

2002 WL 31856870
United States District Court,
E.D. Missouri, Eastern Division.

EQUAL EMPLOYMENT OPPORTUNITY Plaintiff,
v.
EXEL, INC. d/b/a Exel Logistics, Inc. Defendant.

No. 4:01CV0154 JCH. | Sept. 9, 2002.

Attorneys and Law Firms

Rebecca S. Stith, Robert G. Johnson, Donna L. Harper, Melvin D. Kennedy, Gwendolyn Young Reams, Anne E. Gusewelle, EEOC, St. Louis, MO, for Plaintiff.

James N. Foster, Jr., Partner, William B. Jones, McMahon and Berger, St. Louis, MO, for Defendant.

Opinion

MEMORANDUM AND ORDER

HAMILTON, J.

*1 Before this Court are Defendant Exel’s Motion for Attorneys’ Fees (Doc. # 109) and Defendant Exel’s Bill of Costs (Doc. # 108). For the reasons stated in this Memorandum and Order, Defendant’s Motion for Attorneys’ Fees is denied, and the costs set forth in Defendant’s Bill of Costs are granted in part and denied in part..

Background

Plaintiff EEOC sued Defendant Exel on behalf of former Exel employee Alan Gray, alleging violations of the Americans with Disabilities Act, 29 U.S.C. § 12112(a). The EEOC alleged that Exel violated the ADA by terminating Mr. Gray in 1996 because it regarded him as disabled.

This Court granted summary judgment in favor of Defendant Exel on June 21, 2002, but denied Exel’s motion for fees and costs at that time. Defendant has renewed the Motion for Attorneys’ Fees and has filed its Bill of Costs.

Discussion

I. Attorneys’ Fees and Costs Under 42 U.S.C. § 12205

Defendant seeks attorneys’ fees under 42 U.S.C. § 12205, which provides:

In any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys’ fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

Defendant is not, however, automatically entitled to attorneys’ fees. Red Cloud–Owen v. Albany Steel, Inc., 958 F.Supp. 94,

E.E.O.C. v. Exel, Inc., Not Reported in F.Supp.2d (2002)

97 (N.D.N.Y.1997). “Rather, such an award will be made to the prevailing defendant only if plaintiff’s claim is ‘frivolous, unreasonable, or groundless, or ... the plaintiff continued to litigate after it clearly became so.’” Id., quoting *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978); see also *Adkins v. Briggs & Stratton Co.*, 159 F.3d 306, 306 (7th Cir.1998) (an award of fees to an employer in an ADA case is appropriate only when the suit is brought in bad faith or when it is frivolous, unreasonable, or without foundation). Moreover, Defendant should receive fees “only under the most compelling of circumstances,” and even then the decision to award fees still depends upon the Court’s discretion. 958 F.Supp. at 97, 159 F.3d at 307–8.

This case does not present such compelling circumstances. Whatever might be said about the relative merits of this case as presented, it does not rise to the extreme level of “frivolous, unreasonable, or without foundation.” This is not a case in which the Court has warned the plaintiff about continuing to pursue a frivolous case, or in which the plaintiff has continued litigating in the face of an onslaught of adverse rulings by the Court. Indeed, a review of the course of this litigation reveals that this Court has ruled in Plaintiffs’ favor on some important occasions: for example, the Court ruled in favor of Plaintiff on Defendant’s Motion to Dismiss and on Defendant’s Motion to Strike Plaintiff’s Expert Dr. Schreiber.

*2 Moreover, even if this case were “frivolous, unreasonable, or without foundation,” in considering the facts and circumstances of this case, and the course of this litigation, the Court would nevertheless choose in its discretion not to award attorneys’ fees. Consequently, the Court will deny Defendant’s Motion for Attorneys’ Fees.

II. Bill of Costs

The prevailing party in a civil lawsuit is entitled to recover certain costs pursuant to Fed.R.Civ.P. 54 and 28 U.S.C. § 1920. Defendant has set forth \$20,646.53 in costs. This amount includes expert witness fees, special process server fees, and apparently even fees for EEOC case study training materials for a law student (listed as “copies of records/documents” in Defendant’s itemization table).

Defendant has conceded that expert witness fees and special process server fees are not taxable as costs. *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 107 S.Ct. 2494, 96 L.Ed.2d 385 (1987) (Court may not tax expert witness fees in excess of standard witness fee, actual travel expenses, and per diem allowance¹ as set out in 28 U.S.C. § 1821(b)); *Cruce v. KFC Corporation*, 768 F.2d 230, 234 (8th Cir.1985) (special process server fees not taxable because 28 U.S.C. § 1920 contains no provision for such expenses); *Uni-Systems, Inc. Delta Air Lines, Inc.*, No. 4–96–973 (D.Minn.2002) (slip op.) (Eighth Circuit law states that fees of private process server are not taxable as costs). In addition, legal education materials such as the EEOC case study training materials are not taxable as “copies” or for any other reason. The Court will, therefore, deny these costs.

Conclusion

Consequently,

IT IS HEREBY ORDERED that Defendant Exel’s Motion for Attorneys’ Fees (Doc. 109) is DENIED; and

IT IS FURTHER ORDERED that Defendant’s Bill of Costs (Doc. # 108) is GRANTED IN PART and DENIED IN PART in that the following costs are DENIED: (1) expert witness fees (\$12,065.00); (2) special process server fees (\$1,154.80); and (3) the cost of the EEOC case study training materials (\$76.75). The Bill of Costs is GRANTED in all other respects.

Parallel Citations

13 A.D. Cases 1534

Footnotes

¹ Defendant Exel did not specify these amounts in its Bill of Costs.

