

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

RAPOCA ENERGY COMPANY, L.P.,)

Plaintiff,)

v.)

AMCI EXPORT CORPORATION,)

Defendant.)

Case No. 1:00CV00162

OPINION

By: James P. Jones

United States District Judge

*Wade W. Massie, Penn, Stuart & Eskridge, Abingdon, Virginia, for Plaintiff;
James S. Chase, Hunton & Williams, Knoxville, Tennessee, and Michael C. McCann,
Hunton & Williams, Richmond, Virginia, for Defendant.*

In this case arising from a contract dispute, I hold that the judgment in favor of the defendant rendered the defendant a prevailing party entitled to reimbursement of costs, but I will deny the award of certain of the costs requested.

I

Rapoca Energy Company, L.P. (“Rapoca”), filed this declaratory judgment action asking the court to hold that certain sales contracts for coal with AMCI Export Corporation (“AMCI”) were invalid and unenforceable. AMCI counterclaimed for damages under the alleged contracts. The parties waived a jury, and I bifurcated the

issues, leaving the claim for damages under the counterclaim for later resolution if necessary. The bench trial to determine liability was held on March 1, 2 and 5, 2001. At the conclusion of the evidence, I found that valid and enforceable contracts did exist between the parties, and the case proceeded for determination of damages owed by Rapoca to AMCI as a result of Rapoca's breach of the contracts. The trial to determine damages was held on June 4 and 5, 2001. AMCI sought damages in excess of \$4,000,000, which Rapoca claimed was grossly overstated according to the coal market during the relevant time period.

On June 5, 2001, I entered judgment in favor of AMCI on its counterclaim in the amount of \$575,145.25, and denied relief to Rapoca on its complaint. Following judgment, AMCI filed a bill of costs pursuant to 28 U.S.C.A. § 1920 (West 1994). Rapoca objected to this bill of costs, and filled its own bill of costs. Rapoca argues that because the judgment awarded AMCI less in damages than it had sought, AMCI cannot be considered the "prevailing party" under Federal Rule of Civil Procedure 54(d) for any costs incurred after the date of the liability trial. Further, Rapoca objects to certain specific items claimed in AMCI's bill of costs.

For the reasons stated below, I will award costs to AMCI as the prevailing party, but will exclude some of the claimed costs because they are not recoverable according to law.

II

A

Rule 54(d) provides that “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). This rule has been interpreted to create a strong presumption that the prevailing party will recover costs. *See Weeks v. Samsung Heavy Indus. Co.*, 126 F.3d 926, 945 (7th Cir. 1997).

Rapoca argues that because AMCI received substantially less than it sought in the damages portion of the case, AMCI cannot be considered a “prevailing party” entitled to damages under the rule. The Supreme Court has defined a prevailing party as “[a] party in whose favor judgment is rendered, regardless of the amount of damages awarded.” *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep’t of Health and Human Res.*, 121 S.Ct. 1835, 1839 (2001) (quoting *Black’s Law Dictionary* 1145 (7th ed. 1999)). Thus, a party does not have to prevail on each and every issue in order to be considered a prevailing party, and judgment entered in favor of a party is typically sufficient to warrant an award of costs. *See, e.g., Sperry Rand Corp. v. A-T-O, Inc.*, 58 F.R.D. 132, 135-36 (E.D. Va. 1973) (holding plaintiff to be prevailing party where plaintiff won judgment in excess of \$400,000 on one claim, but lost on another claim).

In light of these cases, it is clear that AMCI was the prevailing party in this case. I entered judgment for AMCI and specifically denied Rapoca any relief under its complaint. That AMCI did not receive all that it sought in damages did not render Rapoca the winner of the lawsuit, or a portion thereof, as Rapoca claims. Nor does the fact that the trial was bifurcated lead to a different result. The trial was bifurcated for a more efficient administration of justice. In no way did the bifurcation create two separate cases with two separate prevailing parties. AMCI “prevail[ed] as to the substantial part of the litigation,” and is therefore entitled to its costs pursuant to Rule 54(d). *Testa v. Village of Mundelein*, 89 F.3d 443, 447 (7th Cir. 1996).¹

B

Rapoca also objects to several of the specific items claimed by AMCI in its bill of costs. First, Rapoca contends that the witness travel costs claimed by AMCI are excessive. The relevant statute provides that

[a] witness who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from such witness’s residence by the shortest practical route in going to and returning from the place of attendance. Such a witness shall utilize a common

¹ Of course, Rapoca could have made an offer of judgment prior to the damages trial. If the ultimate judgment was not more favorable to AMCI than the offer, AMCI could not have recovered any costs incurred after the time of the offer. *See* Fed. R. Civ. P. 68. No such offer of judgment was made, however.

carrier at the most economical rate reasonably available.

28 U.S.C.A. § 1821(c)(1) (West 1994). Rapoca argues that the witnesses who traveled from Latrobe, Pennsylvania, to Abingdon, Virginia, for trial should have driven in a rental car rather than flown by a chartered aircraft service. I find that it would be unreasonable to require AMCI's witnesses to have driven more than seven hundred miles round trip several times throughout the course of this litigation. Therefore, it was reasonable for the witnesses to have flown to and from the trial.

The next question is whether the cost of AMCI's chosen means of transportation, a chartered aircraft, is recoverable under § 1821(c)(1). I find that it is recoverable. While it is true that § 1821(c)(1) limits the amount of travel expense to that of "a common carrier at the most economical rate reasonably available," it is not clear that travel via a commercial airline would have been cheaper in this instance. While both parties have submitted results of Internet searches purporting to reflect the cost of scheduled air travel between Latrobe and Abingdon for dates in the future, there is no accurate information as to what the actual cost of travel was for the dates pertinent to the trials in this case. In any event, I find that it was commercially reasonable in this case for AMCI's business executives who were witnesses at trial to travel by chartered plane. Rapoca notes that AMCI seeks \$11,829.60 for five chartered flights. The average cost per flight, therefore, amounts to \$2,365.92, in which as many as four

witnesses traveled together. Particularly in light of the current unreliability of commercial airline schedules, I do not find this figure to be commercially unreasonable, and in the absence of proof that it was greater than the actual costs for travel via scheduled carrier on the same dates, I will not reduce this claimed amount.

As for the reimbursement of the witness's food and lodging, § 1821 provides that the daily subsistence allowance for witnesses is not to exceed the maximum per diem allowance for official travel in the area by federal government employees. *See* 28 U.S.C.A. § 1821(d)(2) (West 1994). The current per diem allowed for official government travel for Abingdon, Virginia, is \$85. Therefore, the claims for AMCI's actual costs for lodging and food for witnesses above the \$85 cap will be denied. However, AMCI is entitled to recover witness attendance fees of \$40 per day for each day's attendance. *See* 18 U.S.C.A. § 1821(b) (West 1994). This is a flat fee unrelated to actual travel or lodging costs, and is recoverable by AMCI for each witness for each day of attendance.

Finally, the costs claimed by AMCI related to travel and expenses for AMCI's in-house attorney, Tom Boettger, are not recoverable. Rule 54(d)(1) specifically excludes attorney's fees from recoverable costs. This rule adheres to the so-called American Rule, by which each party must bear its own attorneys' fees absent a specific statutory provision otherwise. *See Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

Mr. Boettger was not a witness for AMCI. Rather, he attended the trial to assist retained counsel in providing legal services to AMCI in this matter. As such, his expenses and fees are not recoverable as costs. To the extent that AMCI incurred expenses specific to Mr. Boettger in addition to otherwise taxable costs, AMCI's claims will be denied.

III

In summary, AMCI was the prevailing party, and therefore Rapoca's bill of costs will be denied. Rapoca must reimburse AMCI for the cost of chartered air travel of witnesses to and from the trial. Witnesses for AMCI may be reimbursed up to \$85 per day each for food and lodging, and may receive an additional \$40 per day as a witness fee pursuant to 28 U.S.C.A. § 1821(b). Finally, because attorney's expenses and fees are not recoverable, any expenses incurred specific to Tom Boettger, AMCI's in-house counsel, that are additional to and separable from otherwise recoverable costs, will be denied.

DATED: July 30, 2001

United States District Judge