



In the Matter of:

LUIS PATINO,

ARB CASE NO. 06-125

COMPLAINANT,

ALJ CASE NO. 2005-AIR-023

v.

DATE: September 17, 2010

BIRKEN MANUFACTURING COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Leon M. Rosenblatt, Esq., *Law Offices of Leon M. Rosenblatt*, West Hartford, Connecticut

For the Respondent:

Robert L. Hirtle, Esq., Matthew T. Wax-Knell, Esq., *Rogin Nassau, L.C.C.*, Hartford, Connecticut

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*, E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*, and Wayne C. Beyer, *Administrative Appeals Judge*.

SUPPLEMENTAL ORDER AWARDING ATTORNEY'S FEES

Luis Patino alleged that the Birken Manufacturing Company fired him in violation of the whistleblower protection provisions of the Wendell H. Ford Aviation

Investment and Reform Act for the 21st Century (AIR 21).¹ After a hearing, a United States Department of Labor Administrative Law Judge (ALJ) concluded that Birken had not violated AIR 21 and dismissed Patino's complaint. Patino appealed, and the Administrative Review Board (ARB) vacated the dismissal and remanded the case for further proceedings.²

On remand, the ALJ concluded that Birken had violated the STAA and awarded Patino back pay and attorney's fees.³ Birken appealed both orders to the ARB. The ARB dismissed Birken's appeal as untimely filed, affirmed the ALJ's award of attorney's fees, and permitted Patino 30 days in which to submit a petition for additional attorney's fees.⁴

On December 28, 2009, Patino submitted an application for attorney's fees of \$3,362.25 for work before the ARB. Birken has not filed any objections.

As a successful AIR 21 complainant, Patino is entitled to receive all costs and expenses, including attorney's fees, reasonably incurred in litigating his complaint.⁵ The regulations governing AIR 21 provide for the award of attorney's fees incurred by a complainant who prevails in appealing his or her case to the ARB.⁶

The ARB uses the "lodestar method" to calculate attorney's fees. This requires multiplying the number of hours reasonably expended by a reasonable hourly rate.⁷ An attorney requesting fees must demonstrate that the claimed hours of compensation are adequately identified and reasonably expended.⁸ The burden is also on the attorney to

¹ 49 U.S.C.A. § 42121(a) (Thomson/West 2007). Regulations implementing AIR 21 appear at 29 C.F.R. Part 1979 (2009).

² *Patino v. Birken Mfg. Co.*, ARB No. 06-125, ALJ No. 2005-AIR-023 (ARB July 7, 2008).

³ *Patino v. Birken Mfg. Co.*, ALJ No. 2005-AIR-023 (Dec. 15, 2008 merits) (Jan. 28, 2009 fees).

⁴ *Patino v. Birken Mfg. Co.*, ARB No. 09-054, ALJ No. 2005-AIR-023 (ARB Nov. 24, 2009).

⁵ 49 U.S.C.A. § 42121(b)(3)(B); 29 C.F.R. § 1979.109(b).

⁶ 29 C.F.R. § 1979.110(d) ("If the Board concludes that the party charged has violated the law, . . . the Board shall assess against the named person all costs and expenses (including attorney's and expert witness fees) reasonably incurred.").

⁷ *Pierce v. U.S. Enrichment Corp.*, ARB Nos. 06-055, -058, -119; ALJ No. 2004-ERA-001, slip op. at 2 (ARB Feb. 27, 2009).

⁸ *Negron v. Vieques Air Link, Inc.*, ARB No. 04-021, ALJ No. 2003-AIR-010, slip op. at 2 (ARB Mar. 7, 2006).

demonstrate the reasonableness of his hourly fee by showing that the requested rate is in line with fees prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.⁹

We have reviewed the application for attorney's fees for services on behalf of Patino before the ARB from February 16 through November 30, 2009. We find that the hours claimed were reasonably expended in defense of Patino's complaint. Also, the attorneys representing Patino have demonstrated the reasonableness of their hourly fees of \$295.00 an hour for Attorney Leon M. Rosenblatt and \$175.00 an hour for Attorney Lynn M. Mahoney. Accordingly, we order Birken to pay Patino's attorneys the amount of \$3,362.25.¹⁰

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

⁹ *Florek v. Eastern Air Cent., Inc.*, ARB No. 07-113, ALJ No. 2006-AIR-009, slip op. at 12 (ARB May 21, 2009).

¹⁰ *See Pierce*, ARB Nos. 06-055, -058, -119, slip op. at 4 (affirming unchallenged fees and costs reasonably incurred in litigating the case).