



**In the Matter of:**

**PETER P. CEFALU,**

**ARB CASE NOS. 04-103  
04-161**

**COMPLAINANT,**

**ALJ CASE NO. 2003-STA-055**

**v.**

**DATE: April 3, 2008**

**ROADWAY EXPRESS, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Paul O. Taylor, Esq., *Truckers Justice Center*, Burnsville, Minnesota**

***For the Respondent:***

**Lisa A. McGarrity, Esq., *Franczek Sullivan, P.C.*, Chicago, Illinois**

**ORDER ON ATTORNEY'S FEES**

On January 31, 2006, the Administrative Review Board (ARB) issued a Final Decision and Order in this case arising under the whistleblower protection provision of the Surface Transportation Assistance Act (STAA), 49 U.S.C.A. § 31105 (West 1997). The ARB affirmed the Administrative Law Judge's (ALJ) ruling that Roadway violated the STAA when it fired Cefalu after he assisted another employee in his grievance hearing. The ARB also affirmed the ALJ's order of reinstatement and award of damages, as well his order of attorney's fees to Cefalu for work performed at the hearing stage of the proceedings. The ARB informed Cefalu's attorney that he could petition the ARB for fees and expenses incurred before it. *Cefalu v. Roadway Express, Inc.*, ARB Nos. 04-103, 161; ALJ No. 2003-STA-055, slip op. at 10 (ARB Jan. 31, 2006).

By motion dated April 20, 2006, Roadway requested that the ARB stay enforcement of the ALJ's reinstatement order on the ground that a stay was "necessary to avoid an unnecessary waste of Roadway's time and resources." Motion to Stay Enforcement of Order Pending Appeal at 2. By Order dated May 12, 2006, the ARB denied Roadway's motion. *Cefalu v. Roadway Express, Inc.*, ARB Nos. 04-103, 161; ALJ No. 2003-STA-055 (ARB May 12, 2006).

Roadway appealed the ARB's January 31, 2006 decision to the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit affirmed the Board's determination that Roadway had violated the STAA, but remanded the case on the issue of reinstatement. *Roadway Express, Inc. v. United States Dep't of Labor*, 495 F.3d 477, 486 (7th Cir. 2007). The ARB remanded the case to the ALJ for further consideration of this issue. *Cefalu v. Roadway Express, Inc.*, ARB No. 08-001, ALJ No. 2003-STA-055 (ARB Jan. 30, 2008).

We now consider two petitions for attorney's fees from Paul O. Taylor and Amanda R. Cefalu regarding their work before the ARB.<sup>1</sup>

## DISCUSSION

The STAA provides: "If the Secretary issues an order [finding a STAA violation] and the complainant requests, the Secretary may assess against the person against whom the order is issued the costs (including attorney's fees) reasonably incurred by the complainant in bringing the complaint. The Secretary shall determine the costs that reasonably were incurred." 49 U.S.C.A. § 31105(a)(3)(B).

Reasonableness is the key. 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. *Scott v. Roadway Express*, ARB No. 01-065, ALJ No. 1998-STA-008, slip op. at 5 (ARB May 29, 2003).

The attorney requesting fees bears the burden of proof that the claimed hours of compensation are adequately demonstrated and reasonably expended. *Jackson v. Butler & Co.*, ARB Nos. 03-116, 144; ALJ No. 2003-STA-026, slip op. at 10 (ARB Aug. 31, 2004). Time that is duplicative, e.g., where two or more attorneys unnecessarily attend hearings and depositions, and perform the same tasks, will be excluded. *Id.* at 11. Similarly, time attributed to office conferences, supervision and training, and review and revision is not compensable because such time is not normally billable to private clients. *Id.*

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<sup>1</sup> Also pending before the ARB are fee petitions from Attorneys Paul O. Taylor and Amanda Cefalu for services before the United State Court of Appeals for the Seventh Circuit. Supplemental Verified Petitions dated August 28 and 29, 2007 totaling \$31,267.80 and \$10,080.19, respectively.

In addition, the burden is on the attorney to demonstrate the reasonableness of his hourly fee by producing evidence 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. *Johnson v. Roadway Express, Inc.*, ARB No. 01-013, ALJ No. 1999-STA-005, slip op. at 15 (ARB Dec. 30, 2002) (citations omitted). See *Eddleman v. Switchcraft, Inc.*, 965 F.2d 422, 424 (7th Cir. 1992) (market rate is that normally charged by lawyers of similar ability and experience in the community to their paying clients for the type of work in question).

In this case, Attorney Taylor seeks a total of \$3,850.00 for 15.5 hours of services from June 16, 2004, through February 7, 2006, at \$250.00 an hour, plus \$42.40 in expenses.<sup>2</sup> Verified Petition at 3-4. We have reviewed Taylor's 28-page Brief in Support of Recommended Decision and Order and conclude that the hours he claimed in reviewing the record, researching the legal issues and ALJ orders, and drafting, revising, and completing the final document were adequately explained and reasonably expended, given the number and complexity of the issues in this case.

Previously, the ARB affirmed the ALJ's finding that Attorney Taylor's fee of \$250.00 per hour was reasonable because it was consistent with that of other attorneys with comparable experience and skills in the community. *Cefalu*, slip op. at 9 (Jan. 31, 2006). Further, Roadway has not objected to this hourly rate or to the fee petition. Therefore, we award Attorney Taylor \$3,875.00 in fees for services from June 16, 2004, through February 7, 2006.

The ARB previously affirmed the ALJ's exclusion of clerical costs as not recoverable. *Id.* Accordingly, for purposes of this case, we will disallow the claimed expenses of \$42.90, which consisted of \$25.50 for photocopying and \$16.90 for unspecified costs. See *Eash v. Roadway Express, Inc.*, ARB Nos. 02-008, 064, ALJ No. 2000-STA-047, slip op. at 3 (ARB June 27, 2003) (photocopying and postage are traditional clerical costs and are therefore not recoverable).

Attorney Taylor also requests \$1,925.00 for seven hours of services from April 20 to May 26, 2006, at an increased rate of \$275.00 an hour for defending against Roadway's motion to stay. Supplement Petition at 1, 3. Based on the information and comparable market area data provided in Attorney Taylor's fee petitions, we accept the \$25.00 increase in his hourly rate as reasonable. Roadway has not filed an objection. See *Dalton v. Copart, Inc.*, ARB Nos. 04-027, 138, ALJ No. 1999-STA-046, slip op. at 4 (ARB Feb. 8, 2006) (attorney's hourly rate was \$175.00 when case began and he raised it twice during litigation to \$250.00; ARB approved proposed compromise rate of \$200.00, in part because of delay in payment).

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<sup>2</sup> The number of hours, 15.5, multiplied by the hourly rate of \$250.00, equals \$3,875.00.

Attorney Taylor's fee entries for April 20 and 24 and May 15, 2006, note telephone conferences with Attorney Cefalu, Supplement Petition at 3, but do not explain why such conferences were necessary or how they were related to Taylor's review of Roadway's motion for stay, research of the issue, and submission of a four-page response opposing the motion. Certainly, it is appropriate for Attorney Taylor to review the ARB's order denying the motion and to inform his client on May 15, but there is no explanation of the necessity of telephone conferences with Attorney Cefalu. Therefore, we will deduct three quarters of an hour from Attorney Taylor's time and award a total of \$1,718.75 for 6.25 hours.

Finally, Attorney Cefalu requests \$218.75 in fees at \$125.00 an hour for services for conferring with Attorney Taylor and reviewing the motion to stay and a memo on April 20, for conferring and reviewing the draft response on April 24, and for conferring and reviewing the ARB's order on May 15, 2006. Supplement Petition at 3-4.

We disallow Attorney Cefalu's fee request. Her fee petition does not describe her telephone conferences with Attorney Taylor or review of his work with sufficient specificity to persuade us that her services were reasonably or necessarily incurred. The services performed by Attorney Cefalu appear to do no more than duplicate those of Attorney Taylor. *Cefalu*, slip op. at 9 (Jan. 31, 2006). Further, simply reviewing the work of a more experienced attorney, Attorney Taylor, is not compensable. *See Jackson*, slip op. at 11. Therefore, we disallow the requested fee of \$218.75.

Accordingly, Roadway will pay to Attorney Taylor a total of \$5,593.75 (\$3,875.00 plus \$1,718.75) for services through May 2006.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**