

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

EDWIN TAYLOR,	:	CIVIL ACTION
Plaintiff,	:	NO. 03-2216
	:	
v.	:	
	:	
USF - RED STAR EXPRESS, INC.,	:	
Defendant.	:	

ORDER AND MEMORANDUM

NEWCOMER, S.J.

March 8th , 2005

Presently before the Court is Plaintiff's Motion for Attorney's Fees and Costs (Doc. 80). For the reasons stated below, the Court grants this Motion, in part. The Court will reduce the hours in its lodestar calculation by forty-four (44), because Plaintiff's use of three senior attorneys during trial was unnecessary and redundant. The Court will also require certain additional briefing by Defendant (and, if he chooses, Plaintiff).

I. BACKGROUND

Plaintiff seeks attorney's fees and costs which Defendant claims are unreasonable. The underlying litigation was extremely hard-fought and contentious, mostly due to Defendant's apparent strategy of fighting Plaintiff at every turn, through the extensive pre-trial motions practice to post-trial motions. Defense counsel was aggressive and effective, and certainly made Plaintiff prove every element of his case. As the Court had expected, the Parties' considerable legal talents have again clashed, this time on the issue of fees.

II. LEGAL STANDARD

A prevailing plaintiff is eligible for an award of reasonable attorney's fees and costs under the ADA. See 42 U.S.C. § 12205. In general, "plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). Plaintiff here received a jury verdict on the bulk of his claims, so he was certainly prevailing within the meaning of the law. The Court must now determine whether his proposed fees and costs are "reasonable" within the meaning of the statute. Id.

The accepted method of determining attorneys' fees is the "lodestar" method. Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990). The lodestar method is a simple calculation; it multiplies the number of hours reasonably spent on a case by the reasonable hourly rates of those who worked them. See Brytus v. Spang & Co., 203 F.3d 238, 242 (3d Cir. 2000). The result of the lodestar calculation is presumed to be reasonable. See Washington v. Philadelphia County Court of Common Pleas, 89 F.3d 1031, 1035 (3d Cir. 1996). After the party seeking fees submits its request, the adverse party can raise objections to it. From that point on, the Court has considerable discretion to adjust the fee award in light of those objections. See Bell v. United

Princeton Props, Inc., 884 F.2d 713, 720 (3d Cir. 1989). Here, Defendant takes issue with the reasonableness of both the hourly rate of, and hours billed by, Plaintiff's Counsel. The Court will deal with each issue in turn.

III. ANALYSIS

A. Basis of the Court's Inquiry

Whether an hourly rate is reasonable is a question of fact for the Court. See Washington, 89 F.3d at 1035. Plaintiff has submitted a detailed explanation of his fees, along with affidavits from counsel, and from other practicing attorneys, to justify the reasonableness of both his counsel's hourly rate, and of their time expenditures. Plaintiff has also submitted the median fee survey for the City of Philadelphia, from Community Legal Services, Inc. ("CLS"), a document that provides median ranges for attorneys in the Philadelphia area with different levels of experience. This document has been cited approvingly by the Third Circuit as probative of the reasonableness of an hourly rate. See Maldonado v. Houstoun, 256 F.3d 181, 187 (3d Cir. 2001). Finally, Plaintiff has submitted a recent Middle District of Pennsylvania opinion, in which Judge Kane approved of an hourly fee of \$275.00 an hour for Mr. Lamar, one of Plaintiff's counsel. See Equal Employment Opportunity Commission and Marion Shaub v. Federal Express, Corp., No. 02-1194 (M.D. Pa. filed Jan. 14, 2005). Defendant has not informed this Court of

any facts which tend to support its argument that Plaintiff's hourly rates are unreasonable, with the exception of its criticism that Mr. Lamar's hourly rate is higher than that suggested by CLS.

On the issue of whether counsel's expenditure of time was reasonable, Plaintiff has provided the Court with detailed billing records for each of the attorneys and support staff involved in the case and submitted affidavits from multiple experienced attorneys discussing the difficulties of the underlying case based on their review of its facts. See Affidavit of William H. Ewing, Esq., attached as Exh. F to Plaintiff's Motion. (hereinafter "Ewing Aff."); Affidavit of Jordan B. Yeager, attached as Exh. G to Plaintiff's Motion (hereinafter "Yeager Aff."). Defendant has submitted no contrary information, criticizing counsel's utilization of time as broadly unreasonable, excessive, and redundant.

B. Plaintiff's Hourly Rates

Plaintiff's three primary attorneys have requested rates of \$300.00, \$310.00, and \$275.00 per hour. Ms. McKinley, Plaintiff's lead counsel through much of the proceedings, has been a lawyer for over twenty years, and has extensive litigation experience. See Affidavit of Lorrie McKinley at 2, attached as Exh. A to Plaintiff's Motion (hereinafter "McKinley Aff."). She has submitted three affidavits from local attorneys, all of whom

are indisputedly qualified to offer their opinion on the reasonableness of her fee, and all of whom endorse it. Two of these affiants endorse Mr. Lamar's rate of \$275.00 an hour, and one of them supports Mr. Meek's submission. Mr. Lamar has submitted an additional affidavit in support of his request, and also a recent Middle District Opinion awarding him a rate of \$275.00 an hour. With one exception, Plaintiff's requests are consistent with the Community Legal Services ("CLS") fee schedule for attorneys with the commiserate level of experience. For Mr. Lamar, an attorney with fourteen years of experience, a rate of \$275.00 an hour is slightly higher than the CLS suggestion of \$220.00-\$260.00.

Mr. Lamar's litigation and advocacy skills were quite clearly a cut above an average attorney's, and the Court has no trouble believing the multiple affidavits suggesting that an attorney of Mr. Lamar's abilities can expect to garner \$275.00 an hour. This conclusion is bolstered by the similar finding by Judge Kane of the Middle District of Pennsylvania. See Shaub, No. 02-1194, at *32-3.

Mr. Meek's request is at the low end of the CLS range for an attorney with more than twenty-five years of experience (\$310.00-\$400.00), and Ms. McKinley's request is within the CLS range for an attorney with between sixteen and twenty-five years experience (\$250.00-\$310.00). Defendant attacks Mr. Meek and Ms. McKinley

as inexperienced litigators in the field of disability law, but the Court finds no support for this contention. Given their experience and performance at trial, the Court accepts the proposed hourly rates as reasonable. This Court has observed literally hundreds of attorneys before it, and it is quite clear that Plaintiff's counsel are better than most, at least in terms of oral advocacy. Defendant points out the many times that the Court corrected Plaintiff's Counsel, but fails to include Plaintiff's Counsel's rejoinders. Indeed, given the complexity of the facts at hand, Plaintiff's Counsel was quite clarifying at times. The remainder of Plaintiff's rates, for Mr. Earle and Mr. Resnick, are well within the CLS range. The Court accepts Plaintiff's proposed fee schedule.

B. *Reasonableness of Time Expended*

Plaintiff requests an award covering 1341.3 hours of legal work. Defendant challenges this number as inflated and unreasonable. The Court has reviewed Plaintiff's detailed logs, and accepts Plaintiff's submission with several adjustments. District courts should exclude hours from the lodestar calculation that are not reasonably expended. See Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). Hours are not reasonably expended if they are excessive, redundant, or otherwise unnecessary. See id. at 434. In general, a court must make some explanation on the record for its reduction of hours when the

grounds for the reduction are excessiveness or redundancy. Rode, 892 F.2d at 1187.

The lion's share of counsel's time was reasonable. As a number of the affiants have noted, Plaintiff's case was not an easy one to prove, in both a legal and factual sense. See Ewing Aff. at 4; Yeager Aff. at 4. Plaintiff's case was complex and he was fought at every turn by Defendant and its agents. Although certain of Plaintiff's briefs were simply too long, as Plaintiff's Counsel aptly notes, it is often more time-consuming to shorten a document with edits than to simply submit it as it is. See Plaintiff's Resp. at 16, n.34. In general, the Court's review of counsel's billing logs reveals that the bulk of their time was spent on time worthy pursuits.

Defendant attacks counsel's use of time as excessive and redundant, arguing that many tasks were staffed by two senior attorneys when one might have been adequate. Defendant also attacks the large amount of time (241.7 hours) counsel spent preparing summary judgment briefs, the large amount of time (59 hours) spent preparing jury instructions, and Plaintiff's utilization of three senior attorneys at trial when one or two would have sufficed.¹ Additionally, Defendant has identified two

¹ Defendant raises a panoply of other objections to Plaintiff's proposed fees, but the Court does not find merit in them. Defendant attacks Plaintiff's staffing of depositions (generally utilizing two attorneys), Plaintiff's billing for pre-trial preparation, Plaintiff's billing for document review, Plaintiff's billing for his response to Defendant's summary judgment motion, Plaintiff's billing for interoffice communication, and

small bookkeeping irregularities.

At the outset, Defendant's arguments tend to blur the fact that, in addition to being extremely factually complex, and rather legally complex, Plaintiff's case also occurred over a substantial period of time. The Court has reviewed Plaintiff's billing records and finds them generally reasonable. As such, the Court accepts Plaintiff's statement of hours with several exceptions: the Court finds that Mr. Meek's presence at trial was unnecessarily redundant, that counsel spent an excessive amount of time on an ultimately unsuccessful summary judgment motion, and that counsel spent an excessive amount of time on jury instructions. Additionally, the Court will reduce Ms. McKinley's time by 0.3 hours for an apparent bookkeeping irregularity in her account of hours on March 2, 2004, and likewise will reduce the time billed by her paralegal, Ms. Donnelly, by 2.2 hours, for an accounting irregularity on March 1, 2004.

1. *Mr. Meek's Presence at Trial*

Plaintiff was aptly represented at trial by two senior attorneys, Ms. McKinley and Mr. Lamar. Mr. Lamar played a critical and substantial role during trial and, the Court must note, he played the role with the aplomb and skill of a litigator many years his senior. His presence at trial, like Ms.

Plaintiff's research billing. The Court has reviewed Plaintiff's logs, and, given the complexity and contentiousness of the underlying litigation, deems the use of these hours reasonable.

McKinley's, was obviously crucial to Plaintiff's success, and the time he has submitted (which includes travel time) is reasonable. There was no reason, however, that Plaintiff required an additional senior level attorney during trial. It is the Court's finding that Mr. Meek's presence during trial was unnecessary and redundant, and that it would be unreasonable to include it in the lodestar calculation.

It is certainly true that Mr. Meek's presence *may* have been helpful to Plaintiff, in that he may have offered strategic advice or kept notes for litigating counsel, but it is not reasonable to expect Defendant to pay for services which could have been performed by a lower-level attorney or paralegal, if said services were even called for. Mr. Meek, in this Court's view, played no role at trial other than spectator. The Court notes that Mr. Meek has a superb and illustrious reputation, and the exclusion of his trial time is in absolutely no way a reflection of his professional prowess. Because Mr. Meek's presence at trial was excessive and redundant, it is not a reasonable expenditure of hours. The Court strikes 44 hours from the Disabilities Law Project's request.

2. *Plaintiff's Summary Judgment Motion*

Plaintiff submits a bill for 241.7 hours spent preparing an unsuccessful summary judgment motion. Although the motion may have theoretically caused future time-savings, the amount of time

billed for it is simply astounding (particularly in light of its ultimate failure) and therefore not completely reasonable.

First, the brief accompanying Plaintiff's Motion was extraordinarily, excessively long (roughly 83 pages, with 142 footnotes), when this Court's Protocols do not allow briefs longer than fifteen pages without leave of Court (which Plaintiff did not seek or receive). This Court has, in the past, ordered re-briefing of excessively long motions, and, although it did not in this case, it is manifestly unfair to Defendant to allow counsel to be rewarded for such extreme violations of this Court's Protocols. Second, many of the points raised in Plaintiff's Motion were flatly inappropriate subject-matter for summary judgment in this case, including whether Plaintiff was regarded as being disabled, and whether Plaintiff was qualified to perform the position he sought. There were, quite clearly in this Court's view, disputed issues of material fact that prevented adjudication of many of these issues on summary judgment. The Court cannot, however, unilaterally, and without sufficient evidence, dictate the number of hours that would have been reasonable to spend on Plaintiff's motion. See United States v. Eleven Vehicles, 200 F.3d 203, 211-12 (3d Cir. 2000) (district court cannot sua sponte order the reduction of fees).

In order to aide the Court in its determination, Defendant must submit additional evidence (and, if it so desires, Plaintiff

may submit additional evidence of reasonableness). Such evidence might include affidavits on the number of hours expended on similar motions in similar cases, or, in Defendant's case, its own invoices for its summary judgment motion in this case. As the Court does not yet have a sufficient record on which to rule, the lodestar will be entered without the time allotted to summary judgment, pending revision. Of course, Defendant may choose to waive its objection to this use of hours (which it will constructively do by failing to offer sufficient specific objections).

3. *Plaintiff's Jury Instructions*

Plaintiff submits a request for 59 hours spent preparing jury instructions. For three experienced attorneys, this smacks of excessiveness, and may therefore be unreasonable. Although the Court readily accepts the legal and factual complexity of this case, it is reasonable to expect that counsel's years of experience should cause cost-savings in areas like the preparation of jury instructions. Again, the Court requires additional evidence on this matter. Defendant (and Plaintiff if he chooses) shall submit such evidence as is relevant, and the Court will revisit this section of its ruling. Again, should Defendant fail to submit sufficient evidence, it will constructively waive the ability to contest the full award of hours.

C. *Lodestar Calculation*

The above reductions taken into account, the Court finds that the remainder of counsel's utilization of time was reasonable. The Court sees no need to further adjust the lodestar amount, as it has authority to do; all of the Court's other considerations, including that of the result obtained for Plaintiff, have been adequately addressed in its consideration of the reasonableness of the hours utilized. See Hensley, 461 U.S. at 434.

1. *McKinley & Ryan, LLC*

Ms. McKinley requests an award for 605 hours of counsel time and 150 hours of staff time. As discussed above, the Court will reduce this number by: (111 hours preparing Plaintiff's Motion for Partial Summary Judgment, inclusion to be determined at a later date) + (28.2 hours preparing jury instructions, inclusion to be determined at a later date) + (0.3 hours for accounting irregularity) + (11.1 hours which Ms. McKinley has indicated should be billed at a paralegal rate)= 454.4 hours at a rate of \$300.00 per hour, or \$136,320.00, plus 11.1 hours at the paralegal rate of \$85.00 an hour, or \$943.50. This yields a total figure of \$137,263.50. The Court also awards expenses in the amount of \$8,493.55.

Ms. McKinley has submitted invoices for staff time, which is compensable. Ms. McKinley indicated in her affidavit, however,

that she had made certain adjustments to her paralegal billings due to billing judgment. See McKinley Aff. at 8. Because many hours of paralegal time were spent on Plaintiff's Motion for Partial Summary Judgment, the Court will not attempt to interpret Ms. McKinley's use and billing of paralegal time. Rather, Ms. McKinley shall submit to this Court two new billing logs: one including paralegal and staff time utilized during preparation of Plaintiff's Motion for Partial Summary Judgment, and one for all other time billed. Defendant will immediately remit to Plaintiff the amount indicated by Ms. McKinley for other time billed. The time spent on Plaintiff's Motion for Partial Summary Judgment will, obviously, be addressed in the future.

2. *Mr. Lamar*

Mr. Lamar requests an award for 215.60 hours of counsel time at a rate of \$275.00 an hour. The Court will reduce this number by (5.5 hours spent preparing jury instructions, inclusion to be determined at a later date) for a total figure of (210.10 hours x \$275.00) \$57,777.50. The Court also awards expenses in the amount of \$3,372.51.

3. *The Disabilities Law Project*

Mr. Meek requests an award for 329 hours of personal attorney time, and reimbursement for a number of other lawyers at his firm. The Court will reduce this number by (44 redundant and excessive hours spent at trial) + (7 hours spent preparing jury

instructions, inclusion to be determined at a later date) + (76 hours preparing Plaintiff's motion for summary judgment, inclusion to be determined at a later date) = 202.00 at a rate of \$310.00 an hour, yielding a total figure of \$62,620.00. The Court also awards (39.10 - 18.3 hours spent preparing jury instructions, inclusion to be determined at a later date) = 20.8 hours at a rate of \$265.00 for Attorney Resnick, yielding a total of \$5,512.00, and 21.75 hours for Attorney Earle at a rate of \$245.00, yielding a total of \$5,328.75. The total award, therefore, to the Disabilities Law Project, is \$73,460.75. The Court also approves expenses in the amount of \$2,644.93.

IV. CONCLUSION

For the reasons stated above, Plaintiff's Motion for Fees is granted in part and denied in part. An Order follows.

S/ Clarence C. Newcomer

United States District Judge

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EDWIN TAYLOR,	:	CIVIL ACTION
Plaintiff,	:	NO. 03-2216
	:	
v.	:	
	:	
USF - RED STAR EXPRESS, INC.,	:	
Defendant.	:	

ORDER

AND NOW, this 8th day of March, 2005, upon consideration of Plaintiff's Motion for Fees (Doc. 80), Defendant's Response, Plaintiff's Reply, and Plaintiff's Supplemental Reply, it is hereby ORDERED that said Motions are GRANTED in part and DENIED in part. It is further ORDERED that Defendant remit to Plaintiff's Counsel the following amounts:

1. \$137,263.50 in fees and \$8,493.55 in expenses to the law firm of McKinley & Ryan, LLC.
2. \$57,777.50 in fees and \$3,372.51 in expenses to attorney Ralph Lamar, Esq.
3. \$73,460.75 in fees and \$2,644.93 in expenses to the Disabilities Law Project.

It is further ORDERED that Defendant (and Plaintiff, if he wishes), within 14 days of this Order, submit additional information, as they see fit, to justify their respective positions on the reasonableness of Plaintiff's Counsel's hours expended on jury instructions and on Plaintiff's Motion for Partial Summary Judgment.

It is further ORDERED that Plaintiff's Motion to Permit Supplementation of Plaintiff's Initial Fee Request (Doc. 106) is GRANTED.

AND IT IS SO ORDERED.

S/ Clarence C. Newcomer
United States District Judge