

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

DORIS WILLIAMS,)
) C.A. No. 04A-05-002 JTV
Claimant-Below,)
Appellant,)
)
v.)
)
KRAFT FOODS,)
)
Employer-Below,)
Appellee.)

Submitted: June 1, 2005
Decided: September 7, 2005

Francis X. Nardo, Esq., Tybout, Redfearn & Pell, Wilmington, Delaware. Attorney for Appellee.

Walt F. Schmittinger, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney for Appellant.

Upon Consideration of Appellant's
Motion For Attorneys' Fees
GRANTED in Part
DENIED in Part

VAUGHN, President Judge

ORDER

Upon consideration of the appellant's motion for attorneys' fees, the appellee's response, and the record of the case, it appears that:

1. Counsel for Doris Williams ("the claimant") has filed an application for attorneys' fees pursuant to 19 *Del. C.* § 2350(f) following an appeal from a decision of the Industrial Accident Board ("the Board"). The only issue on appeal was whether the Board properly denied medical witness fees for one of the claimant's medical experts. This Court concluded that the denial of fees was legal error. The decision was reversed and remanded for the Board to tax the fees of the medical expert to the employer.¹

2. Fees in the amount of \$6,460 have been requested by claimant's counsel. This figure is based on 8.8 hours worked by an associate at a rate of \$150 per hour and 14.1 hours worked by the claimant's attorney at a rate of \$250 per hour. The claimant also requests an additional one-third for the contingent nature of the litigation, relying on *Quality Car Wash v. Cox*² and *In the Matter of: Ronald Cox*³ for support.

3. Kraft Foods ("the employer") opposes the motion challenging the amount of hours the claimant's attorney spent researching and writing his briefs. Specifically,

¹ *Williams v. Kraft Foods*, Del. Super., C.A. No. 04A-05-002, Vaughn, R.J. (Jan. 28, 2005)(Mem. Op.).

² 1983 Del. Super. LEXIS 773.

³ 1984 Del. Ch. LEXIS 494.

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it argues that the research done by the claimant's attorney and his associate should have been minimal because all but one of the cited cases were ones in which the claimant's counsel or his firm participated. It also argues that a one-third contingency is not warranted in this case because the issues were neither novel nor complex.⁴ The employer further argues that an award of attorneys' fees for work done by the associate would be improper because she was not a duly admitted member of the Delaware bar at the time she completed the work for this case.

4. The Court finds that the fees requested for hours worked by claimant's counsel, Mr. Schmittinger, are reasonable and will be allowed.

5. Fees for the associate, however, will not be allowed. At the time that the work was performed she was a member of the Pennsylvania bar but had not been admitted to the Delaware bar. She was in substance clerking in claimant's counsel's office while becoming a member of the Delaware bar. She was not acting as a member of the Pennsylvania bar. I see no basis for awarding attorney's fees for her work in this case. The request for a one-third multiplier is also denied. The issue on appeal was narrow and it was not novel or complex.

5. Accordingly, the application for attorneys' fees, pursuant to § 2350(f), is **granted in part**. A fee in the amount of \$3,525 is granted to the claimant's counsel. This figure is based on a rate of \$250 per hour at 14.1 hours. The request for additional attorneys' fees for work done by the associate is **denied**. The request for

⁴ *Meadows v. Linton*, 2000 Del. Super. LEXIS 442; *Quality Car Wash v. Cox*, 1983 Del. Super. LEXIS 773.

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a one-third contingency multiplier is **denied**.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Order Distribution
File