

Signed 12/11/96

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

BOSTON & MAINE CORPORATION,

Plaintiff

v.

BROTHERHOOD OF MAINTENANCE OF  
WAY EMPLOYES,

Defendant

Civil No. 94-321-P-C

MEMORANDUM AND ORDER ON DEFENDANT'S  
MOTION FOR ATTORNEYS' FEES AND COSTS

Before the Court for action at this time is Defendant's Motion for Attorneys' Fees and Costs filed on September 25, 1996 (Docket No. 32). After a full review of the written submissions in support of and in opposition thereto, it is hereby ORDERED that said motion be, and it is hereby, GRANTED as provided for hereinbelow.

By the motion, Defendant Brotherhood of Maintenance of Way Employes (BMWE) seeks reimbursement under Section 3 First (p) of the Railway Labor Act, 45 U.S.C. § 153 First (p), for counsel fees and costs in the amount of Twenty-One Thousand Three Hundred Forty-Five Dollars and Fifty-Seven Cents (\$21,345.57) for the services of lead and local counsel. The application is properly supported by adequate billing details and information about the experience of counsel to permit the Court to assess the reasonableness of the hourly rates attributed to the labors of all counsel employed in the representation and of the time

attributed to the various tasks, functions, and projects encompassed by the representation.

Defendant's request is challenged by Plaintiff in only two respects. First, Plaintiff seeks disallowance as unreasonable time charges alleged to "result from the defendant's election to use [lead] counsel from Washington, D.C. rather than counsel located in Maine." Opposition of Boston & Maine Corporation (Docket No. 38) at 1. No factual predicate is laid by the written opposition to support the assertion that the use of foreign lead counsel in the form of the law firm of Highsaw, Mahoney & Clarke, P.C. (HM&C) as opposed to any particular Maine attorney or firm caused any unreasonable escalation in the costs of the representation. Neither has it shown that any specific economy could reasonably be realized by the use of any Maine counsel as lead counsel.

The Court FINDS that the hourly rate of the various attorneys involved in the representation are reasonable considering the nature, complexity, and difficulty of the work performed by them and the specialized expertise of attorneys at HM&C in work of that specific nature. The Court also gives proper consideration to the fact that HM&C attorneys had been involved for a long period of time in the legal machinations that gave rise to the present case and so were particularly equipped, by case-specific experience and background as well as by their educational and general professional experience, to proficiently

analyze and manage the disposition of the issues involved in the present litigation.

The Court also FINDS that the increments of time allocated to each of the particular functions of counsel in the course of the representation are entirely fair and reasonable.

Finally, the Court FINDS that the decision of Defendant to retain HM&C lawyers as lead counsel was a fair and reasonable one in light of all of the circumstances of the case and that such course did not unreasonably inflate, in any respect, the costs of the representation. The charges for both lead and local counsel are fair and reasonable fees for the work performed by them. Defendant's specified objection is not well taken, and it is hereby OVERRULED.

Second, Plaintiff objects to a charge for 6.5 hours of counsels' time which it contends were erroneously charged to HM&C's work in the present case. It is asserted that that time was not in fact devoted to the present case. Defendant, through its counsel, has responded adequately to that allegation, and HM&C concedes that an error of attribution of a total of one hour of incremental time at a rate of One Hundred Fifty Dollars (\$150.00) per hour was erroneous and agrees to the Court's correction of it. The Court FINDS that the remaining 5.5 hours of disputed time was properly attributed to the functions of counsel in this case.

The costs detailed in the application are not challenged in any respect, and the Court FINDS them to be reasonable and necessary to the representation.

Accordingly, it is hereby ORDERED that Plaintiff reimburse Defendant forthwith for reasonable counsel fees for lead and local counsel and reasonable costs incurred in the course of the representation in the total amount of Twenty-One Thousand One Hundred Ninety-Five Dollars and Fifty-Seven Cents (\$21,195.57).

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GENE CARTER  
District Judge

Dated at Portland, Maine this 11th day of December, 1996.