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Pay What Is Due: Update

By Marilyn Raia

Johnson v. Wang 2018 AMC 2838 (W.D. Wash. 2018), (Fishermen's News, April 2019) involved a suit brought by Johnson against Wang for wages owed in the amount of \$7,380. Johnson spent 492 hours at \$15 per hour working on Wang's vessel Thor to prepare it for the fishing season. After the work was done, Wang sold Thor and did not pay Johnson what was due to him.

The District Court Judgment

The district court awarded Johnson \$22,140 for his wages. Because there was no written contract between Johnson and Wang, it awarded Johnson the prevailing wage rate in the port where the work was done, which it found to be \$45 per hour not \$15 per hour that Johnson originally agreed to accept. It then awarded Johnson penalty wages in the same amount under a Washington statute. It also awarded Johnson pre-judgment interest in the amount of \$5,387.20. Finally, because it found Wang was "intentionally dishonest, recalcitrant and acted in bad faith", it awarded Johnson punitive attorneys' fees in an amount to be determined by motion.

The Post-Trial Fee Motion

Johnson was represented by two attorneys in his action against Wang. One had 36 years of maritime law experience and the other had one year of maritime law experience. Both attorneys customarily worked on a contingency fee basis and did not keep contemporaneous records of the time spent on a case. To support the post-trial motion for attorneys' fee, they reconstructed their time records based on the events in the case, and contended the reconstructed records were "understated". The more experienced attorney sought fees of \$24,660 for 54.8 hours of work at \$450.00 per hour. The less experienced attorney sought fees of \$29,950 for 119.8 hours of work at \$250.00 per hour.

Wang, who did not retain counsel to represent him at trial or for the post-trial motion, opposed the request for attorneys' fees on several grounds: 1) the prevailing hourly rate had not been satisfactorily established; 2) the number of hours billed was excessive; 3) the use of two attorneys was not justified in a wage claim against a party who was not represented by counsel; 4) there was duplication of effort in the reconstructed time sheets; and 5) the reconstructed records were too vague.

First, the district court held the claimed hourly rates were reasonable for the levels of experience of the two attorneys in that area. Second, it found some duplication of effort by the two attorneys. It reduced the recoverable hours for the more experienced attorney by half to 27.4 hours, and the recoverable hours for the less experienced attorney by 1.3 hours to 118.5 hours.

Finally, the district court held both attorneys should have known their case might result in an award of attorneys' fees and therefore they should have kept contemporaneous time records. It noted case law in the Ninth Circuit allows district courts to reduce an attorneys' fee award to account for the lack of contemporaneous time records. Accordingly, the district court reduced the amount of attorneys' fees claimed by 25%.

Even after a 25% reduction, the punitive attorneys' fees awarded were \$9,247.50 (\$450 x 27.4 hrs. -25%) for the more experienced attorney and \$22,218.75 (\$250 x 118.5 hrs. -25%) for the less experienced attorney, or a total of \$31,466.25.

The Bottom Line

While Wang succeeded in reducing the amount of his liability for attorneys' fees, he still suffered a significant financial loss by not paying the \$7,380 claimed by Johnson in the first instance. The total liability imposed on Wang was \$81,133.45 most of which, according to Johnson's counsel, has been collected.