UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

Richard Becker, Complainant vs. Alarm Device Manufacturing Company, a Division of Pittway Corporation, and District 65-Union, Respondents; 8 U.S.C. § 1324b Proceeding; Case No. 89200013.

FINAL ORDER FIXING AMOUNT OF ATTORNEYS' FEES DUE FROM COMPLAINANT TO RESPONDENT DISTRICT 65

Statement

1. On February 14, 1989, complainant Richard Becker filed a complaint against respondent employer and respondent union, alleging that they had violated 8 U.S.C. § 1324b in certain respects.

2. On August 7, 1989, I issued a final order granting in part respondents' respective motions to dismiss the complaint. The portions of the complaint so dismissed were based on allegations of unlawful activities more than 180 days before the Special Counsel for Immigration-Related Unfair Employment Practices had received complainant's charge on August 18, 1988. I concluded that such allegations were barred by 8 U.S.C. § 1324b(d)(3). No request for review of this action having been filed with a United States Court of Appeals, this dismissal action became final about October 7, 1989. Sec. 8 U.S.C. § 1324b(i); 28 CFR § 68.52(b) (effective until November 24, 1989).

3. On September 25, 1989, United States District Court Judge Robert L. Carter issued an order, in No. 82 Civ. 7860, Becker v. Dunkin Donuts of America, Inc., which provided, inter alia (emphasis in original):

> . . . RICHARD BECKER is PERMANENTLY ENJOINED and PROHIBITED from filing any charges, complaints or papers of any kind before any state or federal court or agency in the United States of America unless and until he pays to General Mills Restaurant, Inc. the amount of $2,500.00.

I received no notice of this order until April 12, 1990, and did not see it until April 16, 1990.[1] At least as of May 24, 1990, complain-

[1] By letter dated March 24, 1989, respondent employer's counsel drew my attention to Judge Carter's Dunkin Donuts opinion of May 21, 1987, 665 F.S. 221, and

ant had not made the specified payments to General Mills Restaurant.[2]

4. On November 28, 1989, I issued a final order granting respondent union's motion to dismiss the complaint in its entirety with respect to respondent union, and ordering complainant to pay attorney's fees to respondent union for time spent in connection with the time-barred portions of complaint, which portions had been dismissed on August 7, 1989. No request for review having been filed with a United States Court of Appeals, this November 1989 order became final about January 27, 1990.

5. On March 20, 1990, I granted complainant's motion of January 16, 1990, to withdraw his complaint against respondent employer.

6. In connection with the amount of the attorney's fees due under my order of November 28, 1989, a letter to complainant dated April 23, 1990, from respondent union's counsel stated, inter alia, ``I would be prepared to settle this matter with your payment of attorney's fees in the amount of $500.'' By letter to union counsel dated April 28, 1990, complainant stated, inter alia, ``I am favorable [sic] disposes [sic] to your $500 settlement offer.'' By letter to complainant dated May 24, 1990, union counsel stated, inter alia:

> This shall acknowledge receipt of your letter to me dated April 28, 1990 in which you accept my offer, set forth in my letter to you dated April 23, 1990, in which you accepted my offer for you to pay attorneys fees in the amount of $500.00 in settlement of the Order of the Administrative Law Judge granting respondent District 65, U.A.W.'s motion for attorney's fees.
>
> I shall communicate your acceptance of my offer to the Administrative Law Judge and request that an appropriate order be issued to this effect.

Under a covering letter dated June 6, 1990, union counsel submitted to me for my signature a proposed order for attorney's fees in the amount of $500. By letter dated June 8, 1990, I advised com-

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requested that complainant be ``sanctioned as severely as possible'' because of what counsel believed to be his violations of that order. Counsel's request was not based upon complainant's failure to comply, when filing his complaint before me, with Judge Carter's requirement that complainant include ``notice of the limitations herein placed upon him as a litigant'' (665 F.S. at 217). By letter to respondent employer dated August 3, 1989, I stated, in part:

> I read [Dunkin Donuts] as directed to age-discrimination claims by Mr. Becker; the instant case is not, of course, an age-discrimination claim. Moreover, the District Court's opinion specifically declined to restrict Mr. Becker from invoking the jurisdiction of a federal agency [665 F.S. at 217].

[2]I so infer from a letter to complainant, bearing that date, from Nicholas M. Inzeo, Assistant Legal Counsel, U.S. Equal Employment Opportunity Commission. A copy of this letter was forwarded to me by complainant on June 6, 1990.

plainant that I would entertain no objections to the proposed order unless received on or before June 19, 1990.

7. Meanwhile, on April 12, 1990, I received from complainant (under a covering letter dated April 8, 1990) a copy of a March 23, 1990, letter from Judge Carter to attorney Robert B. Armstrong, who has made no appearance in this case but apparently represents complainant in other litigation. This letter stated, inter alia:

> . . . your client is barred from pursuing any matter in any federal court or before any federal agency until he has liquidated the fines leveled on him in the above-styled case. That the EEOC matter predated the ruling in Dunkin Donuts is immaterial. Mr. Becker must satisfy the contempt adjudication before he is entitled to make any further use of a federal forum of any king.

8. I have received from complainant about 8 letters bearing dates between April 13 and June 11, 1990_in other words, after complainant became aware of Judge Carter's March 23 letter. Most of these letters from complainant deal in whole or in part with matters related to the instant proceeding but unrelated to the scope of Judge Carter's order. All but one of these letters are dated after complainant's April 28, 1990, letter agreeing to pay respondent union $500 in attorney's fees. In addition, my file contains about 29 letters written to me by complainant after Judge Carter's order of September 25, 1989, but before his letter to complainant's counsel dated March 23, 1990. None of these letters from complainant referred to Judge Carter's September 25, 1989, order.

Analysis

Documents submitted by complainant both before and after his April 28, 1990, letter agreeing to a $500 settlement for attorney's fees seem to take the position that Judge Carter's September 1989 order nullifies this entire proceeding. As previously noted, before the issuance of this order I dismissed the complaint with respect to those portions in whose connection complainant is required to pay attorney's fees, and before I received notice of this order I dismissed the rest of the complaint as to respondent union and permitted the withdrawal of the rest of the complaint as to respondent employer. Accordingly, to hold that Judge Carter's September 1989 order nullified the entire proceeding before me would redound solely to complainant's advantage. Particularly because my November 1989 costs order was based on my conclusion that there was ``no reasonable foundation in law or fact'' for complainant's contention that such allegations were not time-barred, and complainant's February 1989 complaint before me did not include notice of Judge Carter's May 1987 order placing limitations on complainant as a

litigant (see supra fn. 1), complainant's proposed interpretation of Judge Carter's September 1989 order disregards the bases therefor_namely, complainant's history of filing frivolous claims, and his failure to include notice of Judge Carter's May 1987 order when filing and pressing various age-discrimination claims with the EEOC. In ordering claimant in September 1989 not to file ``any charges, complaints or papers of any kind before any state or federal court or agency in the United States of America unless and until he pays to General Mills Restaurants, Inc. the amount of $2,500.00,'' Judge Carter was obviously attempting to exert pressure on complainant to repay General Mills for part of the expenses imposed on it by reason of complainant's contempt of Judge Carter's May 1987 order. The purposes of Judge Carter's September 1989 order would be perverted by giving it the effect of excusing complainant from compensating the union, an innocent respondent, for complainant's action in bringing against it certain allegations without reasonable foundation in law and fact, which allegations were dismissed before Judge Carter issued his September 1989 order. I need not and do not consider whether Judge Carter's September 1989 order was violated by complainant's action in thereafter filing with me a number of documents in the instant case, both before and after complainant advised me of that order.

Further, complainant's vaguely based attacks on my August and November 1989 final orders against him, which have long since become unappealable, do not provide any equitable basis for disregarding the April 28, 1990, agreement between complainant and respondent union's counsel that complainant pay attorney's fees of $500.

In any event, I would find it least that much to be due if I were to consider union counsel's initial application (dated December 19, 1989) solely on the basis of the file, and without regard to the April 1989 agreement. Thus, by letter to me dated December 23, 1989, complainant stated that he is being billed at $100 an hour by ``a similar attorney who is an expert in the same [labor] field and makes it his sole profession''; this attorney practices labor law in Huntington and Valley Stream, New York.[3]I regard this $100 rate as no less than the minimum rate to be awarded to union counsel, who practices law in New York City and whose affidavit establishes that he is an experienced attorney with special expertise in labor law, as the prevailing market rate in the relevant community

[3]This attorney has never filed an appearance in the instant case.

for a person of similar skills and experience.[4]Further, the 6.2 hours of work claimed by union counsel appear to be reasonable and properly documented. Although claimant's letters to me dated January 16 and March 25, 1990, alleged, inter alia, that union counsel's application showed double billing, I perceive no basis for this claim. Particularly because my file contains a union motion dated June 7, 1989, for summary judgment and assessment of attorney's fees, the fact that counsel claimed .3 hours on June 28, 1989, for ``Req. for Attny fees'' and .4 hours on June 6 for ``Mtn to dismiss & Atty fees'' does not suggest double billing. Further, union counsel's application discloses no basis whatever for claimant's March 25 allegation of `'one day where the same hours are listed twice for the same work [although] one rate is less than the other by the same person.''

Accordingly, claimant will be required to pay respondent union attorney's fees in the amount of $500.00.

Order

IT IS HEREBY ordered that claimant Richard Becker pay to respondent District 65 the sum of $500.00 as attorney's fees in this action.

Pursuant to 8 U.S.C. § 1324b(g)(1), this Final Decision and Order is a final administrative order in this proceeding, and ``shall be final unless appealed'' within 60 days to a United States Court of Appeals in accordance with 8 U.S.C. § 1324b(i).

Dated: July 27, 1990.

NANCY M. SHERMAN
National Labor Relations Board
Division of Administrative Law

[4] In view of such expertise and the geographical area of union counsel's practice, I regard as irrelevant complainant's allegation that a $50 hourly rate is charged ``nation wide'' for ``Labor Law'' by a ``Legal Services Plan'' in Schaumburg, Illinois. New York State Association for Retarded Children v. Carey, 711 F.2d 1136, 1140, 1151 (2nd Cir. 1983).