

CYRUS BROWN)	BRB No. 97-0662
)	
Claimant-Petitioner)	
)	
v.)	
)	
MARYLAND SHIPBUILDING AND)	DATE ISSUED: _____
DRYDOCK COMPANY)	
)	
Self-insured)	
Employer-Respondent)	
)	
TALBERT STYLES)	BRB No. 97-0663
)	
Claimant-Petitioner)	
)	
v.)	
)	
MARYLAND SHIPBUILDING AND)	
DRYDOCK COMPANY)	
)	
Self-Insured)	
Employer-Respondent)	
)	
RICHARD DOBIHAL)	BRB No. 97-0664
)	
v.)	
)	
MARYLAND SHIPBUILDING AND)	
DRYDOCK COMPANY)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeals of the Decision and Order On Remand of Bruno DiSimone, District Director,
United States Department of Labor.

Clifford W. Cunniff, Baltimore, Maryland, for claimant.

Richard W. Scheiner (Semmes, Bowen and Semmes), Baltimore, Maryland,

for self-insured employer.

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

PER CURIAM:

Claimants appeal the Decision and Order On Remand (Case Nos. 4-27977, 4-28537, 4-28993) of District Director Bruno DiSimone awarding attorney's fees 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 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 accord with law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

These cases are before the Board for the second time. In all three cases, the respective claimants sought and were awarded benefits for a work-related hearing loss, and claimant's counsel was awarded fees by the administrative law judge. In each case, claimant's counsel filed a fee petition for work performed the district director. In claimant Brown's case, counsel requested a fee in the amount of \$1,856.25, representing 13.75 hours of legal services at the hourly rate of \$135. In claimant Styles' case, counsel requested a fee in the amount of \$3,001.25, representing 14.5 hours of legal services at the hourly rate of \$185, and 4.25 hours of paralegal services at the hourly rate of \$75. In claimant Dobihal's case, counsel requested a fee in the amount of \$1,485, representing 11 hours of legal services at the hourly rate of \$135. After considering employer's objections in each case, the district director awarded claimants' counsel in claimant Brown's case a fee of \$999, representing 7.4 hours of legal services at the hourly rate of \$135; a fee of \$1,297.50, representing 6 hours of legal services at the hourly rate of \$185 and 2.4 hours of paralegal services at the hourly rate of \$75 in claimant Styles' case; and, a fee of \$931.50, representing 6.9 hours of legal services at the hourly rate of \$135 in claimant Dobihal's case.

Claimant's counsel appealed all three fee awards to the Board, contending that the district director acted arbitrarily in reducing the number of hours requested without providing an adequate explanation. On appeal, the Board, agreeing with claimants, vacated the district director's Supplemental Orders awarding an attorney's fee in each case, and remanded for him to specifically discuss the application of the regulatory criteria of 20 C.F.R. §702.132 to the fee reductions, and to specify the specific hours he disallowed and provide an explanation therefor. *Brown v. Maryland Shipbuilding and Drydock Company*, BRB No. 95-0881 (Sept. 12, 1996)(unpub.); *Styles v. Maryland Shipbuilding and Drydock Company*, BRB No. 95-0882 (Sept. 12, 1996)(unpub.); *Dobihal v. Maryland Shipbuilding and Drydock Company*, BRB No. 92-2662 (Apr. 26, 1995)(unpub.).

In a Decision and Order On Remand dated January 8, 1997, after consolidating the cases for purposes of decision, the district director reinstated the prior fee awards. In reaffirming the prior fees, the district director stated that all three cases involved similar

issues which were not complex. Moreover, he noted that in each case the fee request was considered excessive in view of counsel's practice of minimum quarter-hour billing, citing entries claimed for such things as reviewing a conference notice, reviewing a boilerplate controversion notice, and receipt of notice that the file had been sent to Office of Administrative Law Judges as "examples of excessive billing." Decision and Order on Remand at 2. The district director further noted that the informal conferences in the *Brown* and *Dobihal* cases were both held on the same day, and determined that as the 5.25 hours claimed in both petitions relating to the conference was excessive, he would allow only 3 hours and 12 minutes. In addition, the district director stated that "reducing the requested fees to minutes versus quarter hours resulted in the fees previously awarded." Moreover, he noted that Administrative Law Judge Holmes reduced the requested fee in the *Styles* case by 40 percent, finding \$185 per hour to be reasonable, and stated that this had served as a basis for his decision. He then noted that in *Dobihal* the Board found a \$185 hourly rate excessive.

On appeal, claimants contend that the district director made mathematic errors in calculating the number of hours reduced attributable to duplicative time billed relating to the informal conferences in the *Brown* and *Dobihal* cases. In addition, claimants contend that the district director erred in calculating the number of hours disallowable due to quarter-hour billing for routine tasks, and in addition was under the mistaken belief that an hourly rate of \$185 had been claimed in the *Brown* and *Dobihal* cases. Claimants urge the Board to modify the district director's fee awards to reflect the correct calculations. Employer responds, requesting affirmance of the district director's fee awards.

We agree with claimants that the district director's fee awards are not supported by his reasoning. A sufficient explanation for reductions in each fee request must be provided. *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990); *Bell v. Volpe/Head Construction Co.*, 11 BRBS 377 (1979). Where a district director 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 district director for an adequate explanation. *Devine*, 23 BRBS at 288; *Speedy v. General Dynamics Corp.*, 15 BRBS 448 (1983).

In his Decision and Order on Remand, despite the district director's general statements that the administrative law judge reduced the fee in *Styles* by 40 percent, that he viewed the number of hours claimed in all three cases as excessive in light of counsel's practice of quarter-hour minimum billing and the lack of complexity, and that excessive time was claimed relating to the informal conferences in the *Brown* and *Dobihal* cases, the district director's failure to identify the specific hours he disallowed in each case precludes us from determining whether the reductions he made were mathematically correct. The general reasoning provided by the district director, when considered in conjunction with the fee requests made, do not justify his fee awards as the total amount of time disallowed in each fee petition appears to be greater than the amount of time claimed involving quarter-hour billing and entries related to the informal conference.¹ Moreover, the fact that the

¹The district director stated that 5.25 hours had been claimed in the fee petitions in

administrative law judge reduced the number of hours claimed in the *Styles* fee petition by 40 percent, does not, in any event, provide a proper basis for the district director's fee reduction. In addition, the district director misinterpreted the Board's decision in *Dobihal* as stating that an hourly rate of \$185 is excessive; in actuality, the Board's decision does not address this issue. As the district director failed to comply with the Board's instructions on remand to specify and explain his reductions, we must again vacate the fee awards and remand the case for him to specifically identify and explain any reductions he makes.² *Devine*, 23 BRBS at 288.

Accordingly, the district director's Decision and Order on Remand is vacated, and the cases are remanded for reconsideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

the *Brown* and *Dobihal* cases in connection with the informal conference held on November 16, 1989 and that he was reducing this amount to 3 hours, 12 minutes. The district director did not, however, identify how much time he was allowing in connection with the informal conference in each case. Moreover, the fee petition reflects that only 5 hours were, in fact, claimed.

In addition, the district director reduced the fee requests made in the three cases by an unspecified amount for quarter-hour minimum billing practices. Although the district director appears to have reduced the time claimed in the three fee petitions by a total of 36.2 attorney hours and 1.75 paralegal hours, the total number of quarter-hour entries claimed in these cases total only 9.25 attorney hours and 1.75 paralegal hours.

²We note that, contrary to claimants' allegations in this appeal, the district director was not under a misconception regarding the hourly rates claimed in *Brown* and *Dobihal*; the \$135 hourly rate he awarded was the hourly rate requested by counsel in these cases.