

EEOC v. Northwest Airlines, Inc.

United States District Court for the Western District of Tennessee
December 18, 2002, Filed; December 19, 2002, Entered
Case No. 00-2916M/A

Reporter: 2002 U.S. Dist. LEXIS 26272
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff, vs. NORTHWEST AIRLINES, INC., Defendant.

Prior History: EEOC v. Northwest Airlines, Inc., 2002 U.S. Dist. LEXIS 26276 (W.D. Tenn., Oct. 31, 2002)

Disposition: Court awarded costs.

Counsel: [*1] For EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, plaintiff: Faye A. Williams, Esq., Katharine W. Kores, Esq., Terry L. Beck, Esq., Deidre Smith, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Memphis, TN.

For NORTHWEST AIRLINES, INC., defendant: Herbert E. Gerson, Esq., Thomas J. Walsh, Jr., Esq., Timothy S. Bland, Esq., FORD & HARRISON, LLP, Memphis, TN.

JAMES ALLEN, miscellaneous, Pro se, Memphis, TN.

ROBERT DI TROLIO, miscellaneous, Pro se, Memphis, TN.

For KEVIN ARMSTRONG, intervenor plaintiff: Joe L. Wyatt, Esq., MCWHIRTER & WYATT, Memphis, TN.

	Claim	Award
Deposition fees	\$ 7,717.45	\$ 3,688.04
Expert witness fees	\$ 11,911.50	\$ 493.50
Attorney travel	\$ 2,738.50	-0-
TOTAL	\$ 22,367.45	\$ 4,181.54

Deposition fees:

Pursuant to 28 U.S.C. § 1920(2) and (4), the cost of taking and transcribing depositions and transcripts, and the cost of purchasing copies of depositions may be taxed if the depositions were "necessarily obtained for use in the case." Thus, if the depositions are "reasonably necessary to the prosecution of the action," and not "merely useful for discovery," the costs are appropriately taxed. Ramos v. Lamm, 713 F.2d 546, 560 (10th Cir. 1983); Sales v. Marshall, 873 F.2d 115, 120 (6th Cir. 1989); Independent Iron Works, Inc. v. U.S. Steel Corp., C.A. Cal. 1963, 322 F.2d 656, certiorari denied 84 S. Ct. 267, 375 U.S. 922, 11 L. Ed. 2d 165. [*3]

A deposition does not have to be used as evidence to be taxed as an expense. "When a deposition is not actually used at trial or as evidence on some successful preliminary motion, whether its cost may be taxed generally is determined by deciding if the deposition reasonably seemed necessary at the time it was

Opinion

ORDER TAXING COSTS

Taxation of costs is governed by 28 U.S.C. § 1920, and the costs taxable under this section "shall be allowed as of course to the prevailing party unless the court otherwise directs" or unless a statute or rule otherwise provides. Fed.R.Civ.P. 54(d)(1). Plaintiff in this cause was the prevailing party. As such, Plaintiff did on November 21, 2002, file a cost bill totaling \$ **22,367.45** as costs taxable against Defendant.

Pursuant to Local Rule 54.1(b), notice was given to permit these parties opportunity to be heard concerning the assessment of costs over which they could [*2] not agree. Both Plaintiff's counsel and counsel for Defendant participated at the scheduled hearing.

As a result of the hearing and upon a review of relevant documents in the file, costs are taxed against Defendant and in favor of Plaintiff as follows:

taken." 10 Charles Allen Wright et al, Federal Practice and Procedure: Civil 2d § 2676, at 341(2d ed. 1983); see also Sales, 873 F.2d at 120 ("Necessity is determined as of the time of taking, and the fact that a deposition is not actually used at trial is not controlling."), and Shanklin v. Norfolk Southern Railway Co., No. 94-1212 (W.D. Tenn. Sept. 9, 1996) relying on Hudson v. Nabisco Brands, Inc., 758 F.2d 1237, 1243 (7th Cir. 1985); In re Air Crash Disaster, 687 F.2d 626, 631 (2d Cir. 1982).

However, administrative expenses incorporated in the reporters' invoice, such as for postage, delivery and condensed transcript charges, represents the cost of doing business and are generally incurred for a party's convenience. Consequently, the costs for these services which were assessed by the court reporters used in this [*4] case are not taxable and has been culled from the award. Moreover, Plaintiff's claim for reimbursement of the cost of their expert witnesses' time to sit for deposition is not a taxable item under the prevailing statute.

Expert witness fees:

Title 28 U.S.C. § 1821(b) mandates that costs for witnesses, both fact and expert, are not allowable in excess of \$ 40.00 per appearance, except where an expert witness is court-appointed under 28 U.S.C. § 1820(b). Crawford Fitting v. J. T. Gibbons, Inc., 482 U.S. 437, 96 L. Ed. 2d 385, 107 S. Ct. 2494 (1987).

For the purpose of taxation, witnesses who travel are required to do so by common carrier at the most economical rate reasonably available. The statute also mandates evidence of actual travel cost be furnished.

In the instant case, Drs. Garber and Myers were deposed, and Dr. Levin testified, entitling Plaintiff to a total of \$ 240 in witness fees. Dr. Levin also traveled, pursuant to guideline strictures. Accordingly, Dr. Levin's travel expense also is taxable.

Attorney travel costs:

Attorney's travel expenses related to the taking of depositions are not [*5] taxable, Kiefel v. Las Vegas Hacienda, Inc., C.A.Ill. 1968, 404 F.2d 1163, certiorari denied 89 S. Ct. 1750, 395 U.S. 908, 23 L. Ed. 2d 221, rehearing denied 89 S. Ct. 2128, 395 U.S. 987, 23 L. Ed. 2d 776, absent extraordinary or compelling circumstances. George R. Hall, Inc. v. Superior Trucking Co., Inc., D.C.Ga. 1982, 532 F. Supp. 985.

TOTAL AWARD \$ 4,181.54

Pursuant to Fed.R.Civ.P. Rule 54(d), this action of the Clerk may be reviewed by the court upon motion, served within 5 days of the docketing of this order.