

BRB Nos. 06-0408, 06-0408A,
06-0622A, 08-0755, 10-0302

JOHN G. PHILLIPS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
KINDER MORGAN BULK TERMINALS)	DATE ISSUED: 04/20/2010
)	
and)	
)	
LUMBERMAN'S MUTUAL CASUALTY COMPANY)	
)	
Employer/Carrier- Respondents)	ORDER

Pending before the Board are claimant’s motion for reconsideration of the Board’s November 25, 2009, Order awarding claimant’s counsel an attorney’s fee in BRB No. 06-0622A and a contingent attorney’s fee in BRB Nos. 06-0408/A and 08-0755, and claimant’s appeal of the Decision and Order on Second Remand of Administrative Law Judge Steven B. Berlin, BRB No. 10-0302, in which the administrative law judge awarded counsel a fee of \$18,094. Claimant’s counsel has filed a letter informing the Board that the parties have reached an agreement as to the amount of the fee to which counsel is entitled for work performed before the Board in the four prior appeals. Counsel also states the parties have agreed to an attorney’s fee of \$23,250 for work performed before the administrative law judge. Counsel seeks approval of these agreements.

Counsel states that the parties have agreed to a fee of \$13,837.50 for work performed before the Board. We approve the parties’ agreement as the fee is reasonably commensurate with the necessary work provided by claimant’s counsel in these appeals.¹ 33 U.S.C. §928(c); 20 C.F.R. §802.203.

¹ Claimant’s motion for reconsideration of the Board’s November 25, 2009, Order, thus is moot.

However, the Board is without authority to approve the parties' agreement to an attorney's fee for work performed before the administrative law judge, as the tribunal before whom the work was performed must approve the attorney's fee. 33 U.S.C. §928(c); *Smith v. Alter Barge Line, Inc.*, 30 BRBS 87, 89 (1996); *see generally Tahara v. Matson Terminals, Inc.*, 511 F.3d 950, 41 BRBS 53(CRT) (9th Cir. 2007); *Stevedoring Services of America v. Price*, 432 F.3d 1112, 39 BRBS 85(CRT) (9th Cir. 2006). Therefore, we remand the case to the administrative law judge for consideration of the parties' agreement. In the event the agreement is not approved and the petitioner wishes review of the administrative law judge's Decision and Order on Second Remand, the Board will reinstate the appeal upon the request of the petitioner. 33 U.S.C. §921(b)(4); 20 C.F.R. §802.405(a).

Accordingly, we approve an attorney's fee of \$13,837.50 in BRB Nos. 06-0408, 06-0408A, 06-0622A and 08-0755, to be paid directly to claimant's counsel by employer. Claimant's appeal in BRB No. 10-0302 is dismissed without prejudice, and the case is remanded to the administrative law judge for consideration of the parties' fee agreement.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge