

United States District Court
For the Northern District of California

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E-FILED on 1/28/2009

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BRENDA DAVIS,

Plaintiff,

v.

EASTFIELD MING QUONG, INC.,

Defendants.

No. C-08-00769 RMW

ORDER GRANTING PLAINTIFF'S MOTION
TO STRIKE COSTS

Re Docket No. 37

Plaintiff moves to strike costs of three messenger deliveries sought by defendant under 28 U.S.C. § 1919. The court has reviewed the papers. The parties have requested that this matter be resolved without oral argument. Docket No. 45; Civ. L.R. 7-1(b). Because the court finds that the messenger costs are unreasonable, the court grants the plaintiff's motion to strike costs.

I. BACKGROUND

Ms. Davis commenced an action against Eastfield Ming Quong, Inc. ("EMQ") for nonpayment of overtime wages in violation of the Fair Labor Standards Act and the California Labor Code on February 1, 2008. Comp. ¶ 1. On October 15, 2008, Ms. Davis filed with this court an amended complaint, which omitted the claim under the Fair Labor Standards Act, the only federal law claim present in the original complaint, and retained only violations of California state law. Am. Comp. ¶ 1. Plaintiff then moved to dismiss the action without prejudice on October 16, 2008 to

1 enable her to join a related case against EMQ pending in state court. Pl.'s Mot. to Dismiss 2:2. This
2 court granted the motion and dismissed the case without prejudice. Docket No. 34.

3 On December 11, 2008, EMQ submitted to the court clerk a Bill of Costs seeking
4 reimbursement of three separate "messenger fee[s] [of \$160] for delivery of chambers copy required
5 by Court after e-filing," totaling \$480. Attach. to Bill of Costs. The Attachment to the Bill of Costs
6 indicate that the deliveries occurred on September 10, 2008, October 14, 2008, and November 12,
7 2008. Plaintiff subsequently filed a motion to strike costs.

8 II. ANALYSIS

9 A. Defendant's Messenger Costs Are Not "Just Costs" Under 28 U.S.C. § 1919

10 Both parties agree that costs in this instance are governed by 28 U.S.C. § 1919 rather than
11 Rule 54 and 28 U.S.C. § 1920, as the underlying case was dismissed for lack of jurisdiction. Under
12 28 U.S.C. § 1919, a district court may order the payment of "just costs" in actions dismissed for
13 want of jurisdiction. The term "may" gives district courts discretion to award costs on dismissal for
14 lack of jurisdiction, and costs awarded under section 1919 are not subject to a presumption that they
15 shall be awarded to a prevailing party. *See Callicrate v. Farmland Indus., Inc.*, 139 F.3d 1336,
16 1340, fn. 8 (10th Cir. 1998).

17 "Just costs" under section 1919 are not the same as costs awarded under 28 U.S.C. § 1920.
18 Nevertheless, courts have found that standards applied under § 1920 are useful in interpreting
19 section 1919's "just costs." *Callicrate*, 139 F.3d at 1339 ("[I]n the instant case we are dealing with
20 what are 'just costs' under 28 U.S.C. §1919, and not with costs allowed under § 1920 or Fed.R.Civ.P.
21 54(d). Nevertheless the standards applied under § 1920 are helpful, we feel."); *Ericsson v.*
22 *Motorola*, 179 F.R.D. 328, 330 (N.D. Ala. 1998) ("[section] 1920 and Rule 54(d)(1) may provide
23 some help in determining under § 1919 what costs are 'just'").

24 Costs allowable under section 1920 are enumerated in the statute and do not include
25 messenger fees. 28 U.S.C. § 1920. Further, courts have refused to allow under section 1920 costs
26 such as "administrative fees, like delivery costs," *Johnson v. Holway*, 522 F. Supp. 2d 12, 19
27 (D.D.C. 2007) and "overhead of attorney's law firm such as postage, photocopy charges, express
28 mail." *Ass'n for Disabled Americans, Inc. v. Integra Resort Mgmt., Inc.*, 385 F. Supp. 2d 1272, 1303

1 (M.D. Fla. 2005). Using this analysis to interpret "just costs" under section 1919, it appears that
2 messenger fees should be excluded as they are administrative fees.

3 Further, a district court may exercise its discretion and consider necessity and reasonableness
4 of costs when determining whether they are allowable under section 1920. *United States v. Kolesar*,
5 313 F.2d 835, 840 (5th Cir. 1963); *Hempstead v. Georgia-Pacific Corp.*, 124 F.R.D. 202, 204
6 (W.D. Ark. 1989). The same inquiry should be employed when considering whether costs are "just"
7 as required by section 1919.

8 Here, EMQ's counsel used messenger services to deliver from, presumably, its San Francisco
9 office¹ to this court in San Jose chamber copies of the following: a Case Management Conference
10 Statement, a Stipulation to Continue Mediation and Case Management Conference, and a Stipulation
11 to Continue Mediation Deadline. EMQ points to Civil Local Rule 5-1(b) as requiring these to be
12 delivered via messenger. Civil Local Rule 5-1, however, applies only to filing of original papers and
13 its subsection (b) refers to extra chamber copies of *original* filings and not electronic filings. Civil
14 Local Rule 5-4 applies to electronic case filings, and thus controls. Civil Local Rule 5-4's
15 commentary points to General Order No. 45, which states, "In all cases subject to [electronic case
16 filings], in addition to filing papers electronically, the parties are required to lodge for chambers no
17 later than noon on the business day following the day that the papers are filed electronically, one
18 paper copy of each document that is filed electronically."

19 Although EMQ was required to provide for chambers a copy of the electronic filings by noon
20 the following business day, it could have accomplished this by more cost-efficient means. For
21 example, it could have used expedited U.S. Mail or Federal Express. Spending \$160 per delivery
22 via messenger when substantially less expensive delivery means were available was neither
23 reasonable nor just. Moreover, a comparison of the docket and the messenger service's invoices
24 reveals that two of the three deliveries did not comply with General Order No. 45's requirement of
25 delivery by noon the business day following the e-filing; one e-filed October 10 was not delivered
26 until October 14 and the other e-filed November 10 was not delivered until November 12.
27 Accordingly, these costs are not "just" under § 1919.

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¹ Counsel has a San Jose branch office located about two blocks from the courthouse.

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III. ORDER

For the foregoing reasons, the court grants the plaintiff's motion to strike costs.

DATED: 1/27/2009



RONALD M. WHYTE
United States District Judge

