

BRB No. 98-231

BRIAN K. JOHNSON

Claimant-Respondent

v.

TRINITY INDUSTRIES  
GRETNA MACHINE AND  
IRON WORKS

and

RELIANCE NATIONAL  
INDEMNITY COMPANY

Employer/Carrier-  
Petitioners

DATE ISSUED: \_\_\_\_\_

DECISION and ORDER

Appeal of the Decision and Order Granting Attorney Fees of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Collins C. Rossi (Bernard, Cassisa, Elliott & Davis), Metairie, Louisiana, for employer/carrier.

Before: BROWN and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order Granting Attorney Fees (96-LHC-2592) of Administrative Law Judge Robert D. Kaplan rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with the law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant sustained a head injury on July 21, 1995. Employer paid some

benefits voluntarily, and thereafter the parties agreed to settle the claim for a lump sum payment of \$4,000 for past and future medical benefits. The parties filed a Section 8(i), 33 U.S.C. §908(i), settlement agreement, which the administrative law judge approved in an Order dated August 19, 1997. In his Order, however, the administrative law judge noted that claimant and employer could not agree on an attorney's fee and that he would address that issue in another decision.

Subsequently, counsel for claimant submitted a fee petition requesting a fee of \$8,458.50, representing 37.25 hours at \$150 per hour and 31.9 hours at \$90 per hour, and a request for reimbursement of expenses totaling \$186.71. Employer filed objections. The administrative law judge disallowed 26.25 hours of work which were performed before the district director and sustained several of employer's other objections. He awarded claimant's counsel a fee of \$4,083.71, representing 9.85 hours at \$150 per hour, 28.15 hours at \$90 per hour, and \$72.71 in expenses. Employer appeals the fee award, and claimant has not responded to the appeal.

With regard to its first contention, employer argues that the administrative law judge failed to apply applicable law concerning minimum billing increments. The United States Court of Appeals for the Fifth Circuit has held that its unpublished fee order in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990), is considered circuit precedent which must be followed. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995) (table). In *Fairley*, the court held that attorneys, in general, may not charge more than one-eighth hour for reading a one-page letter and one-quarter hour for preparing a one-page letter. See *Fairley*, slip op. at 2. A review of the fee petition in this case reveals only two potential "violations" which were not reduced by the administrative law judge, and those items involved either reading or writing letters addressed to the administrative law judge on May 19 and June 4, 1997. The administrative law judge, who is familiar with the letters in question, considered reasonable the requests of .25-hour and .5-hour, respectively. Therefore, we reject employer's contention, and we note that as the administrative law judge reduced one other entry in accordance with the Fifth Circuit's rule, the fee awarded by the administrative law judge conforms with the minimum billing rule set forth by the Fifth Circuit. *Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995).

We reject employer's remaining conclusory contention that the fee awarded is not in accordance with Section 28 of the Act. A review of the fee award reveals that the administrative law judge thoroughly considered the fee petition and employer's objections, and employer has not alleged any specific errors in the awarded fee. *Forlong v. American Security & Trust Co.*, 21 BRBS 155 (1988); *Staffile v. Int'l Terminal Operating Co., Inc.*, 12 BRBS 895 (1980).

Accordingly, the administrative law judge's award of an attorney's fee is affirmed.

SO ORDERED.

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JAMES F. BROWN  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge