

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DANCO, INC., et al.,)
)
 Plaintiffs)
)
 v.) Civil No. 97-54-B
)
 WAL-MART STORES, INC.,)
)
 Defendant)

ORDER

BRODY, District Judge

Before the Court is Plaintiffs' Application for Attorney's Fees ("Application") arising out of an April 19, 1998 jury verdict in their favor. Plaintiffs seek a total of \$208,955 in attorney's fees. Defendant opposes Plaintiffs' Application as untimely¹ and unreasonable. For the reasons set forth below, Plaintiffs' Application for Attorney's Fees is GRANTED in the amount of \$138,753.55.

I. BACKGROUND

Plaintiffs filed a nine-count Complaint against Defendant on March 26, 1997 asserting claims for discriminatory termination and hostile work environment under 42 U.S.C. § 1981, as well as various state claims. The Court denied Defendant's Motion for Summary Judgment on Plaintiffs' section 1981 claims and most of the state law claims. At trial, the jury found for Plaintiffs on the hostile work environment claim as well as on their breach of contract and

¹ The Court is not persuaded by Defendant's argument that Plaintiffs' Application is untimely under F. R. Civ. P. 54(d)(2)(B). Plaintiffs were entitled to rely on Local Rule 54.2 which allows 30 days for filing an Application for Attorney's Fees following the disposition of an appeal.

negligent infliction claims. The jury awarded Plaintiffs \$4,440 in contract damages and \$650,000 in damages attributable to the hostile work environment. This Court entered an Amended Judgment on September, 8, 1998 reflecting a remitted damage award of \$304,440. Both parties appealed and the First Circuit affirmed.

II. DISCUSSION

Plaintiffs' Application includes charges for work performed in connection with both the trial and the appeal of this case by members of the firm Friedman, Babcock & Gaythwaite, Plaintiffs' counsel. While Defendant acknowledges that Plaintiffs, as the prevailing party on a section 1981 claim, are entitled to attorney's fees, it argues that many of the charges are unreasonable. See 42 U.S.C. § 1988(b) (Supp. II 1996) ("[i]n any action or proceeding to enforce a provision of section[] . . . 1981, . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs").

Attorney's fees are calculated "by means of the time-and-rate method known as the lodestar." Weinberger v. Great N. Nekoosa Corp., 801 F. Supp. 804, 811 (D. Me. 1992), aff'd sub nom. BTZ, Inc. v. Great N. Nekoosa Corp., 47 F.3d 463 (1st Cir. 1995). The "lodestar" calculation represents the "number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). The resulting figure may be adjusted up or down based the plaintiff's degree of success in the lawsuit. See id. at 434.

1. Lodestar

Defendant takes issue with both the time and rate elements of the lodestar calculation. Specifically, it contends that many of the fees represent excessive research time and duplicative work by several attorneys. Defendant also claims that other fees should be disallowed because

Plaintiffs' counsel failed to provide an adequate description of the work performed. Finally, it asserts that the hourly rate for associates is excessive and that travel time should be compensated at \$10.00 per hour rather than counsels' usual hourly rate.

The Court is satisfied that Plaintiffs' counsel have not engaged in excessive research and have adequately accounted for time spent. It agrees, however, that many of the tasks performed by two attorneys could have been completed by one and that the billing rates for associates and travel time are excessive. The Court will address each of these areas in turn.

a. Multiple attorneys

Plaintiffs' Application reflects many instances in which two attorneys worked on essentially the same task. Plaintiffs argue that hours involving more than one attorney were limited to complex tasks involving novel issues. The Court's careful examination of the Application's Exhibit B reveals, however, that not all tasks undertaken by multiple attorneys fell into this category. For example, the Court does not consider deposition preparation particularly complex. Likewise, trial attendance and general trial preparation should not be routinely billed by multiple attorneys. See Wilcox v. Stratton Lumber, Inc., 921 F. Supp. 837, 847 (D. Me. 1996).

Where the Court found that both a partner and associate billed for work properly completed by one, it eliminated the hours of the associate. The result is an overall reduction of 138.4 hours, 115.3 of which represent hours billed by Attorney George Guzzi. As discussed below, the Court has reduced Attorney Guzzi's hourly rate to \$100 per hour. Thus, the elimination of his duplicate hours reduces the overall bill by \$11,530. Elimination of the

duplicate hours billed by Attorneys Laurence H. Leavitt and Karen Frink Wolf at \$160 per hour further reduces the overall bill by \$3,696 for a total reduction of \$15,226.

b. Associate rate

The Application includes charges for work performed by Attorneys Catherine Miller and George Guzzi at rates of \$135 and \$145 dollars respectively. The Court considers \$100 per hour a fair rate for associates of their experience. The fee for Attorney Guzzi's 791.90 hours (907.20 billed minus 115.3 disallowed by the Court) therefore is reduced to \$79,190 while the fee for Attorney Miller's 11.10 hours is reduced to \$1,110, resulting in a \$35,880.45 reduction in Plaintiffs' total fee.

c. Travel time

Plaintiffs' counsel billed 27 hours of travel time at rates ranging from \$145 to \$175 per hour for a total of \$4,365. This district has not allowed "travel time to be recovered at anything approaching a usual billing rate." Auburn Police Union v. Tierney, 762 F. Supp. 3, 4 (D. Me. 1991). The Court finds \$10 per hour a more appropriate rate and reduces Plaintiffs' total fee by \$4,095. See id.; Federal Deposit Ins. Co. v. Singh, 148 F.R.D. 6, 9 (D. Me. 1993).

2. Degree of Success

Defendant argues that Plaintiffs' fee should be discounted by fifty percent because the jury found against them on their intentional discrimination claim and the First Circuit denied their punitive damages appeal. The Court disagrees.

Where a plaintiff's claims are based on a "common core of facts" or "related legal theories . . . [m]uch of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis." Hensley v. Eckerhart, 461

U.S. 424, 435 (1983). Thus, a district court cannot simply reduce the fee by the amount of time expended on each unsuccessful claim, but instead must "focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." Id.

Here, Plaintiffs' discriminatory termination and punitive damage claims derived from the same set of facts and circumstances as their hostile work environment claim. However, considering that Plaintiffs were unsuccessful on the discriminatory termination claim and on their cross-appeal concerning punitive damages, the Court reduces their fee award by an additional \$15,000.

III. CONCLUSION

For the reasons stated discussed above, the Court GRANTS Plaintiffs' Application for Attorney's Fees and awards a fee of \$138,753.55

SO ORDERED.

MORTON A. BRODY
United States District Judge

Dated this 30th day of August, 1999.