U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

JAMES CARROLL PILLOW, JR.,

COMPLAINANT,

v.

BECHTEL CONSTRUCTION, INC.,

RESPONDENT.

ARB CASE NO. 97-040

ALJ CASE NO. 87-ERA-35

DATE: September 11, 1997

SUPPLEMENTAL ORDER DENYING REQUEST FOR INTEREST AND GRANTING ATTORNEY'S FEES

BACKGROUND

Approximately ten years ago, Complainant James Carroll Pillow, Jr. (Pillow) complained that Respondent, Bechtel Construction, Inc. (Bechtel), violated the employee protection provision of the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. §5851 (1988), when it laid him off from his position as a laborer at the Turkey Point Nuclear Plant in Florida. The Secretary of Labor found in favor of Pillow and remanded the case to the Administrative Law Judge (ALJ) for a recommended decision on the damages to which Pillow was entitled.

While the case was pending before the ALJ on remand, the parties entered into an agreement that resolved the issues of damages and attorney's fees. The agreement provided that Bechtel would pay Pillow $25,000 in back pay and interest and an additional $25,000 in compensatory damages. The agreement also provided that Bechtel would pay Pillow's counsel $250,000 to cover the costs reasonably expended in bringing the complaint, including attorney's fees. The agreement did not settle the underlying issue of liability and contemplated that Bechtel would seek judicial review on that issue.

In a Final Decision and Order, the Secretary approved the agreed terms and ordered the payments listed above. The United States Court of Appeals for the Eleventh Circuit affirmed the Secretary's decision on September 19, 1996. 98 F.3d 1351 (table).

At the end of 1996, Pillow asked this Board to order Bechtel to pay attorney's fees for assisting in defending the Secretary's decision before the Court of Appeals.[1/] Two days later, Pillow filed an emergency motion asking us to order Bechtel immediately to pay $50,000 to Pillow and $250,000 to his counsel, as "partial payment of judgment."

Bechtel responded that the only reason it had not yet paid the obligated amounts totaling $300,000 is "Pillow has told us he would not accept anything less than $365,000, else he would engage [Bechtel] in additional litigation." Bechtel's Response to Pillow's Motion for Payment at 2. Bechtel believed that its payment of the agreed $300,000 should bring an end to this proceeding. *Id*.

In response, we ordered Bechtel immediately to pay $50,000 to Pillow and $250,000 to his counsel. Feb. 5, 1997 Order, slip op. at 3.[2/] We also gave Pillow thirty days "to submit all documents showing the amount of attorney's fees, costs, and interest claimed" together with a brief, and afforded Bechtel the opportunity to respond.

Citing 42 U.S.C. §5851(e), Bechtel argues that because the Secretary has issued a final decision, only the United States District Court has jurisdiction over this dispute concerning the enforcement of the settlement agreement. Resp. Brief at 4-5. That statutory provision states:

> (e)(1) Any person on whose behalf an order was issued under [42 U.S.C. §5251(b)(2)] may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

DISCUSSION

Board Jurisdiction

We agree with the general proposition that after a final decision has been issued, the Board lacks jurisdiction over a dispute about the proper interpretation of a settlement agreement. *See, e.g., Ing v. Jerry L. Pettis Veterans Affairs Medical Ctr.*, Case No. 96-ERA-32, ALJ Rec. Dec. and Ord., Sept. 4, 1996, slip op. at 2-3, *aff'd*, ARB Ord. of Dismissal, ARB Case No. 96-193, Sep. 27, 1996. Unlike the situation in *Williams v. Public Serv. Elec. & Gas Co.*, Case No. 94-ERA-2, Sec'y. Remand Order, Apr. 10. 1995, there is no provision in the settlement agreement in this case retaining jurisdiction for the Board to enforce the agreement. Pursuant to 42 U.S.C. §5251(e), the District Court has jurisdiction to enforce the Board's Final Decision and Order. Pillow's contentions

---

[1/] The Secretary of Labor was the named respondent in the Court of Appeals.

[2/] Bechtel has paid the amounts totaling $300,000. Bechtel's Responsive Brief (Resp. Brief) on Issues of Interest and Attorney's Fees at 3 n.1.

concerning any agreement of the parties to pay any additional interest may be addressed to the District Court in an enforcement action.

The settlement agreement here, which was entered into prior to the judicial review proceeding, does not explicitly preclude an award of attorney's fees for the appellate court proceeding. Further, issues concerning fees and costs may be addressed after the issuance of a final decision. *See Delcore v. W.J. Barney Corp.*, Case No. 89-ERA-38 ARB Order, Oct. 31, 1996 (awarding costs and attorney's fees incurred during appeal of Final Decision and Order issued June 9, 1995).

Thus, there is one issue that properly remains before the Board, Pillow's request for "attorney's fees" for his participation in the judicial review proceeding. The ERA provides that a successful complainant automatically is entitled to an award of "a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, *as determined by the Secretary,* by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued." 42 U.S.C. §5251(b)(2)(B) (emphasis added). The Court of Appeals for the Fourth Circuit held in *Blackburn v. Reich*, 79 F.3d 1375, 1379 (4th Cir. 1995) that "attorney's fees related to prosecuting an appeal before the court of appeals are 'costs . . . incurred . . . in connection with [ ] the bringing of [a] complaint'" under the ERA "and, therefore, the Secretary has the authority to award such fees." *But see DeFord v. Secretary of Labor*, 715 F.2d 231 (6th Cir. 1983) (*contra*). Whereas we are compelled to follow the *DeFord* rule disallowing appellate fees in cases that arise within the Sixth Circuit, *Sprague v. American Nuclear Resources, Inc.*, Case No. 92-ERA-37, Final Dec. and Ord., July 15, 1996, slip op. at 2 n.4, we are not so constrained in this case because it arises within the Eleventh Circuit. *See, e.g., Delcore,* slip op. at 2 (granting appellate level fees in a case arising outside the Sixth Circuit).

In *Delcore* we granted appellate level costs and attorney's fees where, like here, the complainant prevailed before the Secretary and the complainant participated in the judicial review proceeding. Accordingly, we will consider Pillow's request for attorney's fees for appellate level work.

The Attorney's Fee Request

Pillow's fee request is set forth in its entirety below. We have numbered each item to facilitate our discussion.

SERVICE PERFORMED	**HOURS**
1. Review Incoming Correspondence and Documents	4.5
2. Preparation of Outgoing Correspondence and Documents	7.8
3. Telephone Conferences	4.8
4. File Administration	4.0

5. Review Incoming Pleadings, Notices, and Court Filings	3.6
6. Preparation Outgoing Pleadings, Notices, and Court Filings	12.4
7. Review Bechtel Brief	2.0
8. Research Cases Cited in Bechtel Brief	8.0
9. Review Entire Record in Preparation of Pillow Brief	6.0
10. Research Case Law in Support of Pillow Brief	12.5
11. Preparation of Pillow Brief	40.0
12. Review Secretary of Labor Brief	1.5
13. Prepare for and Attend Oral Argument	8.0
14. Research and Prepare Papers in Support of Entitlement to Interest and Fee Awards	16.0
TOTAL HOURS	131.1

This aggregation of hours is not sufficiently specific to permit the Board to determine whether all the attorney's time was reasonably expended. We usually require an itemized list that includes the date on which the attorney's time was expended, the amount of hours expended, and a specific description of the tasks undertaken by the attorney during that time. In the list above, the items 1 through 6 were not sufficiently described for us to find that the time reasonably was spent in connection with the appellate proceeding. We disallow a total of 37.1 hours for these items.

Bechtel objects to attorney time spent in preparing Pillow's brief in the appellate court because Pillow "volunteered to file a brief in the appeal" and his appearance "was gratuitous only." Resp. Brief at 18. Even though Pillow was not required to file a brief in the appellate proceeding, he clearly had an interest in the outcome and we find that preparing and submitting the brief was reasonable under the circumstances. In this instance, since the brief was filed, we may authorize attorney's fees for work performed in producing the brief even though Pillow's counsel has not provided a specific itemization of the date, time and work performed. Given the lack of specificity in the attorney's fees request, the total number of hours claimed for items related to preparing Pillow's appellate court brief, items 8 through 11, was unreasonable. We find half the claimed amount of time for these items to be reasonable and disallow 33.25 hours.

The description of tasks for items 7 and 12 are sufficient and the claimed number of hours are reasonable and we allow those items. Bechtel objects to the time claimed in item 13 concerning oral argument because "Pillow's lawyer did not attend oral argument -- he arrived after it was over -- and was not invited or slated to participate." Resp. Brief at 18. Counsel for Pillow has not contested

the accuracy of this statement. We disallow the eight hours claimed for this item for the reasons Bechtel states.

We have disallowed 78.35 hours and consequently we allow 52.75 hours for appellate level attorney work reasonably incurred in bringing the complaint.

Pillow's counsel did not provide an affidavit attesting to his qualifications or that $250 is a reasonable hourly billing rate in his community. Rather, counsel stated that the claimed hourly fee is less than that charged by opposing counsel. We find this statement inadequate to demonstrate entitlement to the $250 hourly fee and instead authorize $125 as a reasonable hourly fee. We have authorized 52.75 hours at $125 per hour, for a total attorney's fee of $6,593.75.

CONCLUSION

The request for an order requiring the payment of interest is **DENIED** for lack of jurisdiction over the dispute about the meaning of the settlement agreement.

The request for attorney's fees for appellate level work is granted in part and denied in part. Respondent is ordered to pay Complainant's attorney's fees in the amount of $6,593.75.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member