

VINCENT CUOZZI)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SEALAND/UNITED TERMINALS,)	DATE ISSUED:
INCORPORATED)	
)	
and)	
)	
RISK MANAGEMENT ECONOMICS)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Compensation Order-Award of Attorney's Fees of Richard V. Robilotti, District Director, United States Department of Labor.

Milton Garber (Baker, Garber, Duffy & Pederson), Hoboken, New Jersey, for the claimant.

Gerald M. Zashin, P.A., Cedar Grove, New Jersey, for the employer/carrier.

Before: DOLDER, Acting Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and SHEA, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Compensation Order-Award of Attorney's Fees (2-79289) of District Director Richard V. Robilotti 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 law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(1988).

This case is before the Board for the second time. Claimant was awarded compensation under the Act for an injury to his heart which he allegedly sustained on September 21, 1982 while working for employer. Claimant's counsel submitted a fee petition for work performed before the district director,¹ in which he requested \$6,500 for 26 hours of services, resulting in an hourly rate of \$250.² The district director awarded claimant's counsel an attorney's fee of \$150, to be paid by the employer/carrier.

Claimant's counsel appealed the district director's fee reduction to the Board. The Board vacated the fee award and remanded the case for the district director to provide an adequate explanation for the reduction of the fee to \$150, instructing him to specify and explain any disallowances made. *See Cuzzo v. Sealand/United Terminals, Inc.*, BRB No. 86-3108 (July 31, 1989)(unpublished).

In a letter dated August 9, 1989, written in response to the Board's remand Order, the district director summarily reinstated his original \$150 fee award, indicating that this fee award did not constitute an abuse of discretion, as alleged by claimant's counsel, but rather reflected the benefits which claimant's counsel obtained for claimant. Order at 1. The district director further noted that although claimant received only \$776.46 in compensation, his counsel received a \$3,852.25 fee from Administrative Law Judge Murray in addition to his \$150 fee award and that as the Act is for the benefit of the injured worker, an attorney should not receive higher payment than the injured worker.

On appeal, claimant's counsel once again challenges the district director's reduction in the requested fee to \$150. Claimant's counsel asserts that the fact that he received a \$3,852.25 fee for work performed before the administrative law judge is irrelevant to the determination of the fee that he is entitled to receive for work performed before the district director. Claimant's counsel further avers that the district director erred in limiting the fee based on the benefits claimant obtained, asserting that the claimant's financial circumstances are not relevant, where, as here, the fee is being assessed against the employer rather than against the claimant. Employer responds, urging that the district director's fee award be affirmed.

¹Pursuant to Section 702.105 the term "district director" has replaced the term "deputy commissioner" used in the statute.

²Counsel also filed a petition for fees for work performed at the administrative law judge level. According to the district director's Order on remand from the Board, counsel was awarded the sum of \$3,852.25. This award is not contested on appeal by employer.

Because the district director did not adequately explain why the \$6,500 fee requested was reduced to \$150 in violation of the Board's remand instructions, the fee award must once again be vacated and the case remanded for an appropriate explanation. An attorney's fee must be awarded in accordance with the Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, 20 C.F.R. §702.132, which provides that any attorney's fee must be reasonably commensurate with necessary work done, the complexity of the legal issues involved, and the amount of benefits awarded. *See generally Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). Although the amount of benefits awarded to the claimant is a valid consideration in granting an attorney's fee regardless of whether employer or claimant is being held liable for the fee, *see, e.g., Muscella, supra*, it is only one of several relevant factors considered in awarding an attorney's fee. *See generally Thompson v. Lockheed Shipbuilding & Construction Co.*, 21 BRBS 94 (1988). Thus, contrary to the district director's determination on remand, the amount of an attorney's fee is not limited by the amount of compensation gained, since to do so would drive competent counsel from the field. *See Battle v. A.J. Ellis Construction Co.*, 16 BRBS 329 (1984). While a lesser fee than that requested may be awarded where an adequate explanation for the reduction is provided, the district director's failure to indicate whether the hourly rate or number or hours sought were reduced and why in the present case renders his fee award arbitrary. *See Devine v. Atlantic Container, Inc.*, 23 BRBS 280, 288 (1990)(Lawrence, J., concurring and dissenting on other grounds). Accordingly, we must once again vacate the fee award and remand the case to the district director. On remand, the district director must specify and fully explain any reduction in the hourly rate or hours sought consistent with 20 C.F.R. §702.132. *See Speedy v. General Dynamics Corp.*, 15 BRBS 448 (1983).

Accordingly, the Compensation Order-Award of Attorney's Fees of the district director is vacated, and the case is remanded for reconsideration of the fee consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge