



In the Matter of:

MICHAEL BUTLER,

ARB CASE NO. 2017-0027

COMPLAINANT,

ALJ CASE NO. 2014-STA-00068

v.

DATE: **MAY - 7 2019**

NEIER, INC., *et al*,

RESPONDENT.

Appearances:

For the Complainant:

Paul O. Taylor Esq. and Peter LaVoie, Esq.; *Truckers Justice Center*;
Burnsville, Minnesota

For the Respondents:

A. Jack Finklea, Esq.; *Scopelitis, Garvin, Light, Hanson & Feary, P.C.*;
Indianapolis, Indiana

Before: William T. Barto, *Chief Administrative Appeals Judge*, James A.
Haynes, and Daniel T. Gresh, *Administrative Appeals Judges*

ORDER AFFIRMING AWARD OF ATTORNEY'S FEES

PER CURIAM. This case arises under the Surface Transportation Assistance Act of 1982, as amended and recodified (STAA), and its implementing regulations.¹ In July 2016, a Department of Labor Administrative Law Judge (ALJ) concluded after hearing in this matter that Neier, Inc. (Neier) had violated the STAA, and the ALJ awarded damages to the Complainant, Michael Butler. *See Butler v. Neier, Inc. et al*, ALJ No. 2014-STA-00068 (July 29, 2016). In August 2016, Neier appealed the ALJ's decision to the Administrative Appeals Board (ARB or Board). In February 2017, while Neier's appeal was pending before the ARB, the ALJ issued an order

¹ 49 U.S.C. § 31105 (2007); 29 C.F.R. Part 1978 (2016); *see* 49 U.S.C. § 42121 (2000).

awarding Complainant a total of \$52,620.30 in legal fees, costs, and expenses against Neier and over its objections. *Butler v. Neier, Inc., et al*, ALJ No. 2014-STA-00068 (Feb. 9, 2017) (Attorney Fee Order). Thereafter, in June 2018, the ARB affirmed the ALJ's decision on the underlying merits of the case in *Butler v. Neier, Inc., et al*, ARB No. 2016-0084, ALJ No. 2014-STA-00068 (ARB June 22, 2018). Neier now appeals from the ALJ's February 2017 Attorney Fee Order. In briefing filed prior to the Board's June 2018 decision on the merits, Neier argued that the fee award must be set aside because the ALJ had prematurely issued it before the ARB had issued a final decision on the underlying merits of this case. Complainant responds in support of the fee award. We deny the relief requested and affirm the ALJ's order awarding counsel fees, costs and expenses.

The Secretary of Labor has delegated to the Board his authority to act on appeals from ALJ decisions arising under the STAA and issue final agency decisions in those matters.²

The STAA and its implementing regulations authorize payment of reasonable costs and fees to a complainant who prevails on his claim.³ If the Secretary of Labor concludes that a respondent has violated the STAA and the complainant requests, the Secretary of Labor may assess against the person against whom the order is issued the costs reasonably incurred by the complainant in bringing the complaint, including reasonable attorney fees.⁴

The ARB has endorsed the lodestar method for calculating attorney's fees.⁵ This method requires multiplying the number of hours reasonably expended in bringing the litigation by a reasonable hourly rate.⁶ An attorney seeking a fee award must submit evidence documenting the hours worked and the rates claimed, as well as records identifying the date, time, and duration necessary to accomplish

² Secretary's Order No. 01-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13072 (Apr. 3, 2019).

³ See 49 U.S.C. § 31105(b)(3)(A), (B); 29 C.F.R. §§ 1978.109(d)(1), 1978.110(d).

⁴ *Id.*

⁵ See, e.g., *Smith v. Lake City Enters.*, ARB Nos. 12-112, 12-113; ALJ No. 2006-STA-032, slip op. at 3 (ARB Sept. 12, 2013).

⁶ *Id.*

each specific activity and all claimed costs.⁷ In addition, the attorney must 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.⁸

Subsequent to the filing of Neier's pleadings in this matter, the ARB affirmed the ALJ's decision ruling in Complainant's favor on the merits of this case, which became the final decision for the Secretary of Labor. Neier subsequently appealed the ARB's decision to the United States Court of Appeals for the Seventh Circuit. We take official notice of the fact that the Court of Appeals has granted the parties' joint stipulated motion to voluntarily dismiss Respondent's appeal. *Neier, Inc. v. U.S. Dept. of Labor*, No. 18-2800 (7th Cir. Oct. 16, 2018). The fact that Complainant has ultimately been successful before the ARB and the Court of Appeals renders moot Neier's argument that the fee award must be reversed as premature. Consequently, we **DENY** Neier's request that we set aside the fee award on that basis. As Neier does not challenge the amount or substance of the fee award,⁹ we hereby **AFFIRM** as reasonable the ALJ's award to Complainant against Neier of \$52,620.30 in legal fees, costs, and expenses.

SO ORDERED.

⁷ *Id.*, slip op. at 3-4.

⁸ *Id.*, slip op. at 4.

⁹ Respondent's Initial Brief at 1-3; Petition For Review at 2,