

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

NISSR O. HAGAG

CIVIL ACTION

VERSUS

NUMBER 11-346-JJB-SCR

CON-WAY TRANSPORTATION
SERVICES, INC., ET AL

RULING ON MOTION TO COMPEL DISCOVERY

Before the court is a Motion to Compel filed by defendant Con-Way Freight, Inc. Record document number 5. No opposition has been filed.

On May 26, 2011 the defendant served the plaintiff with interrogatories and document production requests. Plaintiff failed to either object or serve responses. After attempting to obtain the plaintiff's responses without court action, the defendant filed this motion on July 27, 2011. However, according to the Status Report filed August 19, 2011, this motion is "nearly mooted by receipt of plaintiff's written responses, minus the signed record release forms that his responses said were attached but were not in fact attached."¹ Since the Status Report was filed, the defendant has not advised the court that the plaintiff has provided the signed record release authorization forms, and neither has the defendant complained about the substance of the plaintiff's discovery responses.

¹ Record document number 6, ¶ C.

Plaintiff served his discovery responses after this motion was filed. Under Rule 37(a)(5)(A), if the discovery responses are provided after a motion to compel discovery is filed, the court shall, after affording an opportunity to be heard, require the party whose conduct necessitated the motion to pay to the moving party the reasonable expenses incurred in making the motion, unless the court finds that the motion was filed without the movant first making a good faith effort to obtain the discovery without court action, the party's nondisclosure, response or objection was substantially justified, or that other circumstances make an award of expenses unjust.

Plaintiff's failure to timely provide his discovery responses or response to this motion demonstrates that the defendant is entitled to reasonable expenses under this rule.² Defendant did not submit anything to support an award of a particular amount of expenses and attorney's fees. A review of the motion and memorandum supports the conclusion that the amount of \$200.00 is reasonable.

Accordingly, the Motion to Compel filed by defendant Con-Way Freight, Inc. is granted, in part. Within seven days the plaintiff shall sign and return to counsel for the defendant the record release authorization forms served with the defendant's discovery

² These same facts show that the plaintiff's actions are not substantially justified and that there are no circumstances which would make an award of expenses unjust.

requests. Pursuant to Rule 37(a)(5)(A), the plaintiff is also ordered to pay to the defendant, within 14 days, reasonable expenses in the amount of \$200.00. In all other respects, the defendant's Motion to Compel is denied.

Baton Rouge, Louisiana, October 4, 2011.



STEPHEN C. RIEDLINGER
UNITED STATES MAGISTRATE JUDGE