

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

BROTHERHOOD OF MAINTENANCE)	
OF WAY EMPLOYES,)	
)	
Plaintiff)	
)	
v.)	Civil No. 90-0301-P-H
)	
MAINE CENTRAL RAILROAD)	
COMPANY and PORTLAND)	
TERMINAL COMPANY,)	
)	
Defendants)	

**RECOMMENDED DECISION ON CROSS-MOTIONS FOR JUDGMENT
ON BASIS OF STIPULATED RECORD**

The plaintiff, Brotherhood of Maintenance of Way Employees, initiated this action under sections 3 First (p) and Second of the Railway Labor Act, 45 U.S.C. ' 153 First (p) and Second, to enforce an award of Public Law Board No. 4885 which was established by agreement of the parties. The award adjudicated seven of eight claims in favor of the claimants and directed the defendants, Maine Central Railroad Company and Portland Terminal Company, to pay the claims, with interest,² within 30 days of November 2, 1990, the award's adoption date.

Prior to the December 21, 1990 filing date of the complaint, the defendants had advised the plaintiff that they would pay the claims of three of the seven successful claimants, but would not pay

¹ Although the plaintiff originally filed a motion for summary judgment, the parties have since agreed to submit the case for decision on cross-motions for judgment based on a stipulated record. See Report of Scheduling Conference and Order (Docket Item 13). This procedural device allows the court to resolve any lingering issues of material fact in reaching its decision on the merits. *Boston Five Cents Sav. Bank v. Secretary of Dep't of Hous. & Urban Dev.*, 768 F.2d 5, 11-12 (1st Cir. 1985).

² The Board awarded interest at the rate of eight percent per annum beginning August 8, 1988.

any of the other four sustained claims. None of the claims was paid prior to suit. On February 15, 1991, after the suit was commenced, the defendants revised their position and informed the plaintiff that they would pay all but claimant Couture's claim and that they would pay interest on each of the other sustained claims only from the date on which the claim was filed or August 8, 1988, whichever date was later. As of May 15, 1991 the defendants had made no principal or interest payment on Couture's claim and had not paid interest for the period between August 8, 1988 and the later dates on which, according in the defendants' records, claimants Bilodeau and Blanchard filed their claims. All other claims were by then paid with interest as awarded. The disputed interest payments were mailed to Bilodeau, Blanchard and Couture on June 14, 1991 and a check was mailed to Couture on June 20, 1991 in payment of his sustained subsistence pay claim.

All of the awarded claims and interest thereon having now been fully paid, the remaining issue before the court is whether the plaintiff is entitled to an attorney fee in this action pursuant to 45 U.S.C. ' 153 First (p). The defendants assert that their full, even if belated, compliance with the Law Board's award has mooted the suit and that the court has no retained jurisdiction to act on the plaintiff's attorney fee demand. The plaintiff argues that, because the defendants have not paid it a reasonable attorney fee and are apparently unwilling to do so, the suit is not at an end.

The plaintiff has from the outset of this litigation asserted a claim for attorney fees. *See* Complaint. The governing statute provides that "[i]f the petitioner shall finally prevail he *shall* be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit." 45 U.S.C. ' 153 First (p) (emphasis supplied).

It is axiomatic that this court's continuing jurisdiction to act in this matter depends upon whether there remains an actual case or controversy. This, in turn, depends on whether the plaintiff continues to have a personal stake in the outcome. *Flast v. Cohen*, 392 U.S. 83, 94-101 (1968); *Baker*

v. Carr, 369 U.S. 186, 204 (1962). The Railway Labor Act establishes a mechanism for the final and binding resolution of rail labor disputes, provides a right of action to enforce awards made thereunder and entitles the petitioner to a reasonable attorney fee if it is the prevailing party. Relying on the statutorily established process and deeming itself aggrieved by the defendants' failure to pay the claims sustained by the Law Board within the prescribed time period, the plaintiff initiated this law suit. In doing so, it sought not only to achieve the defendants' compliance with the award but also reimbursement for attorney fees necessitated by the suit. The former has been accomplished, the later has not. The plaintiff is asserting an entitlement to fees. I conclude that, as to fees, there remains an actual case or controversy in the outcome of which the plaintiff has a personal stake. For Article III purposes the case is not moot.³

The issue, then, is whether the plaintiff has finally prevailed within the meaning of 45 U.S.C.

' 153 First (p). In an analogous context the Supreme Court has observed:

³ The defendants' reliance on *Lewis v. Continental Bank Corp.*, 494 U.S. 472 (1990), is misplaced. *Lewis* involved a federal constitutional (commerce clause) challenge to Florida statutes which prohibited out-of-state bank holding companies from operating industrial savings banks in Florida. After the district court found that the statutes unconstitutionally discriminated against nonresidents, but before the court of appeals affirmed on the merits, a federal bank law was amended in a way that mooted the commerce clause challenge. The Supreme Court, noting that the case had become moot on appeal, simply observed that jurisdiction could not be sustained on the basis of the appellee's interest in realizing on the lower court's ' 1988 award of attorney fees in circumstances where the mootness was attributable to a change in the legal framework governing the case. No such change has occurred here.

It is settled law, of course, that relief need not be judicially decreed in order to justify a fee award under ' 1988. A lawsuit sometimes produces voluntary action by the defendant that affords the plaintiff all or some of the relief he sought through a judgment -- *e.g.*, a monetary settlement or a change in conduct that redresses the plaintiff's grievances. When that occurs, the plaintiff is deemed to have prevailed despite the absence of a formal judgment in his favor. . . . The "equivalency" doctrine is simply an acknowledgment of the primacy of the redress over the means by which it is obtained. If the defendant, under the pressure of the lawsuit, pays over a money claim before the judicial judgment is pronounced, the plaintiff has "prevailed" in his suit, because he has obtained the substance of what he sought.

Hewitt v. Helms, 482 U.S. 755, 760-61 (1987).

The Court of Appeals for the First Circuit has amplified on this theme as follows:

In *Nadeau v. Helgemoe*, 581 F.2d 275 (1st Cir. 1978), we held that "plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit". *Id.* at 278-79 As we held in *Nadeau*, the plaintiffs may be considered to have prevailed, although they have obtained no formal relief from the court, if the "plaintiff's lawsuit act[ed] as a 'catalyst' in prompting [the] defendants to take action to meet [the] plaintiffs' claims . . .". [*Id.*] at 279 To establish that they are prevailing parties entitled to an award of attorney's fees, however, plaintiffs who have obtained only informal relief must meet both a factual and a legal test. The plaintiffs are prevailing parties as a matter of fact if "the plaintiffs' suit and their attorney's efforts were a necessary and important factor in achieving the improvements [undertaken by defendants on the plaintiffs' behalf]". [*Id.*] at 281. The chronological sequence of events is an important factor in determining whether the defendants guided their actions in response to the plaintiffs' suit, especially "where the evidence relevant to the defendants' behavior is under defendants' control and not easily available to [the] plaintiff[s]". *Id.*

If the plaintiffs can establish that their suit "was causally related to the defendants' actions which improved their condition", they must then prove that they have prevailed in a legal sense. *Id.* The plaintiffs cannot meet this test if it has been judicially determined that the defendants' conduct was not required by law. Where, as here, there has been no such judicial determination on the merits, the district judge should not grant attorney's fees if he determines that the

plaintiffs' action `` could be considered `frivolous, unreasonable, or groundless or that the plaintiff continued to litigate after it clearly became so.'" *Id.* . . . To meet the legal test enunciated in *Nadeau*, the plaintiffs need not establish a legal entitlement to the relief sought in their complaint. There has been no judicial determination in this suit that the defendants' conduct in lifting the land use restrictions was not required by law. The plaintiffs may meet the legal test for attorney's fees, therefore, if they establish that their suit was not `` frivolous, unreasonable, or groundless". [*Id.*].

Ortiz de Arroyo v. Barcelo, 765 F.2d 275, 281-83 (1st Cir. 1985) (other citations omitted).

I conclude that the plaintiff's suit and the efforts of its attorneys were a necessary and important factor in achieving the defendants' compliance with the Law Board's award. The fact is that, after the 30-day period allowed for compliance had passed but before this suit was initiated, the defendants informed the plaintiff they would not pay four of the seven sustained claims. Indeed, they paid none of them prior to suit. Only during the course of the litigation did the defendants gradually revise their position and eventually pay all sustained claims according to the terms of the award. Final compliance occurred in late June 1991 after the stipulated record was filed and most of the briefing was accomplished. There is a clear connection between the defendants' ultimate compliance with the award and the prosecution by the plaintiff of this lawsuit, and I so find.⁴

Finally, I conclude that the plaintiff has prevailed in a legal sense. On this point the plaintiff need not establish a legal entitlement to the relief sought in its complaint. Rather, it need only establish that its suit was not frivolous, unreasonable or groundless. Given that the Law Board's award is presumptively final and binding, *see* 45 U.S.C. ' 153 First (m) and (p), it cannot be said that the suit is any of those things.

⁴ Although the defendants suggest that they would have paid Couture's subsistence benefits award upon an earlier presentation of a copy of his claim form dated July 20, 1987, *see* Supplemental Declaration of Daniel J. Kozak, the Law Board's award does not condition the defendants' obligation on such a presentation. Nor does the defendants' suggestion concerning Couture's claim explain their

In sum, I conclude that the plaintiff is entitled to reasonable attorney fees.

For the foregoing reasons, I recommend that the plaintiff's motion for judgment on the pleadings be **GRANTED** as to its claim for attorney fees, that the defendants' motion be **DENIED** and that the parties be ordered to confer and agree upon reasonable attorney fees and, if unable to agree, to file by a date certain submissions on the attorney fees issue for resolution by the court.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 8th day of November, 1991.

*David M. Cohen
United States Magistrate Judge*

failure to pay the other claims with interest within the mandated 30-day period.