lightolier, 50 F.3d 1204, 1222 (3d Cir. 1995). But as the context of our statement in Abrams makes clear, the reason why the damage amount is relevant is not because of some ratio that the court ought to maintain between damages and counsel fees. Rather, the reason has to do with the settled principle ... that counsel fees should only be awarded to the extent that the litigant was successful.

Washington v. Philadelphia Cty. Ct. of Common Pleas, 89 F.3d 1031, 1041-2 (3d Cir. 1996).

¹12/01/04 4 hours for “document review and trial prep”; 11/18/04 1 hour for “document review, phone conference with judge and client meeting/letter to opposing counsel concerning prior agreements with counsel”; 10/13/04 half an hour for “document review, conference with co-counsel”; 8/15/04 1 hour for “drafting of document request #6 and file review”; 9/7/04 1 hour for “phone call with client and document review”; 8/2/04 1.25 hours for “file review/phone conference with Judge/conference with co-counsel/ letter requesting expert report from Dr. Whalen”; 7/25/04 5 hours for “file review, conference with client, dep prep, drafting of document request #4”; 7/8/04 2 hours for “letter to opposing counsel (deposition locale dispute), document review and conference with client”; 7/7/04 2 hours for “document review, letter to opposing counsel and conference with client”; 7/5/04 5 hours for “document/file review and drafting and review of admissions”; and 7/3/04 3 hours for “document/file review (of responsive discovery) and drafting and review of admissions”).

Omari was successful on all of his claims. Further, he did not seek a large recovery. This makes this case unlike those where a plaintiff, though successful, obtains only a token recovery. In Sheffer v. Experian Information Solutions, Inc., 290 F. Supp. 2d 538 (E.D. Pa. 2003), for example, a plaintiff sought \$300,000 in damages, but a jury awarded a mere \$1,000. His attorneys sought \$126,543.33 in fees, but were awarded only \$25,000. 290 F. Supp. 2d at 551. Although Omari's recovery was not enormous, he clearly is not in the Sheffer category. Thus, I cannot reduce counsel's fee award for lack of success.

IV. Conclusion

Although I do not habitually grant attorney's fee petitions with no adjustments, I see nothing objectionable in the petition which counsel for Omari have submitted. I am not entitled to reduce counsel's fee in a spirit of compromise; I can do so only upon an appropriate basis. See, Rode v. Dellarciprete, *supra*. For this reason, I will award counsel \$73,837.75 in fees.

ORDER

AND NOW, this 12 day of April, 2005, upon consideration of Plaintiff's Motion for Attorney's Fees, filed as Document No. 40 in this case, and Defendant's Response thereto, it is hereby ORDERED that Plaintiff's Motion is GRANTED and Plaintiff is AWARDED \$73,837.75 in counsel fees.

BY THE COURT:

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE