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DEC - 8 1980

JAMES F. DAVEY, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DIANE R. WILLIAMS, :

Plaintiff, :

v. : Civil Action No. 74-0186

BENJAMIN R. CIVILETTI, et al., :

Defendants. :

MEMORANDUM OPINION OF UNITED STATES DISTRICT JUDGE
CHARLES R. RICHEY

This case is before the Court on plaintiff's motion for relief and attorneys' fees and costs, with defendants' opposition thereto. The plaintiff requests relief in the amount of $20,527.60, as well as full restoration of annual and sick leave, corresponding credit on the government's contribution toward plaintiff's pension and expungement of plaintiff's termination record. The plaintiff also requests attorneys' fees in the amount of $112,952.00, as well as costs in the amount of $5,944.26.

RELIEF AWARD

The Court notes that the plaintiff's relief request had been fully briefed by the parties for both sides back in 1976. The Court issued an order on June 30, 1976 awarding the plaintiff $19,147.68, as well as affording the plaintiff full restoration of her annual and sick leave, corresponding credit on the government's contribution toward her pension, and expungement of her termination record. On July 2, 1976, the defendants moved this Court to reconsider its June 30, 1976 relief award and to stay the award pending appeal to the United States Court of Appeals. This Court amended its June 30, 1976 relief award on August 12, 1976, by reducing the plaintiff's monetary award to $16,251.33. Additionally, the Court ordered that the amount of the judgment shall be placed in escrow pending appeal.

At this time, the plaintiff requests a larger relief award in the amount of $20,527.60. The defendants request that a

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smaller award in the amount of $8,275.60 be granted. The Court finds that the rationale behind the June 30, 1976 relief order, as amended, is still applicable today; therefore, the Court will vacate its stay of the amended June 30, 1976 relief order. However, the Court shall also amend the relief order to delete from plaintiff's relief award the interest of $1,429.69, pursuant to Fisher v. Adams, 572 F.2d 406 (1st Cir. 1978), which will result in an award of $14,821.65 for the period September, 1972 thru April, 1976. Additionally, the government will afford the plaintiff full restoration of annual and sick leave, corresponding credit on the government's contribution towards her pension, and expungement of her termination record.

The remaining issue with respect to plaintiff's relief request concerns the period July, 1976 thru August, 1978. The plaintiff claims that the Court must consider the continuing impact of defendants' discriminatory conduct since its June 30, 1976 determination of relief. The Court does not agree, for the Court finds that the amended June 30, 1976 relief order adequately compensated the plaintiff for the loss of her job. The Court notes that the plaintiff did not allege a continuing wrong in 1976 nor did she seek an award of front pay. The relief awarded in 1976 was only stayed until a final determination. Further, the plaintiff was employed during the period in question by University Research Co. at the rate of $20,500 per year until July, 1977, and thereafter at the rate of $22,386 per year.

ATTORNEYS' FEES

The Court also must determine the appropriate award of attorneys' fees and costs. The Court again notes that it issued an award of attorneys' fees on August 12, 1976. The defendants, on August 23, 1976, moved this Court for a stay of the attorneys' fee award pending appeal. This motion was granted on October 27, 1976. The Court finds that the rationale behind the August 12, 1976 order is still applicable today with respect to the pre-

July 9, 1976 billable hours of the attorneys.[1/] Accordingly, the only issue remaining for the Court is a determination of the reasonable number of hours expended by the plaintiff's attorneys since July 9, 1976, as well as the appropriate hourly rates and costs since 1972.

As stated in Copeland v. Marshall, No. 77-1351, slip op. at 19 (D.C.Cir. Sept. 2, 1980), any fee-setting inquiry begins with the "lodestar": the number of hours reasonably expended multiplied by a reasonable hourly rate. The first problem is determining the reasonable number of hours spent by the plaintiff's attorneys. See Lindy Bros. Builders, Inc. of Philadelphia v. American Radiator & Standard Sanitary Corp., 487 F.2d 161 (3d Cir. 1973).

In the present case, there is a dispute as to the actual number of hours reasonably expended by plaintiff's counsel. Plaintiff's counsel states that the amount of time expended in this case since July 9, 1976 can be broken down as follows:

ATTORNEY	HOURS	YEAR
Jerry S. Cohen	8.00	1979
Herbert E. Milstein	3.50	1976
Michael D. Hausfeld	75.50	1977
	1.50	1978
	50.25	1979
	84.50	1980
Steven J. Toll	217.50	1979
	78.50	1980
LAW CLERKS		
Debra Marcus	31.50	1979
Judry Subar	2.50	1979

The hours are further broken down as follows:

I. 1976

1/ The pre-July 9, 1976 compensable hours are as follows:

ATTORNEY	HOURS
Michael D. Hausfeld	197.00
Glen DeValerio	11.75
Robert Swift	1.00
LAW CLERKS	
John Clifford	8.00
Neal Kessler	.50

3.50 hours - Drafting memorandum in opposition to motion to amend judgment

3.50 hours - TOTAL

II. 1977

68.25 hours - Research and drafting appellee's brief and appellee's brief in opposition to brief of appellant-applicant-intervenor
7.50 hours - Review pleadings and cases in preparation for appellate argument - appellate court appearance

75.75 hours - TOTAL

III. 1978

.50 hours - Drafting memorandum opposing costs
1.00 hours - Investigation and trial preparation

1.50 hours - TOTAL

IV. 1979

1.00 hours - Court appearances
1.50 hours - Settlement discussions
102.50 hours - Deposition and sworn statement preparation and attendance
28.00 hours - Researching and drafting memorandum re motion for order to show cause
66.75 hours - Research regarding hearsay problems and admissibility of administrative record and preparation of pretrial pleadings, findings of fact and conclusions of law and other matters relating to pretrial motions.
110.00 hours - Trial preparation, witness interviews and investigation

309.75 hours - TOTAL

V. 1980

2.75 hours - Court appearances (excluding trial)
8.50 hours - Research and drafting memorandum regarding pretrial issues
5.00 hours - Preparation of pretrial papers and opposition to defendants pretrial pleadings
4.75 hours - Trial preparation and witness interviews
6.00 hours - Trial
6.00 hours - Drafting memorandum regarding damage award

163.00 hours - TOTAL

The defendants state that the total hours claimed by the plaintiff's attorneys is unreasonable. The defendants cite Union Central Life Insurance Company v. Hamilton Steel Products, Inc., 493 F.2d 76, 80 (7th Cir. 1974) for the proposition that the Court needs to scrutinize the bill of plaintiff's attorneys to account for and reduce fees resulting from multiple billing. Accordingly, the defendants urge the Court to reduce plaintiff's attorneys' compensable time in this matter by 230 hours.

The defendants first claim that 66.75 hours expended for research regarding hearsay problems and admissibility of the administrative record should not be allowed. They claim that the hours were excessive and that there were no specific hearsay problems at trial. (Def. Memo at 12). The Court does not agree. The Court finds that the plaintiff's attorneys have adequately accounted for those hours and that the research was necessary in the presentation of this case at trial. The 66.75 hours in question is made up of 32.75 hours expended by Mr. Toll, as pointed out below, and 34 hours expended by the two law clerks. While the 32.75 hours expended by Mr. Toll is also contested below, there is no doubt that the hours were only charged once.

The defendants next contest the 32.75 hours worked in 1979 and 13.5 hours worked in 1980 by Mr. Toll with respect to the pretrial statement and findings of fact and conclusions of law. (Def. Memo at 13). The defendants claim that the 32.75 hours in 1979 has no category on the plaintiff's list and that the hours are in too generalized a form. The Court again does not agree. The Court finds that the discrepancy in 1979 resulted from a typographical error as stated by the plaintiff's attorneys. (Pl. Reply Memo at 12.) Mr. Toll's affidavit clearly indicates how the 32.75 hours was expended in 1979. (Toll's affidavit at 2.) Additionally, the defendants admit that the 13.5 hours expended in 1980 has been properly categorized. (Def. Memo at 13.)

Thirdly, the defendants claim that the attorneys' fee application is devoid of specific references to work performed and adequate descriptions of that work. They note that Messrs. Hausfeld and Toll record approximately 74 hours in 1979 and 1980 for trial preparation and witness interviews. The defendants claim that this amount of time is excessive in light of the fact that plaintiff's entire case took only one and one-half days at trial and consisted of only six witnesses. (Def. Memo at 14.) However, the length of plaintiff's case and the number of witnesses is not germane to the number of hours spent for trial preparation. The Court notes that the plaintiff's attorneys were

well prepared for the successful conclusion of this action. Accordingly, the number of hours claimed by plaintiff's attorneys for trial preparation was reasonable and justifiable.

The defendants also claim that the 76 hours claimed for trial are excessive in light of the fact that only one attorney was present at the trial.[2/] (Def. Memo at 15.) The Court finds that this contention has no merit. Even if one attorney presented the case, the Court does not find that the second attorneys' presence at the trial was excessive.

Defendants also claim that the plaintiffs are seeking double payment for the hours spent by Mr. Toll in reviewing the administrative-level work which was done by Mr. Hausfeld. (Def. Memo at 15). The Court agrees. The time spent by Mr. Toll in familiarizing himself with the case is clearly duplicative of the efforts expended by Mr. Hausfeld. See Arnett v. American Red Cross, No. 76-1083, slip op. at 6 (D.D.C. Jan. 28, 1980). Accordingly, the Court will strike 8.50 hours from the time claimed by Mr. Toll.[3/]

The defendants further claim that the plaintiff's attorneys seek multiple payment for time spent by Messrs. Hausfeld, Toll and Cohen in preparation for and attendance at depositions. They seek to strike the following hours from plaintiff's attorneys: 38 of Mr. Toll's claimed 78.5 hours, all 8 of the hours claimed by Mr. Cohen[4/] and 12 of the 17 hours claimed by Mr. Hausfeld. (Def. Memo at 17.) The Court agrees. While the Court acknowledges the fine work performed by the plaintiff's attorneys throughout, the Court notes that this was not an extremely complex piece of litigation that necessitated two, and even three

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2/ Pursuant to the Court's records, Messrs. Hausfeld and Toll entered appearances during the trial of this matter. See Williams v. Civiletti, 487 F.Supp. 1387 (D.D.C. 1980).

3/ The Court estimates that ten percent of the 85.50 hours claimed by Mr. Toll under the category review of administrative record, including transcripts of administrative hearing and other affidavits and documents submitted to the investigator, witness interviews, trial preparation was duplicative.

4/ The includes the one hour that Mr. Cohen spent in settlement discussions. (Pl. Memo at 12, n.12.)

attorneys[5/] present at witness depositions. The Court is not insensitive to the arguments advanced by the plaintiff's attorneys that it was sometimes necessary to have two attorneys present in order for Mr. Toll to familiarize himself with the case. (Pl. Reply Memo at 16, 17). However, the Court does not believe that the defendant must "foot" the bill for this experience. Further, the Court finds this double representation to be duplicative and unnecessary. See Arnett v. American Red Cross, id.

The defendants also claim that the plaintiff's attorneys should not receive any compensation for the time spent in preparing the motion to show cause why Harvey Brinson should not be held in criminal contempt of court. While the Court notes that the plaintiff did not win on this motion, the fact is that Mr. Brinson did change his story on a number of occasions. Williams v. Civiletti, 487 F.Supp. 1387, 1389 (D.D.C. 1980). Accordingly, plaintiff's attorneys must be compensated for their work on this motion.

Finally, the defendants state that the Court should not compensate plaintiff's attorneys for the time spent on the appeal of this matter. The defendants rely upon 42 U.S.C. § 2000e-5(k) which provides:

> In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

The defendants contend that plaintiff's appeal constituted a separate action in which she was completely unsuccessful. This is not correct. Also, it was in fact the defendants who moved this Court on June 21, 1976 for a trial de novo in light of the recent Supreme Court decision in Chandler v. Roudebush, 425 U.S. 840 (1976); as well as the subsequent appeal. The Court noted in its July 22, 1976 Order that it did not need to decide whether the government had the right to demand a trial de novo since the defendants and the plaintiff had

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5/ Three attorneys were present at Mr. Brinson's deposition (Def. Memo at 17.)

stipulated in open court to the case being determined on the basis of the Court's review of the administrative record. Additionally, the Court notes that its original decision, which made new law that sex discrimination of this type is cognizable under Title VII, was not disturbed on appeal.

The defendants further contend that the defense of the appeal by plaintiff simply led to a delay of the ultimate trial on the merits, and a trial was precisely what defendant had requested of the appellate court. (Def. Memo at 18.) This implies that the plaintiff's attorneys unduly protracted this case by not agreeing to a trial de novo initially. Surely, the defendants did not expect the plaintiff's attorneys to just "lay down" and give up its initial favorable decision, for they were professionally obligaterd to their client to fight for her rights. However, as this Court decided, it was in fact the defendant who violated the rights of the plaintiff, and not as the defendant would have one believe, i.e. that plaintiff's own obstinate, arrogant attitude led to her termination. (Def. Memo at 5.) The Court finds that the plaintiff's attorneys performed admirably in protecting their client's rights, and accordingly, must be compensated for their efforts on the appeal of this matter.

Applying these findings, the Court disallows the following time from the schedule of hours submitted by plaintiff's attorneys:

ATTORNEY	HOURS	YEAR
Jerry S. Cohen	8.00	1979
Michael D.Hausfeld	12.00	1979
Steven J. Toll	8.50	1979
	38.00	1979

Upon determining the reasonable hours expended by plaintiff's attorneys, the remaining element in fixing a lodestar fee is the reasonable hourly rate. Copeland v. Marshall, No. 77-1351, slip op. at 21 (D.C. Cir. Sept. 2, 1980). Plaintiff's attorneys seek compensation for all their hours worked since 1972 to the present at their current commercially billable rate pursuant to Copeland, Id. at 24 n.3:

> [I]f the lodestar itself is based on present hourly rates, rather than the lesser rates applicable to the

time period in which the services were rendered, the harm resulting from delay in payment may be largely reduced or eliminated.

Accordingly, plaintiff's attorneys have submitted a scale using their last hourly rates as the multiplier. The defendant has responded with varying hourly rates. The Court finds that the use of each attorney's current billable rate reflects the proper multiplier. However, the rates suggested by plaintiff's attorneys require some adjustment.

In determining the current billable rates of attorneys in this matter, the Court is guided by the considerations articulated in Evans v. Sheraton-Park Hotel, 503 F.2d 177, 187 (D.C. Cir. 1974). These considerations include: (1) the novelty and complexity of the issues, (2) the amount of risk involved in taking the case, (3) the nature and amount of the results obtained, (4) the skill required to perform the legal services properly, and (5) awards in similar cases.

The Court notes that the hourly rates established in its August 12, 1976 Order awarding attorneys' fees were less than those originally requested for all of the attorneys. (See Pl. Response to the Court's Request of April 20, 1976 at 5.) For the same reasons that this Court reduced the attorneys' hourly rate in its prior Order, a similar reduction is now appropriate.

Thus, the Court finds that the fair and reasonable compensation for Mr. Hausfeld's services should be as follows:

YEAR	RATE
1972	$30.00
1973	35.00
1974	45.00
1975	55.00
1976	65.00
1977	75.00
1978	75.00
1979	75.00
1980	85.00

The Court finds that the fair and reasonable compensation for Mr. Toll's services should be as follows:

YEAR	RATE
1979	$65.00
1980	65.00

The plaintiff's attorneys seek a present hourly rate of $80.00 an hour for Mr. DeValerio, yet the last time he worked on

this case, the Court accorded Mr. DeValerio a $40.00 hourly rate. The Court now finds $60.00 to be an appropriate hourly rate.

Finally, the plaintiff's attorneys seek compensation for Mr. Milstein at $130.00 an hour. However, the Court notes that pursuant to their response to the Court's request of April 20, 1976, Mr. Milstein's billable rate at that time was only $1.00 more than that of Mr. Hausfeld. Consequently, the Court finds that the billable rate of Mr. Milstein should be the same as Mr. Hausfeld's or $85.00 per hour.

The Court notes that the hourly charge for plaintiff's counsel is comparable to the fees awarded in similar Title VII litigation. In Bachman v. Pertschuk, No. 76-0079 (D.D.C. March 14, 1979), appeal dismissed, No. 79-1650 (D.C. Cir. Nov. 20, 1980), this Court awarded fees to attorneys with experience comparable to Messrs. Milstein and Haulsfeld at the hourly rates varying from $75.00 to $85.00; in Arnett v. American National Red Cross, No. 76-1083 (D.D.C. Jan. 28, 1980), the Court awarded fees at the hourly rate of $80.00. Attorneys with experience similar to Messrs. Toll and DeValerio were compensated at $70.00 per hour in Bachman and from $50.00 to $75.00 an hours in Arnett.

Accordingly, the Court adopts the following schedule for attorneys' fees:

ATTORNEY	HOURS	CURRENT HOURLY RATE	TOTAL
Herbert E. Milstein	.25	85.00	$ 21.25
Michael D. Hausfeld	400.25	85.00	34,021.25
Glen DeValerio	11.75	60.00	705.00
Steven J. Toll	249.50	65.00	16,217.50
Robert Swift	1.00	35.00	35.00
LAW CLERKS			
John Clifford	8.00	20.00	160.00
Neal Kessler	.50	20.00	10.00
Debra Marcus	31.50	20.00	630.00
Judry Subar	2.50	15.00	37.50

Thus the lodestar fee in this case for all hours expended is $51,837.50.

As further pointed out in Copeland v. Marshall, No. 77-1351, slip op. at 22 (D.C. Cir. Sept. 2, 1980), the lodestar

fee may be adjusted to reflect other factors. The burden of justifying any deviation from the lodestar rests on the party proposing the deviation. Lindy Bros. Builders, Inc. of Philadelphia v. American Radiator & Sanitary Corp., 540 F.2d 102, 118 (3d Cir. 1976).

Plaintiff's attorneys request an incentive award of sixty percent due to the numerous obstacles they faced, including the appellate court's remand, Brinson's new story under oath, and the passage of an additional four years, thereby making it extremely difficult to put together and present an effective case. While the Court notes the excellent job done by the plaintiff's attorneys in protecting the rights of the plaintiff, the Court finds the sixty percent incentive request to be excessive. Pursuant to the August 12, 1976 attorneys' fee award, this Court granted plaintiff's attorneys a thirty-five percent incentive award for the successful conclusion of this action at that time. The Court finds that the rational behind the August 12, 1976 incentive award of thirty-five percent is still applicable today. The Court further finds that the incentive award is reasonable in light of the fact that this case made new law -- sex discrimination of this type is now cognizable under Title VII.

Based upon the foregoing, the Court will add $18,493.16 to the lodestar fee of $52,837.60 for a total attorneys' fee award of $71,330.76, which the Court finds to be fair and reasonable. To this total will be added costs in the amount of $5,944.26, which the Court finds to be fair and reasonable.

An order in accordance with the following shall be issued of even date herewith.

Charles R. Richey
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DIANE R. WILLIAMS, :

Plaintiff, :

v. : Civil Action No. 74-0186

BENJAMIN R. CIVILETTI, et al., :

Defendants. :

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O R D E R

In accordance with the Memorandum Opinion of even date herewith, it is, by the Court, this 5th day of December, 1980,

ORDERED, that plaintiff's motion for relief, as well as attorneys' fees and costs be, and the same hereby is, granted in part; and it is

FURTHER ORDERED, that the stay of this Court's amended June 30, 1976 relief order will be, and the same hereby is vacated; and it is

FURTHER ORDERED, that plaintiff be, and the same hereby is, awarded $71,330.76 in attorneys' fees and $5,944.26 in costs, as well as the $14,821.65 and other non-monetary relief due the plaintiff as per the Court's Opinion of even date herewith; and it is

FURTHER ORDERED, that said monies shall be, and the same hereby is, to be paid within twenty days from the date hereof.

Charles R. Richey
United States District Judge