



In the Matter of:

**BRYAN KEITH PITTMAN,**

**ARB CASE NO. 99-062**

**COMPLAINANT,**

**(Formerly ARB NO. 97-120)**

**v.**

**ALJ CASE NO. 96-STA-25**

**GOGGIN TRUCK LINE, INC.,**

**DATE: July 30, 1999**

**RESPONDENT.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

### ORDER

The Administrative Review Board issued a Final Decision and Order on September 23, 1997, in this case arising under the employee protection provision of the Surface Transportation Assistance Act of 1982, as amended (STAA), 49 U.S.C.A. §31105 (West 1996). *Pittman v. Goggin Truck Line, Inc.*, ARB Case No. 97-120, ALJ Case No. 96-STA-25. In this decision, we held that Goggin Truck Line, Inc. (Goggin), the Respondent, discriminated against Bryan Pittman, the Complainant, in violation of the STAA, when it discharged him for complaining about the safety of trucks he was assigned to drive. ARB Final Decision and Order Sept. 23, 1997, slip op. at 4. Among other things, the ARB ordered Goggin to pay Pittman's attorney's fees for hours worked on this case through February 7, 1997.<sup>1/</sup>

Goggin petitioned the United States Court of Appeals for the Sixth Circuit for review of the ARB's decision, and the court, in an unpublished decision, affirmed the ARB's decision on January 15, 1999. *Goggin Truck Line Co., Inc. v. Administrative Review Board, U.S. Dep't of Labor*, No. 97-4340 (6th Cir., filed Jan. 15, 1999). Pittman now moves for a supplemental award of attorney's fees for time expended after February 7, 1997. Feb. 26, 1999 Affidavit of Cabell Regan in support

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<sup>1/</sup> February 7, 1997, was the date on which Pittman submitted his post-hearing brief to the Administrative Law Judge. An affidavit in support of attorney's fees covering the period from the initiation of the case to February 7, 1997, accompanied this brief. Brief for Complainant [before the Office of Administrative Law Judges], Feb. 7, 1997. The ALJ's Recommended decision and order of June 16, 1997, granted Pittman's request for attorney's fees. R. D. & O. at 22.

of supplemental request for attorney's fees, paragraph 9. Pittman requests \$4,620 in attorney's fees and \$617.50 in costs; his attorney's fee request is based on \$200 per hour for 23.10 hours of work. Goggin objects to the award of any fees for any time expended after July 23, 1997, the date Pittman received the ALJ's Recommended Decision and Order, with the exception of hours expended on August 19 and 21, 1997, preparing Pittman's brief to the ARB. Supplemental Affidavit [in support of] Attorney's Fees for Complainant, paragraph 9. Goggin argues that Pittman is not entitled to fees for any time expended after July 23, 1997, because attorneys in the Office of the Solicitor, U.S. Department of Labor, not Pittman's counsel, litigated this case before the Sixth Circuit.

## DISCUSSION

The STAA provides that, in a case in which the Secretary issues an order in favor of a Complainant, the Secretary may order the Respondent to pay the costs, including attorney's fees, "reasonably incurred by the complainant in bringing the complaint." 49 U.S.C.A. §31105(b)(3)(B). Generally, the lodestar method of calculation is used, which requires multiplying the number of hours reasonably expended in bringing the litigation by a reasonable hourly rate. *See Clay v. Castle Coal and Oil Co.*, Case No. 90-STA-37 (Sec'y Dec. June 3, 1994). In a case arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. §5851 (1994), the ARB held that, to be compensable under the fee shifting provision of that act, complainant's attorney must show the connection between the hours expended and the whistleblower litigation. *McCafferty v. Centerior Energy*, ARB Case No. 96-144, ALJ Case No. 96-ERA-6, ARB Dec. and Remand Order Sep. 24, 1997, slip op. at 29-30.

Accordingly, guided by these precepts, we allow the 15.75 hours Pittman's counsel expended up to September 25, 1997, when he "Transmitted" the ARB Final Decision and Order to Pittman. However, thereafter, Pittman's counsel did not actively litigate the case before the Sixth Circuit, allowing the Office of the Solicitor to carry on the appellate litigation in its entirety. We find that the hours expended after that date were not related to "bringing the complaint" with the exception of the following entries:

- January 23, 1998—Review of Respondent's Draft [sic] Brief to 6th Circuit—2 hours;
- February 16, 1998—Review of draft brief of DOL—2 hours;
- February 17, 1998—Letter to DOL—.75 hours.

These hours presumably were expended in consultation with the Solicitor's Office on its brief before the Sixth Circuit and are therefore related to the "bringing of the complaint."

We agree with Goggin that costs incurred for advisory services rendered by the Squire, Sanders & Dempsey law firm were not closely related to the bringing of the complaint, but rather were related to exploring the question whether a motion for change of venue from the Sixth Circuit to the Fourth Circuit would be successful. Since the Solicitor's Office alone, rather than Pittman, litigated the case on appeal, these costs did not further the litigation of this case. Accordingly, Respondent Goggin shall pay Pittman \$4100 in attorney's fees for 20.5 hours at \$200 per hour.<sup>2/</sup>

**SO ORDERED.**

**PAUL GREENBERG**

Chair

**CYNTHIA L. ATTWOOD**

Member

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<sup>2/</sup> Goggin did not challenge the \$200 hourly rate Pittman's counsel claimed.