

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1998 MTWCC 65

WCC No. 9701-7682

GUY WALL

Petitioner

vs.

NATIONAL UNION FIRE INSURANCE COMPANY

Respondent/Insurer

BARRETTS MINERALS, INCORPORATED

Employer.

ORDER ON COSTS

¶1 The petitioner/claimant prevailed in this case and seeks an award of costs in the amount of \$846.37. (745.45 + 100.92 - Sandra Wall deposition charge). Respondent has objected to the amounts billed by claimant for photocopying, faxes, telephone charges and postage. A further objection was made to the claim for the telephonic deposition of Sandra Wall as being untimely.

¶2 The Workers' Compensation Court rule regarding costs provides in relevant part:

24.5.342 TAXATION OF COSTS.

(3) The court will allow reasonable costs. The reasonableness of a given item of cost claimed is judged in light of the facts and circumstances of the case, and the issues upon which the claimant prevailed.

(4) The following are examples of costs that are generally found to be reasonable:

(a) deposition costs (reporter's fee and transcription cost), if the deposition is filed with the court;

(b) witness fees and mileage, as allowed by statute, for non-party fact witnesses;

(c) expert witness fees, including reasonable preparation time, for testimony either at deposition or at trial, but not at both;

(d) travel and lodging expenses of counsel for attending depositions;

(e) fees and expenses necessary for perpetuation or presentation of evidence

offered at trial, such as recording, videotaping or photographing exhibits;

(f) documented photocopy expenses;

(g) documented long-distance telephone expenses; and

(h) documented postage expenses.

(5) The following are examples of costs that are generally found not to be reasonable:

(a) trial transcripts ordered by the parties prior to any appeal;

(b) secretarial time; and

(c) items of ordinary office overhead not typically billed to clients.

(6) Items of cost not specifically listed in this rule may be awarded by the court, in accordance with the principles in (3).

. . . .

¶13 Counsel for the claimant provided documentation regarding telephone charges, including the additional charge from AT&T for the telephonic deposition of Sandra Wall. Respondent continues to object asking for the identity of persons to whom a call was made or to whom the mail was sent. I find that the signature of the attorney on the bill of costs is sufficient information to document that all telephone calls and postage relates to the matters in this case. Notification of the cost of the AT&T deposition of Ms. Wall was included in the document setting forth claimant's justification of costs, filed on March 18, 1998. This deposition was not filed with the Court. ARM 24.5.342 (4)(a) disallows deposition costs if the deposition is not filed with the Court. Although the rule specifically addresses reporter's fees and transcription costs, I find this charge must also be disallowed.

¶14 Respondent objects to the charges for photocopying of documents and for faxes asserting that the documentation provided by claimant is insufficient. Again I rely on the attorney's explanation that the photocopies and the Federal Express bill is sufficient to document the charge to this case.

¶15 The final objection by the respondent is the charges which are claimed for faxing documents. Because this cost is not included in ARM 24.5.342 the Court requested information from the respondent regarding the charges it makes to its clients. Additionally, at the Rules Committee meeting which was held on September 3, 1998, this question was discussed. The committee members, which included claimants' counsel and defense counsel, indicated that their respective firms did not charge their clients for faxes. Based on this information I find that fax charges in the amount of \$103.50 must be disallowed.

¶16 IT IS HEREBY ORDERED that respondent, National Union Fire Insurance Company, pay to petitioner's attorney, Mr. Richard J. Pyfer, costs in the amount of \$628.95.

DATED in Helena, Montana, this 14th day of September, 1998.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Richard J. Pyfer
Mr. Donald R. Herndon
Submitted: March 25, 1998