

JOSEPH LOMBARDO)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
AMERICAN STEVEDORING, LTD.)	DATE ISSUED: <u>July 28, 1999</u>
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSOCIATION)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Order of Remand and Award of Attorney Fees of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

James R. Campbell, Middle Island, New York, for claimant.

Christopher J. Field (Weber, Goldstein, Greenberg & Gallagher), Jersey City, New Jersey, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Order of Remand and Award of Attorney Fees (98-LHC-954) of Administrative Law Judge Ainsworth H. Brown 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 may be set aside only if the challenging party shows it to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant sought benefits under the Act for a work-related injury to his right ankle and left knee. At the proceeding on June 22, 1998, the parties informed the administrative law judge that they had resolved the dispute between them, and requested that the case be remanded for processing. Thereafter, claimant's counsel submitted a fee application requesting \$6,412.50, representing 25.65 hours of legal services at the hourly rate of \$250.

In a summary Order of Remand and Award of Attorney Fees, the administrative law judge granted the parties' request to remand the case to the district director "for processing," and awarded claimant's counsel a fee in the amount of \$1,880, "as urged by the employer." Order of Remand and Award of Attorney Fees. The administrative law judge summarily denied claimant's motion for reconsideration. Claimant appeals the award of an attorney's fee, contending that it is so inadequate as to be arbitrary, capricious and an abuse of discretion. Employer responds, urging affirmance.

Specifically on appeal, claimant contends that the administrative law judge erred in reducing the amount of the attorney's fee awarded from the amount requested without sufficient explanation. We agree that the administrative law judge's fee award does not comport with law, as a sufficient explanation for reductions in fee requests must be provided. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990); *Collins v. General Dynamics Corp.*, 14 BRBS 458 (1981). Where an administrative law judge has not set forth a sufficient explanation for the reduction, the Board is prevented from reviewing the award and will remand the case to the administrative law judge for an explanation. *Devine*, 23 BRBS at 288; *Speedy v. General Dynamics Corp.*, 15 BRBS 448 (1983).

In the instant case, the administrative law judge summarily found:

Basically, the employer alleges that the time expended was excessive. I find that there is merit in the exception. Especially, I note that the amount of time devoted to review of correspondence concerning 8(f) relief is well taken.

Order of Remand and Award of Attorney Fees. Thus, the administrative law judge awarded an attorney's fee in the amount of \$1,880 "as urged by the employer." *Id.* The administrative law judge correctly found that claimant's counsel is not entitled to a fee for work performed regarding the Section 8(f) issue, 33 U.S.C. §908(f). *See generally Shaw v. Todd Pacific Shipyards Corp.*, 23 BRBS 96 (1989); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989). However, disallowing these items only reduces the fee petition by .6 hours. Therefore, as the administrative law judge neglected to state which other specific hours were being disallowed and failed to specifically discuss the application of the regulatory criteria of 20 C.F.R. §702.132 to the fee reduction, the award must be vacated and the case remanded for reconsideration pursuant to the regulatory criteria. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984). On remand, the administrative law judge

must specify any reductions and provide an explanation therefor. *Devine*, 23 BRBS at 288.

Accordingly, the administrative law judge's Order of Remand and Award of Attorney Fees is vacated, and the case is remanded for reconsideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge