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PAULA L. PRICE V. MONTEREY COAL
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

PAULA L. PRICE,
COMPLAINANT

DISCRIMINATION PROCEEDING

v.

Docket No. LAKE 86-45-D
VINC CD 85-18

MONTEREY COAL COMPANY,
RESPONDENT

Monterey No. 2 Mine

DECISION

Appearances: Linda Krueger MacLachlan, Esq., and
Michael J. Hoare, Esq., 314 N. Broadway,
St. Louis, Missouri for the Complainant
Thomas C. Means, Esq., Crowell & Moring,
Washington, D.C. for the Respondent.

Before: Judge Melick

This proceeding is before me to determine the amount of attorney's fees and costs to be allowed based upon the April 12, 1989, decision finding that Monterey Coal Company discriminated against the Complainant in violation of Section 105(c)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act".

The Complainant first cites expenses of \$187.36 incurred in connection with the prosecution of her grievance proceeding below in which she obtained lost pay resulting from the acts of Monterey Coal Company also held to have been discriminatory in this case. She also seeks reimbursement for her costs in prosecuting the instant case of \$28,758.77 including attorney's fees and expenses of \$24,107.79.

Monterey opposes the award of fees and expenses maintaining that (1) an award of fees and expenses is unauthorized under the circumstances of the case and (2) the requested fees and expenses radically exceed any conceivable fee and expense entitlement.

Section 105(c)(3) of the Act provides in part as follows:

Whenever an order is issued sustaining the
complainant's charges under this subsection, a sum

equal to the aggregate amount of all costs and expenses (including attorney's fees) as determined by the Commission to have been reasonably incurred by the miner, applicant for employment or representative of miners for, or in connection with, the institution and prosecution of such proceedings shall be assessed against the prson committing such violation.

The evidence shows that the Complainant first raised the issue of her lost pay in a grievance proceeding under the corresponding collective bargaining agreement for essentially the same reasons and based on the same grounds as her successful complaint herein. As the record indicates she prevailed in those proceedings to the extent that she obtained four days back pay--but she was denied her related expenses in prosecuting that case. It may reasonably be inferred however because of the close similarity of issues that those expenses were also directly related to the development of evidence necessary for the instant case. I therefore find that those expenses were sufficiently "in connection with the institution and prosecution" of the instant proceedings to warrant assessment of such expenses against Monterey.

Monterey also maintains that the Complainant's grievance was settled by the union without agreement to compensate her for the cost of the proceedings and that therefore she may be deemed to have waived any right to reimbursement for those expenses. The evidence in the case shows however that Ms. Price did not consent to the settlement of her grievance by the union and had no choice in the matter -- the decision to settle was made by the union.

Next, Monterey challenges the amount of grievance proceeding expenses cited by the Complainant on the grounds that she had previously estimated those expenses to be only \$25. The Complainant cannot fairly be bound however by a rough estimate of expenses made from the witness stand without her documentation. In the absence of any other challenge to the amount of the expenses claimed, the Complainant is awarded her full claim of \$187.36.

I find however that reduction of the claimed attorney's fees and trial expenses is clearly warranted in this case. The Complainant is entitled to only those costs and expenses "reasonably incurred". Section 105(c)(3) supra.

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In determining a reasonable attorney fee the most useful starting point is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424 (1983). *Copeland v. Marshall* 641 F.2d 880 (D.C. Cir. 1980). Where the prevailing party has achieved only partial or limited success however the product of hours reasonably expended in litigation as a whole times a reasonable hourly rate may be an excessive amount. *Hensley, supra*. There is no precise rule or formula for making a determination for reduction of an award to account for a limited success and the court necessarily has discretion in making this equitable judgment. *Hensley, supra*. In this regard it is noted that while the Complainant herein alleged 31 protected activities and 14 acts of discrimination she prevailed on only one allegation of discrimination. Many of the unsuccessful claims were indeed facially frivolous.

Another factor that may be considered in determining an appropriate fee is the quality of representation. See *Copeland, supra*. at 906 - 908. I find in this case that the inordinate length of trial i.e. 12 days, in a case that should have been tried in no more than two days, is chargeable to Complainant's trial counsel. Her lack of preparation, lack of focus, lack of understanding of the law, frequent and extraordinary delays between questions and her repeated failure to promptly appear and be ready for trial sessions in this case clearly justifies a significant reduction in the hours reasonably spent both for attorney's fees and the Complainant's own expenses.

Considering the above factors I find that attorney's fees and expenses in the amount of \$4,000 and Complainant's other expenses in the amount \$800 are appropriate.

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ORDER

Monterey Coal Company is directed to pay to the Complainant within 30 days of the date of this decision attorney's fees and other expenses of \$4,987.36.

Gary Melick
Administrative Law Judge
(703) 756-6261