

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Hollen v. Hathaway Electric, Inc., 213 W. Va. 667

584 S.E.2d 523 (2003) · No. No. 30681 · Decided June 26, 2003

SUMMARY

The Supreme Court of Appeals of West Virginia held that an employee prevailing under the West Virginia Wage Payment and Collection Act may recover reasonable attorney's fees for time spent preparing and litigating the fee petition. The court also held that the lower court improperly reduced counsel's compensable hours from 104 to 67 and improperly reduced the hourly rate from \$130 to \$100. The judgment was reversed and remanded for an award based on 104 hours at \$130 per hour, plus reasonable fees for work performed on appeal.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	June 26, 2003
DOCKET	No. 30681
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Hollen appealed a supplemental judgment order of the Circuit Court of Upshur County awarding her attorney's fees after Hathaway Electric settled her West Virginia Wage Payment and Collection Act claim on the day of trial.
STANDARD OF REVIEW	An attorney's-fee award is reviewed for abuse of discretion. Pure questions of law or statutory interpretation are reviewed de novo.
PRECEDENTIAL VALUE	Published state supreme court opinion; precedential.
PARTIES	Angela D. Hollen v. Hathaway Electric, Inc.

TOPICS

wage and hour employment law remedies appellate procedure standard of review

PRACTICE AREAS

employment law wage and hour remedies appellate procedure

QUESTIONS PRESENTED

1. Whether counsel may recover reasonable attorney's fees for time spent preparing and defending the attorney's-fee petition in an action under the West Virginia Wage Payment and Collection Act.
2. Whether the circuit court abused its discretion by reducing counsel's compensable hours from 104 to 67.
3. Whether the circuit court abused its discretion by reducing counsel's hourly rate from \$200 to \$100.
4. Whether Hollen was entitled to reasonable attorney's fees for work performed in prosecuting the appeal.

HOLDINGS

1. In an action under the West Virginia Wage Payment and Collection Act, a prevailing employee may ordinarily recover reasonable attorney's fees for time counsel spends preparing and defending the attorney's-fee petition.
2. The circuit court erred by excluding the hours counsel spent preparing and supporting the fee petition; Hollen's counsel was entitled to compensation for the full 104 hours claimed.
3. The circuit court abused its discretion by reducing counsel's hourly rate from \$130 to \$100; under the circumstances, \$130 per hour was a reasonable rate under the Pitrolo factors.
4. A prevailing employee entitled to statutory attorney's fees may recover reasonable fees for work reasonably required to prosecute a successful appeal.
5. The circuit court's refusal to award the requested \$200 contingent hourly rate did not constitute an abuse of discretion under the circumstances of this case.

KEY QUOTATIONS

"If an attorney is put to the burden of proving the reasonableness of his or her fee, he or she obviously must expend time and effort making that proof." (528)

"Thus we conclude that the lower court erred when it awarded only \$100 per hour to Ms. Hollen's counsel." (530)

"Therefore we remand this case to the lower court for a determination of the hours of work necessitated by this appeal, and an appropriate order awarding the same \$130 per hour for the hours expended as a result of this appeal." (530)

FACTUAL BACKGROUND

Angela Hollen worked as a secretary for Hathaway-related companies from October 1995 until her resignation on October 11, 2000. She resigned after a dispute over approved vacation time and alleged that Hathaway Electric refused to pay her for unused vacation days because it treated her employment with two technically separate companies as noncontinuous. After suit was filed under the West Virginia Wage Payment and Collection Act, Hathaway Electric settled on the day of trial by offering \$500 in vacation pay, \$1,500 in liquidated damages, and dismissal of its counterclaim. Hollen's counsel sought compensation for 104 hours at \$200 per hour, but the circuit court awarded only 67 hours at \$100 per hour.

PROCEDURAL HISTORY

Hollen sued Hathaway Electric for unpaid vacation pay, liquidated damages, and attorney's fees. On the day of trial, the employer offered the requested vacation pay and liquidated damages and agreed to dismiss its counterclaim, leaving the amount of attorney's fees for the circuit court. The circuit court awarded fees for 67 hours at \$100 per hour rather than the 104 hours at \$200 per hour requested. The Supreme Court of Appeals reversed and remanded with directions.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court must award fees for the 104 hours claimed at \$130 per hour, determine the reasonable number of hours counsel spent prosecuting the appeal, and award those appellate hours at the same \$130 hourly rate.

CASES CITED

- Bond v. Bond, 144 W. Va. 478, 109 S.E.2d 16 (1959)
- Cummings v. Cummings, 170 W. Va. 712, 296 S.E.2d 542 (1982)
- Ball v. Wills, 190 W. Va. 517, 438 S.E.2d 860 (1993)
- Daily Gazette Co., Inc. v. West Virginia Development Office, 206 W. Va. 51, 521 S.E.2d 543 (1999)
- Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995)
- Rollyson v. Jordan, 205 W. Va. 368, 518 S.E.2d 372 (1999)
- Gribben v. Kirk, 195 W. Va. 488, 466 S.E.2d 147 (1995)
- Lipscomb v. Tucker County Commission, 206 W. Va. 627, 527 S.E.2d 171 (1999)
- Farley v. Zapata Coal Corp., 167 W. Va. 630, 281 S.E.2d 238 (1981)
- Taylor v. Mutual Mining, Inc., 209 W. Va. 32, 543 S.E.2d 313 (2000)
- Orndorff v. West Virginia Department of Health, 165 W. Va. 1, 267 S.E.2d 430 (1980)
- Gagne v. Maher, 594 F.2d 336 (2d Cir. 1979)
- Weisenberger v. Huecker, 593 F.2d 49 (6th Cir. 1979)
- Prandini v. National Tea Co., 585 F.2d 47 (3d Cir. 1978)
- Hernandez v. Kalinowski, 146 F.3d 196 (3d Cir. 1998)
- Brown v. Thompson, 192 W. Va. 412, 452 S.E.2d 728 (1994)
- Aetna Casualty & Surety Co. v. Pitrolo, 176 W. Va. 190, 342 S.E.2d 156 (1986)
- Bishop Coal Co. v. Salyers, 181 W. Va. 71, 380 S.E.2d 238 (1989)
- Barnes v. Public Service Commission, 172 W. Va. 232, 304 S.E.2d 685 (1983)
- Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974)
- Blum v. Stenson, 465 U.S. 886, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984)