



Issue Date: 27 February 2014

Case No.: 2010-FRS-00026

In the Matter of

CHRISTOPHER BALA¹
Complainant

v.

**PORT AUTHORITY
TRANS-HUDSON CORPORATION**
Respondent

ORDER AWARDING ATTORNEY'S FEES AND COSTS

This matter arises under the employee protection provisions of the Federal Rail Safety Act ("FRSA" or "the Act"), 49 U.S.C. § 20109, as amended.² The employee protection provisions of the Act apply to railroad employees who feel they have been subjected to retaliatory discipline or discrimination from their employer for engaging in protected activities related to railway safety.

Fee Petitions

I issued a Decision and Order Awarding Benefits on February 10, 2012. On March 12, 2012, Complainant's counsel, Charles Goetsch, filed Complainant's Petition for Fees and Costs requesting fees in the amount of \$47,256.00 for 85.92 hours of services performed at \$550.00 per hour; plus \$1,664.75 in costs for a total of \$48,920.75.

On March 21, 2012, Respondent filed Respondent's Memorandum of Law in Opposition to Complainant's Petition for Attorney's Fees and Costs. Respondent argued that the hourly rate charged by Complainant's counsel (\$550.00 per hour) was unreasonable, as it falls outside the range of hourly rates typically charged in Connecticut (between \$350.00 and \$425.00 per hour) and New Jersey (between \$250.00 and \$325.00 per hour).

¹ Claimant and/or Claimant's counsel are to advise this office, within 10 days of the date of this Order, in writing the correct home address for Claimant. As indicated by the attached service sheet, there are two home addresses in the file.

² Pub. L. 110-53, Title XV, §1521, Aug. 3, 2007, 121 Stat. 444; Pub. L. 110-432, Div. A, Title IV, § 419, Oct 16, 2008, 122 Stat. 4892.

My February 10, 2012 Decision and Order was affirmed in full by the Administrative Review Board on September 27, 2013. Subsequently, on December 12, 2013, Complainant's counsel filed a supplemental fee petition requesting fees in the amount \$45,108 for 85.92 hours of services performed at \$525.00 per hour; and \$1,400 for 2.66 hours spent drafting the supplemental petition at \$525.00 per hour. Claimant again requested reimbursement for \$1,664.75 in costs. In sum, Complainant's counsel seeks a total award of \$48,172.75 in fees and costs.

In an application for an attorney fee, the attorney has the burden of establishing the reasonableness of the hourly rate on the quality of representation, his qualifications, the complexity of the legal issues involved, and the level of proceedings. Pritt v. Director, OWCP, 9 BLR 1-159 (1986). In determining whether an hourly rate is appropriate, 20 C.F.R. § 725.366(b) provides, in pertinent part:

Any fee approved under paragraph (a) of this section shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the qualifications of the representative, the complexity of the legal issues involved, the level of proceedings to which the claim was made, the level at which the representative entered the proceedings, and other information which may be relevant to the amount of the fee requested.

To determine whether the hourly rate is appropriate, several factors must be considered, including the location of counsel, his years of experience, the level of expertise, and the complexity of the case. See 20 C.F.R. § 725.366. Additional facts which may be considered are the risk of loss, delay in payment, and the amount of the award of benefits. See Helton v. Director, OWCP, 6 B.L.R. 1-176 (1983). In Stanhope v. Electric Boat Corp., 44 BRBS 107 (2010) (Order), the BRB emphasized that counsel's summary averments of prevailing market rates are insufficient to meet the satisfactory evidence standard. Id. Items that could potentially satisfy counsel's burden include: (1) affidavits of other lawyers in the relevant community who are familiar with counsel's skill and experience and could attest to the prevailing rates charged in the community by comparable attorneys for similar services; or (2) evidence regarding the fees that counsel has received for work involving cases of similar complexity.

Complainant's counsel submitted four affidavits which set forth his experience and qualifications. In his own affidavit, he noted that that he has been practicing law with a focus on railroad workers for over thirty-three years. He also noted that he tried three of the first FRSA trials before Administrative Law Judges; filed the first FRSA case in a United States District Court; and successfully argued the first FRSA case to come before a U.S. Circuit Court of Appeals.

Complainant's counsel also submitted the affidavit of Joseph D. Garrison, a practicing attorney in New Haven, Connecticut. Mr. Garrison stated that Complainant's counsel prevailed in "basically all of the most difficult railroad worker cases which have been litigated in this

area.” Mr. Garrison further stated that \$550.00 per hour is an accurate measure of Complainant’s counsel’s value in the marketplace.

Additionally, Complainant’s counsel submitted the affidavit of Bruce L. Atkins, a senior litigation partner at the law firm of Deutsch Atkins, P.C., in Hackensack, New Jersey. Based on Complainant’s counsel’s skills, experience, and reputation, Mr. Atkins stated that he believed the rate of \$550.00 per hour is reasonable and within the range of lawyers in New Jersey with his background and experience.

The affidavit of Richard R. Renner, an attorney in the Washington, DC offices of Kohn, Kohn, and Colapinto and the National Whistleblower Center, indicated that he believed the fair market rate for Complainant’s counsel’s services would be \$734.00, based on Complainant’s counsel’s “unique experience and expertise in railroad labor law.”

Further, two recent cases were submitted in which Complainant’s counsel’s fee petitions were approved with hourly rates at \$525.00 and \$500.00. See Barati v. Metro-North Railroad Co., 939 F.Supp.2d 153 (D. Conn. 2013) (holding that hourly rate of \$525.00 was reasonable); Santiago v. Metro-North Railroad Co., Case no. 2009-FRS-00011 (Supplemental Decision and Order Awarding Attorney Fees finding that \$500 per hour was reasonable).

In Barati, where \$525.00 per hour was found reasonable, Judge Janet Arterton wrote: “Attorney Goetsch is undeniably a leading specialist in the law governing railroad employees’ rights, and his longstanding and highly developed practice makes him more efficient, creative and effective for his railroad employee clients than an attorney of similar trial experience in federal litigation but without the benefits of his specialization.” Id. at 156.

In Barati, Complainant received \$41,778 in compensatory damages and \$250,000 in punitive damages. In Santiago, Complainant received no compensatory damages and \$40,000 in punitive damages. Here, Complainant recovered \$1,101.00 plus interest, far less than the recoveries in Barati and Santiago. Accordingly, I find that \$525.00 per hour is unreasonable. Nonetheless, it is clear from the record that Complainant’s counsel is an expert in this specialized area of law, and thus I find that \$500.00 per hour is a reasonable rate for the services rendered in this matter.

ORDER

Based on the foregoing, it is **ORDERED** that Respondent shall pay Complainant's reasonable attorney's fees and costs, in the amount of \$45,958.08.³

SO ORDERED.



Digitally signed by THERESA TIMLIN
DN: CN=THERESA TIMLIN,
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Law Judges, L=CHERRY HILL, S=NJ,
C=US
Location: CHERRY HILL NJ

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey

³ This figure represents 85.92 hours at \$500.00 per hour (\$42,960.00); plus 2.66 hours at \$500 per hour (\$1,333.33); plus \$1,664.75 in costs.

SERVICE SHEET

Case Name: **BALA CHRISTOPHER_v_PORT_AUTHORITY_TRANS_**

Case Number: **2010FRS00026**

Document Title: **Order Awarding Attorney Fees**

I hereby certify that a copy of the above-referenced document was sent to the following this 27th day of February, 2014:



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