

BRB No. 91-1106

LINCOLN ROBERTS (Deceased) )  
 )  
 Claimant-Respondent )  
 )  
 v. )  
 )  
 OAKLAND CONTAINER TERMINALS )  
 )  
 and )  
 )  
 TOKIO MARINE MANAGEMENT, ) DATE ISSUED:  
 INCORPORATED )  
 )  
 Employer/Carrier- )  
 Respondents )  
 )  
 CONTAINER STEVEDORING )  
 COMPANY )  
 )  
 and )  
 )  
 CRAWFORD AND COMPANY )  
 )  
 Employer/Carrier- )  
 Respondents )  
 )  
 MATSON TERMINALS, )  
 INCORPORATED )  
 )  
 Self-Insured )  
 Employer-Petitioner ) DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fees of Deborah Oppenheim,  
District Director, United States Department of Labor.

Norman A. Sauer (Davis & Sauer), San Francisco, California, for Matson Terminals,  
Incorporated.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER,  
Administrative Appeals Judges.

PER CURIAM:

Matson Terminals (employer) appeals the Compensation Order Award of Attorney's Fees (Nos. 13-0065072, 13-0067367, 13-0074891) of District Director Deborah Oppenheim rendered on claims 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 may be set aside only if the challenging party shows it to be arbitrary, capricious, an abuse of discretion or contrary to law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant sustained several injuries during the course of his employment with different employers. Claimant's last day of work before the onset of his total disability was February 16, 1982. On that day, he worked for employer. The administrative law judge found that claimant's November 29, 1980 injury was aggravated by his employment between March 1, 1981 and February 17, 1982, and that therefore employer is liable for claimant's permanent total disability benefits.

Employer appealed the administrative law judge's determination that it is the responsible employer and further contended that claim was barred pursuant to 33 U.S.C. §§912, 913. Employer also appealed the district director's fee award to claimant's counsel. The Board affirmed the finding that employer is the responsible employer and held that employer failed to adequately raise its statute of limitations argument before the administrative law judge. The Board thus affirmed the award of permanent total disability benefits, and it modified the fee award to reflect employer's liability only for those services performed subsequent to employer's controversion of the claim on December 30, 1983. *Roberts v. Oakland Container Terminals*, BRB Nos. 86-3187 and 87-282 (Oct. 29, 1990) (unpublished).

Employer appealed the Board's decision to the United States Court of Appeals for the Ninth Circuit. While its appeal was pending, the district director issued another fee order assessing liability for claimant's attorney's fee against employer. The present appeal is of this fee order.

Employer's sole contention on appeal is that if the Ninth Circuit reverses the Board's decision on the merits, then it is not liable for the attorney's fee awarded by the district director. Inasmuch as the Ninth Circuit affirmed the Board's decision in *Matson Terminals v. Director, OWCP*, No. 90-70686 (9th Cir. March 23, 1992), we affirm the district director's determination that employer is liable for the assessed attorney's fee.

Accordingly, the district director's Compensation Order Award of Attorney's Fees is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge