

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

MICHAEL J. JONES,

ARB CASE NO. 2023-0035

COMPLAINANT,

ALJ CASE NO. 2022-AIR-00003

ALJ SCOTT R. MORRIS

v.

DATE: May 28, 2025

EXCLUSIVE JETS, LLC,

RESPONDENT.

Appearances:

For the Complainant:

Morgan W. Campbell, Esq. and Mark McKinnon, Esq.; *Fox Rothschild LLP*; Washington, District of Columbia

For the Respondent:

Danielle Dobosz, Esq. and Zebulon D. Anderson, Esq.; *Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.*; Raleigh, North Carolina

**Before Randel K. Johnson, Chief Administrative Appeals Judge, and
Thomas H. Burrell, Administrative Appeals Judge**

ORDER AWARDING ATTORNEYS' FEES

This case arises under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21) and its implementing regulations.¹ On May 10, 2023, Administrative Law Judge (ALJ) Scott R. Morris issued a Decision and Order Granting Relief (D. & O.) finding that Respondent Exclusive Jets, LLC violated the Act by terminating Complainant

¹ 49 U.S.C. § 42121; 29 C.F.R. Part 1979 (2024).

Michael J. Jones' employment because he engaged in protected activity. Respondent appealed the decision to the Administrative Review Board (ARB or Board). On December 31, 2024, the Board affirmed the ALJ's decision with one modification as to the appropriate formula for calculating interest on a backpay award. On February 26, 2025, Respondent appealed the Board's decision to the Fourth Circuit Court of Appeals. On March 28, 2025, Complainant filed a Petition for an Award of Attorneys' Fees, seeking an award of \$99,072.50 and fees generated in connection with responding to any opposition filed by Respondent. Complainant did not seek any costs. Respondent filed a response on April 4, 2025. Complainant filed a Reply to Respondent's Response in Opposition to Complainant's Petition for an Award of Attorneys' Fees responding to Respondent's arguments and seeking an additional \$4,122.50. in fees for work performed in making the reply.

We now consider Complainant's Petition for an Award of Attorneys' Fees and supplemental request regarding his attorneys' work before the Board.²

DISCUSSION

A successful AIR21 complainant is entitled to receive all costs and expenses, including attorneys' fees, reasonably incurred in bringing the complaint.³ The Board uses the lodestar method for calculating attorneys' fees, which requires multiplying a reasonable hourly rate by the number of hours reasonably expended in bringing litigation.⁴ An attorney seeking a fee award 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.⁵ The attorney must also submit evidence documenting the hours worked and the rates claimed, as well as records

² See 29 C.F.R. § 1979.110(d) ("At the request of the complainant, the Board shall assess against the named person all costs and expenses (including attorney and expert witness fees) reasonably incurred.").

³ 49 U.S.C. § 42121(b)(3)(B)(iii) (upon the finding of a violation, the Department "shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred"); 29 C.F.R. § 1979.110(d).

⁴ *Clemmons v. Ameristar Airways, Inc.*, ARB No. 2011-0061, ALJ No. 2004-AIR-00011, slip op. at 3 (ARB Apr. 27, 2012) (citations omitted); *Yates v. Superior Air Charter, LLC*, ARB No. 2017-0061, ALJ No. 2015-AIR-00028, slip op. at 3 (ARB May 28, 2021) (citation omitted).

⁵ *Yates*, ARB No. 2017-0061, slip op. at 3 (citation omitted).

identifying the date, time, and duration necessary to accomplish each specific activity and all claimed costs.⁶ If the documentation of hours is inadequate, the award may be reduced accordingly.⁷

1. Reasonableness

The burden is on the attorney requesting a fee award to demonstrate the reasonableness of his hourly fee by producing evidence that the requested rate is in line with fees prevailing in the relevant community for similar services by lawyers of reasonably comparable skill, experience, and reputation.⁸ In deciding the “prevailing market rates in the relevant community,” we may consider, among other things, rates Complainant’s attorney charges paying clients, and rates other lawyers in the community charge for similar work.⁹ Factors that may be considered for determining the relevant community include: (i) where the complainant worked for the respondent, (ii) where the case was filed, and (iii) where the relevant events took place.¹⁰ Complainant proposes Melbourne, Florida as the relevant community, as Melbourne is where Complainant resided while employed by Respondent.¹¹ Complainant also notes that the rates requested by attorneys in Melbourne are less than those charged by attorneys located in urban markets such as Washington, D.C. (where the Board is located and where Complainant’s counsel practice) or Cherry Hill, New Jersey, where the ALJ is located.¹²

Declarations provided by counsel located in Florida and familiar with the Melbourne legal market attest that the rate of \$425/hour charged by the two attorneys who performed the majority of the work on Complainant’s appeal is reasonable and in line with the prevailing rates of attorneys with comparable skill,

⁶ *Id.* at 3-4 (citation omitted).

⁷ *Id.* at 4 (citation omitted).

⁸ *Id.* (citation omitted).

⁹ *Shields v. James E. Owen Trucking, Inc.*, ARB No. 2008-0072, ALJ No. 2007-STA-00022, slip op. at 4-5 (ARB Nov. 30, 2009) (citations omitted).

¹⁰ *See Clemmons*, ARB No. 2011-0061, slip op. at 5-6; *Yates*, ARB No. 2017-0061, slip op. at 5 n.17.

¹¹ Complainant Michael J. Jones’ Petition for an Award of Attorneys’ Fees (Comp. Br.) at 3.

¹² *Id.*

experience, and reputation.¹³ Respondent did not contest the reasonableness of this rate, and we note that it is substantially lower than the attorneys' standard rate and the applicable rates identified on the *Laffey* Matrix and the Fitzpatrick Matrix.¹⁴ We conclude that the hourly fee requested is reasonable.

In addition to requiring that an attorney's hourly rate be reasonable, the Board requires that an attorney's "time and task entries be sufficiently detailed to demonstrate their reasonableness."¹⁵ Accordingly, the Board disfavors the use of block billing or grouping multiple tasks into a single time entry.¹⁶

The time entries for each of the four attorneys who worked on the case are generally for a single task (e.g. "Revise/edit liability argument section of brief" and "review trial transcripts regarding testimony on firing/meeting with management and malicious compliance"). These single-task entries contain the requisite particularly to allow the Board to judge their reasonableness. We note, however, that a few time-entries are for multiple tasks. However, these entries include parenthetical information on the amount of time spent on each task, as demonstrated by the following example for a single entry of 8.4 hours: "Draft introduction to brief (1.6); revised statement of facts (2.7); draft revisions to argument section of brief on liability issues (4.1)[.]"¹⁷ The Board has recognized that this type of billing is appropriate because it "avoids the usual problem created by block billing - that it is difficult to determine the reasonableness of time expended."¹⁸

¹³ Comp. Br. at Exhibits (Ex.) 14, 15.

¹⁴ Mark McKinnon attested in his declaration that, at all relevant times, his standard hourly rate exceeded \$600/hour. *Id.* at Ex. 10. The rate specified by the *Laffey* Matrix for 2023-2024 for an attorney with 35+ years of experience was \$1,057. The rate specified by the Fitzpatrick Matrix, which is published by the U.S. Attorney's Office for the District of Columbia, Civil Division, for an attorney with 35+ years' experience was \$807 for 2023. Morgan Campbell attested in his declaration that his current standard hourly rate is \$765/hour and, at all relevant times, his standard hourly rate exceeded \$600/hour. *Id.* at Ex. 8. The rate specified by the *Laffey* Matrix for 2023-2024 for an attorney with 23 years of experience was \$1,057. The rate specified by the Fitzpatrick Matrix for an attorney with 23 years of experience was \$758 for 2023.

¹⁵ *Yates*, ARB No. 2017-0061, slip op. at 6 (quoting *Cefalu v. Roadway Express, Inc.*, ARB Nos. 2004-0103, -0161, ALJ No. 2003-STA-00055, slip op. at 4 (ARB Jan. 6, 2010)).

¹⁶ *Id.* (quoting *Cefalu*, ARB Nos. 2004-0103, -0161, slip op. at 4).

¹⁷ Comp. Br. at Ex. 9 at 8.

¹⁸ *Yates*, ARB No. 2017-0061, slip op. at 8.

Respondent does not contend that the time expended by Complainant's counsel was not reasonable and does not raise any issue with the time entries included with Complainant's Petition. After a review of the time entries, we find that the number of hours expended was reasonable. The entries do not indicate that the hours expended were (1) excessive in relationship to the task performed, (2) redundant or duplicative because multiple attorneys performed the same task, or (3) unnecessary or inappropriate because the task is not properly billed to clients.¹⁹

2. Degree of Success

The Board, following the Supreme Court's lead, has long recognized that "the extent of a plaintiff's success is a crucial factor" to consider in determining the amount of fees to be awarded.²⁰ Here, Complainant was successful on almost every issue raised on appeal. In our decision, we addressed the following arguments raised by Respondent in their Petition for Review.

In the merits appeal, Respondent argued that: (i) Complainant's logbook entries and actions during his final rotation were not protected activity; (ii) Complainant's protected activity was not a contributing factor to his termination; (iii) it would have fired Complainant even in the absence of Complainant's protected activity; (iv) its liability for backpay should be tolled as of the date Complainant received a job offer from Gama Aviation; (v) the method the ALJ used to calculate interest on Complainant's backpay award should be revised; and (vi) Complainant is not entitled to compensatory damages for emotional distress.²¹

¹⁹ See *id.* at 6 (citation omitted).

²⁰ *Hensley v. Eckerhart*, 461 U.S. 424, 440 & n.14 (1983); see also *Clemmons*, ARB No. 2011-0061, slip op at 7 (noting that the complainant had been successful on every issue).

²¹ Respondent's Opening Brief (July 27, 2023) at 19-23, 27-30, 30-32, 32-37, 38-39, 39-41; see *Jones v. Exclusive Jets, LLC*, ARB No. 2023-0035, ALJ No. 2022-AIR-00003, slip op. at 10-11, 17-19, 22-23 (ARB Dec. 31, 2024).

On all issues other than the proper method for calculating interest on Complainant's backpay award, we found in favor of Complainant.²² Therefore, we hold that the extent of Complainant's success was great.²³

3. Respondent's Pending Appeal

Respondent argues that the Board should reduce the fees that have been requested because the request "completely eclipses" the relief obtained.²⁴ We are unpersuaded by Respondent's assertion that the award should be reduced because it is significantly larger than the relief granted.²⁵ Indeed, the ARB has declined to reduce attorneys' "fee awards solely because the amount requested is larger than the damages recovered."²⁶ In *Clemmons*, the Board noted an earlier case, *Hoffman*, in which the Board reversed an ALJ's finding that a requested attorney's fee was unreasonable because of the small amount of back pay awarded.²⁷ In reversing, the Board explained it "would chill attorneys from taking moderately complicated cases

²² In his Fee Petition, Complainant identifies ten issues raised by Respondent and claims that Complainant prevailed on nine of those issues—on all but the correct method for calculating interest. Comp. Br. at 6. This discrepancy arises from Complainant separating out issues that we treated as a single issue. For instance, we treated as a single issue the question of whether Respondent's liability for backpay should be tolled as of the date Complainant received a job offer from Gama Aviation. Complainant presents this as two issues: whether the ALJ applied the correct standard regarding mitigation of damages and whether the Board's precedents on mitigation were wrongly decided.

²³ Respondent "does not dispute that [Complainant] was, in large part, successful in this matter." Respondent's Response in Opposition to Claimant's Petition for an Award of Attorneys' Fees and Costs (Resp. Br.) at 4.

²⁴ *Id.* at 3.

²⁵ See *Bywaters v. United States*, 670 F.3d 1221, 1230 (Fed. Cir. 2012) (quoting *Blum v. Stenson*, 465 U.S. 886, 897 (1984) (stating while "there may be circumstances in which the basic standard of reasonable rates multiplied by reasonably expended hours results in a fee that is either unreasonably low or unreasonably high,' the lodestar figure is 'presumed' to be reasonable") and *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 543 (2010) (holding that as a rule, the lodestar figure should only be adjusted in "rare and exceptional" cases and may not be adjusted "based on a factor that is subsumed in the lodestar calculation")).

²⁶ *Clemmons*, ARB No. 2011-0061, slip op. at 7 (citations omitted).

²⁷ *Id.* at 7-8 (quoting *Hoffman v. Boss Insulation & Roofing, Inc.*, ARB Nos. 1996-0091, 1997-0128, ALJ No. 1994-CAA-00004 (ARB Jan. 22, 1997)).

where the complainant earned modest wages and hence the back pay sought would be small in relation to the attorney time expended.”²⁸

Respondent also argues that Complainant’s success before the Board was “largely illusory” and points out that it has appealed the Board’s Order to the Fourth Circuit and intends to contest the Board’s decision as to both liability and damages.²⁹ Respondent cites absolutely no authority to support its claim that a complainant’s degree of success can or should be discounted simply because the losing party has appealed the court’s decision. Nor does the filing of the appeal divest the Board of jurisdiction to award attorneys’ fees, as courts retain residual jurisdiction over collateral matters, including claims for attorneys’ fees.³⁰

CONCLUSION

As stated above, we find that both the hourly fee and the number of hours expended were reasonable. We also conclude that Complainant’s counsel achieved excellent results such that Complainant’s attorneys should recover a fully compensatory fee. Again, Respondent has not objected to the attorneys’ hourly rates or the hours billed for work before the Board or disputed Complainant’s degree of success. Accordingly, we grant Complainant’s Petition for an Award of Attorneys’

²⁸ *Id.* at 8 (citing *Hoffman*, ARB Nos. 1996-0091, 1997-0128, slip op. at 5). This is not to say that a “chilling effect” will necessarily rationalize a disproportionate difference between a fees request and relief granted. The analysis is a holistic one. *See Bywaters*, 670 F.3d at 1231 (citing *Blum*, 465 U.S. at 900) (“It is axiomatic that attorneys almost inevitably consider the amount involved in a particular case when determining a reasonable number of hours to expend on any given issue or when allocating personnel resources based upon the expertise or experience required. Where only a small amount is at stake, it certainly would not be reasonable to expend countless hours on such a small claim or to commit the most experienced or valued attorney in the firm to work on the case. Thus where the amount involved is small, reductions in the reasonable number of hours expended or the reasonable hourly rate can easily be made to reflect this fact. It is for this reason that the Supreme Court has held that the ‘results obtained’ factor is generally subsumed within the lodestar calculation and thus normally should not provide an independent basis for a departure from the lodestar figure.”).

²⁹ Resp. Br. at 5.

³⁰ *See White v. N.H. Dep’t of Emp. Sec.*, 455 U.S. 445, 451 (1982); *Langham-Hill Petroleum Inc. v. S. Fuels Co.*, 813 F.2d 1327, 1330-31 (4th Cir. 1987); *Rothenberg v. Sec. Mgmt. Co., Inc.*, 677 F.2d 64, 65 (11th Cir. 1982).

Fees and fees for preparing the Reply Brief and order Respondent to pay attorneys' fees of \$103,195.00 for work performed before the ARB.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge