

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

RESPONDENT'S MOTION TO COMPEL PAYMENT OF FEES GRANTED:
September 19, 2001

GSBCA 15222

PARCEL 49C LIMITED PARTNERSHIP,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Richard J. Conway and Robert J. Moss of Dickstein Shapiro Morin & Oshinsky, LLP,
Washington, DC, counsel for Appellant.

Catherine C. Crow and Jeremy Becker-Welts, Office of General Counsel, General
Services Administration, Washington, DC, counsel for Respondent.

DANIELS, Board Judge (Chairman).

ORDER

Pending before the Board is respondent's motion to compel appellant to pay fees relating to appellant's deposition of respondent's expert witness. We grant the motion.

The Board does not have a rule of procedure dealing specifically with this issue. Our Rule 101(d) provides, however, "In making rulings and issuing orders and directions pursuant to these rules, the Board takes into consideration those Federal Rules of Civil Procedure which address matters not specifically covered herein." 48 CFR 6101.1(d) (2000). Federal Rule of Civil Procedure 26(b)(4)(C) speaks directly to the subject at issue:

Unless manifest injustice would result, . . . the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subdivision.

We follow this rule. General Distribution Services, GSBCA 8187-TD, 86-3 BCA ¶ 19,197; see also Copy Data Systems, Inc., ASBCA 44058, 98-1 BCA ¶ 29,390 (1997).

Appellant's reliance on Integrated Systems Group, Inc. v. Department of the Treasury, GSBCA 11336-C(11214-P), 95-1 BCA ¶ 27,308 (1994), is inapposite. That case involved the question of whether the Board could impose monetary sanctions against a protester who comes here in bad faith. This case involves neither a request for monetary sanctions, nor a protest, nor an allegation of bad faith.

Respondent's expert has charged fees for three discrete periods of time associated with his deposition: preparation for the deposition, testifying at the deposition (the bulk of the time), and reading and confirming the transcript of the deposition. Appellant does not contend that manifest injustice would result from our requiring appellant to pay the expert a reasonable fee for any of these periods of time. Nor does appellant contend that the fee proposed is unreasonable. Consistent with Rule 26(b)(4)(C), then, we direct appellant to pay the fees claimed.

Requiring appellant to pay for the time the expert spent preparing for the deposition is worth special mention. In Copy Data Systems, the Armed Services Board of Contract Appeals observed that United States district court rulings can be found both in support and in opposition to a direction that the party calling an expert for deposition pay for the expert's preparation time. The Armed Services Board then concluded:

We think the better rule is that unless factors rendering award of such time unjust, such as demonstration that the preparation is a substitute for pretrial preparation to be accomplished in any event, reasonable preparation time should be allowed.

98-1 BCA at 146,072. We concur in this view. In so doing, we note that the leading cases reaching a contrary conclusion are from the District Court for the Northern District of Illinois (Equal Employment Opportunity Commission v. Sears, Roebuck & Co., 138 F.R.D. 523, 526 (N.D. Ill. 1991); Rhee v. Witco Chemical Corp., 126 F.R.D. 45, 47-48 (N.D. Ill. 1989)), and more recent decisions of that court (Profile Products, LLC v. Soil Management Technologies, Inc., No. 99-C-5870, 2001 WL 869566 (N.D. Ill. Aug. 1, 2001); Collins v. Village of Woodridge, 197 F.R.D. 354, 356-58 (N. D. Ill. 1999)) are consistent with the more common rule espoused by the Armed Services Board.

STEPHEN M. DANIELS
Board Judge