



In the Matter of:

BARRY D. MODER,

**ARB CASE NOS. 01-095
02-039**

COMPLAINANT,

ALJ CASE NO. 2000-WPC-5

v.

DATE: October 28, 2003

VILLAGE OF JACKSON, WISCONSIN,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER AWARDING ATTORNEY'S FEES AND COSTS

On June 30, 2003, we issued a final decision and order affirming the Administrative Law Judge's (ALJ's) Recommended Decision and Order in this case. *Moder v. Village of Jackson*, ARB Nos. 01-095, 02-039, ALJ No. 2000-WPC-5 (June 30, 2003). We concurred with the ALJ that the Village of Jackson, Wisconsin violated § 1367 of the Federal Water Pollution Prevention and Control Act, 33 U.S.C.A. § 1367 (West 2001), when it failed to promote the Complainant, Barry Moder, to supervisor of the Village wastewater treatment plant in May 2000.

However, we modified the recommended backpay award to increase it from \$1,459.44 to \$4,576.00. *Moder*, electronic slip op. at 7.¹ We also rejected the recommendation to award compensatory damages and front pay. *Id.* at 7-9.

The Complainant's counsel, Jeffrey P. Sweetland, has filed a petition for attorney's fees dated July 18, 2003, seeking fees and expenses in the amount of \$10,594.60. The fee petition was served on counsel for the respondent, James R. Scott. No opposition has been filed. However, we review the petition for compliance with applicable standards.

¹ The Final Decision & Order is available at the Office of the Administrative Law Judges' website <http://www.oalj.dol.gov>.

When the Secretary issues an order under § 1367(b) to abate a violation

at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees), as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

33 U.S.C.A. § 1367(c).

The Secretary employs 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. *Jenkins v. EPA*, No. 92-CAA-6, electronic slip op. at 2 (Sec'y Dec. 7, 1994), citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

The party seeking a fee award must submit evidence documenting the hours worked and the rates claimed. A "complainant's attorney fee petition must include 'adequate evidence concerning a reasonable hourly fee for the type of work the attorney performed and consistent [with] practice in the local geographic area,' as well as records identifying the date, time, and duration necessary to accomplish each specific activity, and all claimed costs." *Gutierrez v. Regents, Univ. of Cal.*, ARB No. 99-116, ALJ No. 98-ERA-19, electronic slip op. at 11 (ARB Nov. 13, 2002); *Fabricius v. Town of Braintree/Park Dep't*, ARB No. 97-144, ALJ No. 1997-CAA-14, electronic slip op. at 8 (ARB Feb. 9, 1999). If the documentation of hours is inadequate, the award may be reduced accordingly. *Hensley v. Eckerhart*, 461 U.S. at 433.

Here, the Complainant has submitted a fully itemized and documented fee petition. We find the level of detail in the descriptions of the services provided to be adequate. We find the hourly rate of \$200 for hours worked in 2001 and \$225 for hours worked in 2002, and the total of 23.5 hours devoted to the review proceeding and preparation of the fee petition to be reasonable. We also note that Moder does not include fees incurred for an argument he raised for the first time on review and which we rejected.

Moder achieved significant remedies and remains the prevailing party. We decline to make a downward adjustment for work performed on the now-unsuccessful argument concerning compensatory damages and front pay. See *Hensley v. Eckerhart*, 461 U.S. at 435 (attorney's fees should not be reduced simply because plaintiff failed to prevail on every contention raised, where plaintiff obtains otherwise an excellent result). Cf. *Pogue v. United States Dep't of the Navy*, No. 87-ERA-21, electronic slip op. at 14 (Sec'y Apr. 14, 1994) (Labor Secretary rejected respondent's challenge to an award of attorney's fees award in case where, although no damages were awarded, the complainant was more than minimally successful, because the Secretary found a violation of the CERCLA and because discriminatory disciplinary actions were ordered expunged and the complainant was awarded a retroactive within grade increase, transfer to a comparable job and training).

We thus **GRANT** the Complainant's unopposed petition for attorney's fees and costs in the amount of \$ 10,594.60.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge