

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Marc Bacon, et al.,

Plaintiffs,

v.

Case No. 2:99-cv-803

Honda of America Mfg., Inc.,

Defendant.

OPINION AND ORDER

This matter is before the court on the plaintiffs' objections to the clerk's memorandum, dated January 14, 2005, awarding costs to the defendant in the amount of \$51,770.48. Plaintiffs do not object to the clerk's determination concerning the amount of costs or what is properly included in that amount. Rather, plaintiffs ask this court to exercise its discretion in favor of denying an award of costs.

Under Fed.R.Civ.P. 54(d)(1), "costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs[.]" Fed.R.Civ.P. 54(d)(1); Delta Air Lines, Inc. v. August, 450 U.S. 346, 352 (1981). The district court may, in its discretion, deny a request for costs. Jones .v Continental Corp., 789 F.2d 1225, 1233 (6<sup>th</sup> Cir. 1986). However, Rule 54(d) creates a presumption in favor of awarding costs, and the unsuccessful party must show circumstances sufficient to overcome the presumption. Goostree v. Tennessee, 796 F.2d 854, 863 (6<sup>th</sup> Cir. 1986); White & White, Inc. v. American Hospital Supply Corp., 786 F.2d 728, 730 (6<sup>th</sup> Cir.

1986). Thus, the court's discretion is more limited than it would be if the rule were nondirective. White & White, Inc., 786 F.2d at 732.

In White & White, Inc., 786 F.2d at 730-31, the court discussed several factors to consider in determining whether to award costs. Those factors include:

- a) Were the taxable expenditures unnecessary to the case or unreasonably large?
- b) Should the prevailing party be penalized for unnecessarily prolonging the trial or for injecting unmeritorious issues?
- c) Was the prevailing party's victory so insignificant that the judgment amounts to a victory for the opponent?
- d) Was the case close and difficult?
- e) Did the losing party act reasonably and in good faith in filing, prosecuting or defending the case?
- f) Did the losing party conduct the case with propriety?
- g) Have other courts denied costs to prevailing defendants in similar cases?
- h) Did the prevailing party benefit from the case?
- I) Did the public benefit from the case?
- j) Did the case result in a profound reformation of current practices by defendant?
- k) Does the award of costs have a chilling effect on other litigants?

See Rosser v. Pipefitters Union Local 392, 885 F.Supp. 1068, 1071-72 (S.D.Ohio 1995).

Factors which are relevant but insufficient in themselves

as a basis for denying costs include the good faith of the losing party in filing, prosecuting or defending the action, and the propriety with which the losing party conducts the litigation. White & White, Inc., 786 F.2d at 730. Factors which the district court must ignore when determining whether to deny costs include the size of a successful litigant's recovery and the ability of the prevailing party to pay his or her own costs. Id.

Applying the above factors to the circumstances of this case, this court finds that the taxable expenditures were not unnecessary to the case or unreasonably large. Many of the depositions included within the taxable costs were made necessary by affidavits which were filed by the plaintiffs, many of which were shown by the depositions to have no basis in fact. The depositions were also used by the defendant in support of its opposition to the class certification in this case and its motion for summary judgment.

Defendant, the prevailing party, did not prolong the proceedings or inject unmeritorious issues into the case. Defendant's victory in this case was not insignificant, and did not amount to a victory for the plaintiffs.

In determining whether the case was close or difficult, the fact that the case was or was not frivolous is not the relevant standard. Goostree, 796 F.2d at 864. The Sixth Circuit has noted that the "closeness of a case is judged not by whether one party clearly prevails over another, but by the refinement of perception required to recognize, sift through and organize

relevant evidence, and by the difficulty of discerning the law of the case." White & White, Inc., 786 F.2d at 732-33. Here, it should have quickly become apparent that Honda's organizational structure made this an inappropriate case for class certification. Although the case was factually complex in the sense that several individual disparate treatment claims concerning a number of employment decisions were asserted by the individual defendants, the law in the employment discrimination area applicable to this case was clear and well established at the time of filing. The case was resolved at the summary judgment stage, and no trial was necessary. The evidence produced in the case plainly demonstrated that class certification was inappropriate, and that defendant was entitled to summary judgment on the discrimination claims of the individual plaintiffs. The fact that plaintiffs prevailed on a handful of discovery or procedural motions does not support a finding that the case presented a close question. This case cannot be characterized as close or difficult.

The next factor is whether the plaintiffs acted reasonably and in good faith in filing, prosecuting or defending the case. The plaintiffs may have acted in good faith from the standpoint that they subjectively believed that their case had merit. However, viewed objectively, plaintiffs' claims were not reasonable and were not supported by the evidence. For example, in some instances, plaintiffs challenged defendant's promotion decisions in regard to positions for which plaintiffs had not even applied. Even assuming that plaintiffs acted in good

faith, this factor, in itself, is not sufficient to preclude an award of costs.

The court finds that in most respects, plaintiffs conducted the case with propriety. However, defendant was obliged to conduct many of the depositions in question due to the plaintiffs' submission of twenty unfounded declarations. Even if this factor is met, it is not sufficient to preclude an award of costs.

The next factor is whether other courts have denied costs to prevailing defendants in similar cases. Plaintiffs have cited a number of cases in which costs were denied. However, these cases are not similar to the instant case. In contrast, this court notes that in Jones, 789 F.2d at 1233, an employment discrimination case, the Sixth Circuit affirmed the decision of the district court taxing costs against the plaintiff.

The next factors concern whether the prevailing party and the public benefitted from the case. The court finds that there is no evidence that either the defendant or the public benefitted in any way from the case. There is likewise no evidence that the case resulted in any reformation of current practices by the defendant.

The last factor is whether an award of costs in this case would have a chilling effect on other litigants. This court finds no basis for such a finding in this case. In Jones, 789 F.2d at 1233, the Sixth Circuit rejected the plaintiff's argument that an award of costs against a losing civil rights plaintiff would conflict with the remedial purposes of Title

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Plaintiffs also note in their reply that an award of costs against the individual plaintiffs would be difficult for these two hourly factory workers to bear. However, plaintiffs do not maintain, nor have they presented any evidence, that they are financially incapable of paying costs. Plaintiffs previously asserted their willingness to bear the costs of this action as putative class representatives.

Weighing the above factors, this court finds, in its discretion, that an award of costs against the plaintiffs and in favor of the defendant is appropriate in this case. Plaintiffs' objections to the clerk's memorandum on costs and their request to deny or reduce the award of costs to the defendant are denied. The court orders that costs in the amount of \$51,770.48 are hereby taxed against the plaintiffs.

Date: February 14, 2005

s\James L. Graham  
James L. Graham  
United States District Judge