



In the Matter of:

RICHARD HOFFMAN,

ARB CASE NO. 96-091

COMPLAINANT,

ALJ CASE NO. 94-CAA-004

v.

DATE: August 8, 1997

**W. MAX BOSSERT and BOSS
INSULATION AND ROOFING, INC.,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**SUPPLEMENTAL DECISION AND ORDER
ON ATTORNEY FEES AND COSTS**

In a 1995 Decision and Remand Order, the Secretary of Labor found that the Respondents, W. Max Bossert and Boss Insulation and Roofing, Inc. (Boss), violated the employee protection provision of the Clean Air Act, 42 U.S.C. § 7622 (1988), when Boss laid off the Complainant, Richard Hoffman, from his position as a roofer. The Secretary remanded the case to the ALJ to determine the complete remedy.

After receiving the ALJ's recommended decision on remand, the Board issued a Final Decision and Order (Final Decision) on January 22, 1997 in which it found that Hoffman is entitled to reinstatement, back pay, a specified amount representing attorney fees and the costs he incurred in bringing this complaint, through March 15, 1996. We explained that Hoffman's attorneys are entitled to payment of their reasonable fees and costs incurred since March 16, 1996 and permitted the parties to submit a petition for such additional fees and costs and a response. This decision corrects one typographical error in the Final Decision and orders Boss to pay a specified amount of additional fees and costs.

Correction to Final Decision

Paragraph 4 on page 8 of the Final Decision is corrected to read:

Respondents shall pay to Complainant's attorneys \$34,397.50 in attorney fees and \$5,585.36 in costs for the period through March 15, 1996.

Additional Attorney Fees and Costs

In his Petition for Additional Attorney Fees and Costs, Hoffman seeks additional attorney fees of \$4,512.00 and additional costs of \$204.40. Boss objects to certain of the claimed fees and costs. We list below the claimed hours, fees, and the explanation given for items that we disallow either in whole or in part. We explain the reason for the disallowance after the chart.

<u>Attorney Initials</u>	<u>Date</u>	<u>No. of Hours</u>	<u>Amount</u>	<u>Explanation Given for Charge</u>
SJS	03.28.96	0.8	\$88.00	Delivered Supplemental Brief to ALJ Office in Camden, NJ
SJS	04.08.96	0.4	\$44.00	Received Recommended Decision from ALJ
SJS	08.05.96	1.0	\$110.00	Reviewed Dept. of Labor Procedural Rules for filing briefs; revised Service List; received EM's comments
SJS	08.06.96	3.4	\$374.00	Finalized Brief and Cover Letter; checked Dept. of Labor Rules for form of Briefs, requirements, etc.
service				
SJS	08.07.96	0.6	\$66.00	Delivered Brief to U.S. Dept. of Labor in Washington, DC

<u>Attorney Initials</u>	<u>Date</u>	<u>No. of Hours</u>	<u>Amount</u>	<u>Explanation Given for Charge</u>
SJS	09.11.96	2.0	\$220.00	Revise Brief; go to Jenkins Law Library to look up proper citations; discuss with EM
JM	01.28.97	0.7	\$87.50	Received copy of decision of Secretary of Labor - conference with SJS re same.
SJS	01.29.97	0.9	\$99.00	Call from Dick Hoffman; Dick will send me information on his 1995 and 1996 income; request itemized information from accounting for supplemental fee petitions; discuss order with EM.

We disallow the fee of \$88.00 on March 29, 1996 and of \$66.00 on August 7, 1996 because the charges are for attorney time to hand deliver briefs where either courier service or overnight mail was available. We find these charges not to be reasonably incurred in bringing the complaint. We note that Hoffman's attorney correctly did not charge for his time to hand deliver the rebuttal brief. Affidavit of Scott J. Schwarz at p. 4, par. 14.

We disallow \$44 charged on April 8, 1996 for receiving the ALJ's recommended decision, since receiving a document is a ministerial task that may be accomplished by support staff. In contrast, we have allowed other charges for reviewing the ALJ's and Secretary's decisions in this case.

We disallow \$55 of the \$110 charged on August 5, 1996 and \$55 of the \$374 charged on August 6, 1996 as excessive for the tasks listed. Concerning the \$220 charged on September 11, 1996, we disallow \$110 for charging for attorney time to walk to a law library to look up proper citations because we find that this charge was not reasonably incurred in bringing the complaint.

For charges in 1997, we disallow \$43.75 of the \$87.50 charge on January 28, 1997 because it includes a charge for receiving a decision of the Secretary. We also disallow \$49.50 of the \$99 charge on January 29, 1997 as excessive.

We have disallowed a total of \$511.25 of the claimed attorney fees. We find that all other attorney's fees and costs reasonably were incurred in bringing this complaint. Where Hoffman has listed small charges for telephone calls and for photocopies, we understand these costs to be reasonably incurred in bringing the complaint and therefore we allow these costs.

CONCLUSION

The January 22, 1997 Final Decision and Order of is corrected as noted above. Respondents shall pay to Complainant's attorneys additional attorney fees of \$4000.75 and costs of \$204.40.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member