

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

MARIBEL VALENTIN : CIVIL ACTION
 :
 v. :
 :
 CROZER-CHESTER MEDICAL CENTER : NO. 95-3722

MEMORANDUM and ORDER

Norma L. Shapiro, J.

January 26, 1998

Plaintiff Maribel Valentin ("Valentin") filed the present petition for attorney's fees. Defendant Crozer-Chester Medical Center ("Crozer") objects to the petition. For the reasons stated below, the court will award Valentin reasonable attorney's fees appropriate to the level of her success against Crozer.

BACKGROUND

Valentin, alleging unlawful national origin discrimination and retaliation because she filed charges of discrimination with the Equal Employment Opportunity Commission ("EEOC"), filed this action against defendant Crozer pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. Valentin based her action against Crozer on four theories: 1) national origin¹ discrimination in eliminating her position as an evening/night coordinator and denying her a second shift position; 2) national origin discrimination in terminating her; 3) retaliation during the course of her employment between

¹ Valentin is of Puerto Rican ancestry.

September, 1993 and February, 1995; and 4) retaliatory discharge. A jury returned a verdict in favor of Valentin and against Crozer on the second national origin claim and both retaliation claims. The jury awarded damages in the amount of \$209,000 for pain and suffering, \$45,400 for past lost wages and \$20,600 for future lost wages. The court reduced the award for future lost wages to present value and entered judgment against Crozer in the amount of \$274,157.92.

Crozer filed a renewed motion for judgment as a matter of law or for a new trial. By Memorandum and Order dated November 3, 1997, the court granted judgment as a matter of law in favor of Crozer on the claims for discriminatory termination and retaliation between September, 1993 and February, 1995. The court would not set aside the jury's verdict there was retaliatory discharge, but determined the \$209,000 awarded for compensatory damages was excessive and without support in the evidence. The court granted Crozer's motion for a new trial on damages unless Valentin accepted a remittitur to \$117,407.92 (\$45,000 in past lost wages, plus \$19,757.92 in future lost wages, plus \$52,500, one-fourth of the \$209,000 compensatory damage award). See Valentin v. Crozer-Chester Med. Ctr., No. 95-3722, 1997 WL 736142 (E.D. Pa. Nov. 3, 1997). Valentin accepted the remittitur. Ultimately Valentin prevailed on only one of her four Title VII claims.

DISCUSSION

A prevailing Title VII plaintiff is entitled to recover attorney's fees and costs under 42 U.S.C. § 2000e-5(k).² Although Valentin's success was limited to one of her four claims, she was a "prevailing party." Valentin "succeeded on [a] significant claim affording [her] some of the relief sought." Texas State Teachers Ass'n v. Garland Indep. Sch. Dist., 489 U.S. 782, 791 (1989); see also City of Riverside v. Rivera, 477 U.S. 561, 570 (1986) (plurality). She is entitled to recover attorney's fees.

"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." Hensley v. Eckerhart, 461 U.S. 424, 433 (1988). Valentin must "submit evidence supporting the hours worked and rates claimed." Id. at 433.

"In a statutory fee case, the party opposing the fee award

² 42 U.S.C. § 2000e-5(k) provides: "In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party ... a reasonable attorney's fee (including expert fees) as part of the costs"

Valentin inaccurately bases her fee petition on 42 U.S.C. § 1988. Section 1988 does not provide for recovery of fees in a Title VII action. The court will assume plaintiff intended to base her petition on § 2000e-5(k), because the standard for determining fees is the same under § 1988 and § 2000e-5(k). See Brown v. Borough of Chambersburg, 903 F.2d 274, 277 n.1 (3d Cir. 1990).

then has the burden to challenge, by affidavit or brief with sufficient specificity to give fee applicants notice, the reasonableness of the requested fee." Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990). "[T]he district court retains a great deal of discretion" to adjust the fee award once the opposing party has objected. Bell v. United Princeton Properties, Inc., 884 F.2d 713, 721 (3d Cir. 1989).

Valentin seeks \$109,887.50 in fees and costs for all work performed by three separate lawyers involved in this action: Shelley Farber ("Farber"), Valentin's trial attorney; Maureen C. Repetto ("Repetto"), an attorney who represented Valentin prior to Farber's representation; and Andrew S. Halpern ("Halpern"), a New York attorney who assisted Farber.

The Supreme Court has not permitted mathematical comparison of the total number of claims to the number of claims upon which plaintiff prevailed. See Hensley, 461 U.S. at 435 n.11. The Court of Appeals does not permit limiting attorney's fees to maintain proportionality to the damage amount. See Cunningham v. City of McKeesport, 807 F.2d 49, 52-54 (3d Cir. 1986), cert. denied, 481 U.S. 1049 (1987). But attorney's fees "should only be awarded to the extent that the litigant was successful." Washington v. Philadelphia County Ct. of Comm. Pleas, 89 F.3d 1031, 1042 (3d Cir. 1996).

I. Farber

A. Fees

Valentin seeks fees for Farber for 385 hours of work at a rate of \$225 per hour, a total of \$86,625.00. Crozer, arguing the number of hours is inflated for an attorney with Farber's experience, objects to the total number of hours. Farber often performed tasks not typically performed by one with his experience and hourly rate, or if performed, should take less time.

For instance, on May 14, 1996, Farber spent 1.6 hours doing "follow up research on evidence admissibility." Farber spent 7.3 hours researching Robinson v. City of Pittsburgh, 120 F.3d 1286 (3d Cir. 1997), and drafting a short letter about the case to the court in August, 1997. Farber spent 1.5 hours reviewing Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061 (3d Cir. 1996) (en banc), cert. denied, 117 S. Ct. 2532 (1997), several weeks after the court issued its post-trial Memorandum and Order.

Similarly, Farber spent 5.5 hours reviewing a six-page proposed stipulation of facts. Farber also billed for "working lunches," time spent traveling to and from meetings, depositions and other related matters, whether or not the travel was during ordinary business hours. "'Hours that are not properly billed to one's client also are not properly billed to one's adversary pursuant to statutory authority.'" Hensley, 461 U.S. at 434

(quoting Copeland v. Marshall, 641 F.2d 880, 891 (D.C. Cir. 1980) (en banc). Farber's total hours for work performed will be reduced by fifteen hours to 370 hours.

Crozer next claims Farber's hourly rate of \$225 is excessive and should be reduced. The hourly rate must be "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Blum v. Stenson, 465 U.S. 886, 896 n.11 (1984). "[T]he prevailing market rate can often be calculated based on a firm's normal billing rate because, in most cases, billing rates reflect market rates, and they provide an efficient and fair short cut for determining the market rate." Gulfstream III Assoc., Inc. v. Gulfstream Aerospace Corp., 995 F.2d 414, 422 (3d Cir. 1993).

Farber submitted an affidavit stating his typical hourly rate during this period of time was \$225 for prosecuting employment related cases. Farber's résumé shows he has been practicing for approximately seventeen years in the area of disability, worker's compensation and employment discrimination. Attorney Alan Epstein ("Epstein") submitted an affidavit stating Farber's rate was representative of the prevailing market for work by one with Farber's experience. Attorney Ronald H. Surkin ("Surkin") submitted an affidavit concurring in Farber's hourly rate. The Court of Appeals has approved hourly rates between \$250 and \$275 for Epstein in other matters. See Washington, 89

F.3d at 1036. The court finds Farber's hourly rate of \$225 here reasonable for an attorney with his general experience but limited Title VII trial experience.

Crozer also objects to the number of hours billed because of Valentin's limited success (on only one of four claims). Farber argues the successful claim for retaliatory discharge was the only claim permitting a large monetary recovery, so Valentin actually achieved as much as she could have expected. While Valentin may have been successful on the one claim involving a potentially large monetary recovery, the court cannot ignore the fact that she did not prevail on three-quarters of the claims she litigated to verdict.

The four claims may have been intertwined to some extent, but Farber cannot recover fees for the total amount of hours expended on unsuccessful claims. See Washington, 89 F.3d at 1042. The fee awarded is not merely the product of reasonable hours times a reasonable rate. "There remain other considerations that may lead the district court to adjust the fee upward or downward, including the important factor of the 'results obtained.'" Hensley, 461 U.S. at 434. Because of Valentin's limited success, the court will reduce Farber's fees by 50%. That amount fairly accounts for the interrelation of the four claims and Valentin's success on only one of the four interrelated claims. The court will award Valentin attorney's

fees for Farber in the amount of \$41,625.00.

B. Costs

A party may recover costs "incurred in order for the attorney to be able to render his or her legal services." Abrams v. Lightolier, Inc., 50 F.3d 1204, 1225 (3d Cir. 1995). Farber claims costs of \$8,007.49. Crozer objects to several items. Crozer claims it should not be obligated to reimburse Farber for costs involved in subpoenaing several witnesses who never testified at trial or whom Crozer agreed to provide at trial. Farber counters he did not know in advance whether he would call all subpoenaed witnesses and was operating under standard trial procedure. As to the witnesses Crozer agreed to provide, Farber had already subpoenaed them prior to the agreement with Crozer. The court finds these costs reasonable.

Farber spent \$67.95 at the Jenkins Law Library for this judge's court procedure rules; these had been provided by the judge's deputy clerk to Farber's predecessor, Repetto. At the time of trial, these rules were available for inspection without charge at the law library or Office of the Clerk of Court. Farber cannot recover for this expenditure. Farber also claims costs of \$625.54 in photocopying and \$93.25 in postage, UPS and Federal Express shipping. Postage and photocopying are "part of ordinary office overhead," Stitsworth v. Ford Motor Co., No. 95-5763, 1996 WL 67610, at *3 (E.D. Pa. Feb. 13, 1996) (Shapiro,

J.), and presumably are already taken into account in Farber's hourly rate. The court will not award these costs.

Farber claims \$5128.25 for court reporter fees for depositions. Crozer challenges \$3,528.25 as involving depositions unrelated to Valentin's successful claim. Valentin has the burden of establishing that each of these depositions was "reasonably related to the success achieved" on the one claim. Contractors Ass'n of Eastern Pa. Inc. v. City of Phila., No. 89-2737, 1996 WL 355341, at *11 (E.D. Pa. June 20, 1996). For most of the claimed amounts, the court cannot tell who was being deposed. Valentin has not presented clear records to enable the court accurately to determine precisely which of these depositions were related to the successful claim. The court will not award costs for these disputed depositions. The court will award Valentin total fees for costs incurred by Farber in the amount of \$3,692.50.

II. Repetto

A. Fees

Valentin seeks fees on behalf of Repetto in the amount of \$125 per hour for 26.5 hours, a total of \$3,312.50. Repetto also represented Valentin in a separate unemployment compensation action; she did not separate her time between the two cases. Under § 2000e-5(k), the court must exclude hours spent on distinct state law matters, see Northeast Women's Ctr. v.

McMonagle, 889 F.2d 466, 476 (3d Cir. 1989), cert. denied, 494 U.S. 1068 (1990), and also discrete but related state law matters. See Surgner v. Blair, No. 95-5331, 1996 WL 284993, at *3 (E.D. Pa. May 20, 1996). A separate state unemployment action is distinct and clearly separable from the present Title VII action, and Repetto may not recover from defendant for time spent on the state court matter.

The petitioner must present a fee petition that is "specific enough to allow the district court to 'determine if the hours claimed are unreasonable for the work performed.'" Rode, 892 F.2d at 1190 (quoting Pawlak v. Greenawalt, 713 F.2d 972, 978 (3d Cir. 1983), cert. denied sub nom., International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of Am. v. Pawlak, 464 U.S. 1042 (1984)). Repetto's time sheets simply refer to activities such as "MV," or "MV research." The court cannot determine what hours were spent on this Title VII action, as opposed to the state court unemployment matter. The court could deny Valentin all fees for Repetto because of her inadequate, vague records. See, e.g., Alvarez v. City of Phila., Nos. 77-4424, 79-375 & 79-1192, 1986 WL 6301, at *4 (E.D. Pa. June 3, 1986) (Shapiro, J.). Instead, the court will reduce Repetto's hours by 50% to 13.25 hours to reflect the amount of time spent on the Title VII action.

Repetto's hourly rate of \$125 is reasonable and the court

will not reduce her rate. The court will award Valentin fees for Repetto in the amount of \$125 per hour. Consistent with the court's reduction of Farber's fees to reflect Valentin's limited success, the court will reduce Repetto's award by 50% to \$828.13.

B. Costs

Repetto only claims \$50 in costs for service. That amount is reasonable and the court will award Valentin Repetto's costs in the amount of \$50.

III. Halpern

A. Fees

Valentin seeks fees for Halpern in the amount of \$150 per hour for 133 hours, a total of \$19,950.00. Crozer objects that Halpern's time is redundant and unnecessary. The court believes Halpern's time is reasonable.

Halpern states he previously has billed at hourly rates between \$175 and \$265. Halpern's hourly rate of \$150 is reasonable in this market for legal work by comparable attorneys. However, because of Valentin's limited success, the court will reduce Halpern's award by 50%. The court will award Valentin fees for Halpern in the amount of \$9,975.00.

B. Costs

Halpern claims total costs of \$209.00.³ Crozer objects generally to all costs as unspecified. Halpern claims costs of

³ Valentin erroneously states Halpern's costs are \$179.00.

\$35.00 for postage and \$110.50 for photocopies. The court will not award these costs because they are ordinary business expenses. See Stitsworth, 1996 WL 67610, at *3. Halpern also seeks to recover train and cab fare in the amount of \$31.50 (after his car broke down on the way to Farber's office in Media, Pennsylvania). Crozer has no obligation to pay for Halpern's automotive problems; the court will not award these costs. The court will award Valentin costs for Halpern in the amount of \$32.00.

An appropriate Order follows.

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ORDER

AND NOW, this 26th day of January, 1998, upon consideration of plaintiff Maribel Valentin's ("Valentin") petition for reasonable attorney's fees, defendant Crozer-Chester Medical Center's ("Crozer") response and Valentin's reply thereto, and in accordance with the attached Memorandum, it is hereby **ORDERED** that:

1. Valentin's petition for reasonable attorney's fees is **GRANTED**.

2. Fees and costs are awarded to Valentin's counsel in the following amounts:

Shelly Farber, Esq.:		
370 hours x \$225/hour - 50%	=	\$41,625.00
Costs		\$ 3,692.50
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Total:		\$45,317.50

Maureen C. Repetto, Esq.:		
13.25 hours x \$125/hour - 50%	=	\$ 828.13
Costs		\$ 50.00
		<hr/>
Total:		\$ 878.13

Andrew S. Halpern, Esq.:		
133 hours x \$150/hour - 50%	=	\$ 9,975.00
Costs		\$ 32.00
		<hr/>
Total:		\$10,007.00

Grand Total: \$56,202.63

Norma L. Shapiro, J.