



**In the Matter of:**

**ANGEL NEGRON,**

**ARB CASE NO. 04-021**

**COMPLAINANT,**

**ALJ CASE NO. 2003-AIR-10**

**v.**

**DATE: March 7, 2006**

**VIEQUES AIR LINK, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Enrique Jose Mendoza Mendez, Esq., San Juan, Puerto Rico**

***For the Respondent:***

**Luis R. Mellado-Gonzalez, Esq., San Juan, Puerto Rico**

**ORDER AWARDING ATTORNEY'S FEES AND COSTS**

This case arose out of a complaint Angel Negrón filed claiming that his employer, Vieques Air Link (VAL), violated the employee protection (whistleblower) provision of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), 49 U.S.C.A. § 42121 (West 2003) when it suspended, transferred, and discharged him in retaliation for making safety complaints. After a formal hearing, an Administrative Law Judge (ALJ) issued a Recommended Decision and Order finding that VAL violated AIR 21 and Negrón was entitled to reinstatement, back pay, damages and costs. The ALJ also issued a Supplemental Decision and Order Granting Attorney Fees (S. D. & O.), recommending an award of attorney's fees and costs in the amount of \$15,961.48. VAL appealed the ALJ's recommendation to this Board. We issued a Final Decision and Order affirming the rulings of the ALJ on December 30, 2004.

On January 18, 2005, Negron submitted to the Board a Petition and Memorandum of Law For an Award of Attorney's Fees seeking \$5,850 in fees for 29.25 hours of work performed in defending VAL's appeal of the ALJ's decision before the Board. Negron's fee petition covers fees for services rendered from November 26, 2003, through January 10, 2004. Negron's Petition requested the Board to take judicial notice of the motion and supporting papers he filed in relation to his petition for fees before the ALJ. VAL filed a timely response opposing the Petition. Opposition to Additional Attorneys' Fees (Opposition) at 1. We now consider Negron's Petition and VAL's Opposition.

### DISCUSSION

Under AIR 21, if the ALJ finds that a person violated the employee protection provision, the ALJ can assess, at the complainant's request, the costs of bringing the case, including attorney's fees reasonably incurred by the complainant in bringing the complaint, against the person against whom an order is issued for the violation of AIR 21. 49 U.S.C.A. § 42121(b)(3)(B); *see also* 29 C.F.R. § 1979.109(b)(2005). The regulations governing AIR 21 also provide for the award of attorney's fees incurred by a complainant who prevails in appealing his or her case to the Board. 29 C.F.R. § 1979.110(d) ("If the Board concludes that the party charged has violated the law, . . . the Board shall assess against the named person all costs and expenses (including attorney's and expert witness fees) reasonably incurred.").

We employ the lodestar method to calculate attorney's fees, which requires multiplying the number of hours reasonably expended in bringing the litigation by a reasonable hourly rate. *Jackson v. Butler & Co.*, ARB Nos. 03-116 and 03-144, ALJ No. 2003-STA-26 (ARB Aug. 31, 2004); *Gutierrez v. Regents of the Univ. of Cal.*, ARB No. 99-116, ALJ No. 1998-ERA-19 (ARB Feb. 6, 2004). The party seeking a fee award must submit evidence documenting the hours worked and the rates claimed. If the documentation of hours is inadequate, the award may be reduced accordingly. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

We have reviewed Negron's request for additional attorney's fees and find that the tasks performed are appropriately itemized and that the hourly rate is reasonable. We now consider VAL's opposition to the request. VAL's response incorporates by reference arguments raised in opposing the attorney's fees granted by the ALJ. Opposition at 1.

First, VAL contends that additional fees should not be granted because its ground for appeal "had merit even though [the ARB] eventually sustained the final decision of the ALJ." Opposition at 1. This contention is not a ground upon which we can deny the award of attorney's fees. Negron prevailed in VAL's appeal to the Board and is therefore entitled to reasonable attorney's fees pursuant to 29 C.F.R. § 1979.110(d).

Second, incorporating its prior objections by reference, VAL challenges Negron's

attorney's hourly rates. VAL argued that Negron's attorney failed to indicate the hourly rate he charges for cases similar to Negron's. *See* S. D. & O. at 1. As the ALJ indicated, AIR 21 contains no requirement that attorneys justify their billing rates by revealing fee arrangements made with other clients. S. D. & O. at 3. We defer to the ALJ's ruling that \$200.00 per hour for out-of-court representation reflects the hourly rates charged in the geographic region of Puerto Rico. S. D. & O. at 3.

Third, incorporating its prior arguments by reference, VAL argues that the fee petition does not clearly state counsel's hourly rate and does not contain a clear itemization of the complexity and type of services rendered. Opposition at 1; S. D. & O. at 1. VAL contends that "the amounts claimed are clearly exaggerated and unsupported by the law and the evidence." Opposition at 2. We disagree. VAL fails to challenge any particular time entry. Negron's itemized list of time billed on this matter clearly describes services rendered by counsel at the rate of \$200.00 per hour. Those services included reviewing a record that included a trial transcript and exhibits, analyzing VAL's brief and writing Negron's appellate brief. The level of detail in the descriptions of the services provided is adequate, and the overall number of hours, 29.25 hours of out-of-court service, is reasonable.

#### **CONCLUSION**

We grant Negron's fee petition. Respondent VAL shall pay to Negron's counsel \$5,850 in additional attorney's fees for the period ending January 10, 2004.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**