

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

SONYA HALL

PLAINTIFF

v.

4:08CV00645-WRW

ST. JOHN MISSIONARY BAPTIST CHURCH

DEFENDANT

ORDER

Pending is Defendant's Motion for Costs (Doc. No. 58). Plaintiff has responded.¹

Plaintiff sued Defendant for employment discrimination, outrage, and other claims.

Defendant prevailed on all counts. In its Motion for Costs, Defendant asks for \$446.60 for the transcript of Plaintiff's deposition, as well as a little over \$200 for witness fees and mileage, for a total of \$655.15.²

Under Rule 54(d)(1) of the Federal Rules of Civil Procedure, costs other than attorneys fees "should be allowed to the prevailing party."³ The losing party has the "burden of overcoming the presumption that the prevailing party is entitled to costs, meaning that the losing party must 'suggest a rationale under which the district court's actions constitute an abuse of discretion.'"⁴ Even if a deposition was not used at trial, a district court has discretion to award costs in connection with the deposition if it was necessary for use in the case, and not just

¹Doc. No. 60.

²Doc. No. 58.

³Fed. R. Civ. P. 54(d)(1).

⁴*186th & Dodge, LP v. Rave Reviews Cinemas*, 501 F.3d 945, 958 (8th Cir. 2007) (quoting *Janis v. Biesheuvel*, 428 F.3d 795, 801 (8th Cir. 2005)).

“purely investigative.”⁵ A judge may tax as costs “fees and disbursements for . . . witnesses.”⁶ Witnesses are generally allowed to receive a *per diem* amount, and reimbursement of mileage.⁷

Plaintiff’s deposition was necessary in this case. I relied on deposition testimony in deciding Plaintiff’s outrage claim. Accordingly, awarding costs connected with the deposition is appropriate.

In connection with witness fees and mileage, Defendant asks for: “Witness fee and mileage for Darryle Hinton (subpoena) 53.23; Witness fee and mileage for Rudolph Howard (subpoena) 52.93; Witness fee and mileage for Friendly Womack (subpoena) 54.44; Witness fee and mileage for Gary Noble (subpoena) 47.95.”⁸

Each of these witnesses testified at trial on March 17, 2010.⁹ Defendant, however, did not provide any documentation with respect to mileage. Accordingly, I will not award mileage -- I will award only \$40 per witness as an attendance fee for a total of \$160.00.

The sum of costs in connection with Plaintiff’s deposition (\$446.60) plus witness attendance fees (\$160.00) is \$606.60. Defendant’s Motion for Costs is GRANTED for costs in the amount of \$606.60.

IT IS SO ORDERED this 13th day of April, 2010.

/s/Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

⁵*Slagenweit v. Slagenweit*, 63 F.3d 719, 721 (8th Cir. 1995).

⁶28 U.S.C. § 1920(3).

⁷28 U.S.C. § 1821.

⁸Doc. No. 58.

⁹Doc. No. 54.