



McCauley v. Raytheon Travel Air Co.

2001 | Cited 0 times | D. Kansas | October 19, 2001

MEMORANDUM AND ORDER

This case comes before the court on the plaintiff's motion to retax costs (Doc. 65). The plaintiff argues that Raytheon's bill of costs was untimely filed; that Raytheon has not shown that the photocopies and deposition transcripts were necessarily obtained for use in the case; that he should not be forced to pay for photocopies of discovery documents when Raytheon had the option to either photocopy the materials or allow the plaintiff to inspect them; and that he should not have to pay for Raytheon's decision to order a transcript of proceedings before the FAA because "a copy of the transcript would have been available through discovery."

Pursuant to 28 U.S.C. § 1920, the court may tax as costs "[f]ees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case" and "[f]ees for exemplification and copies of papers necessarily obtained for use in the case." Materials and services that serve only to add to the convenience of counsel are not "necessarily obtained." *U.S. Industries, Inc. v. Touche Ross & Co.*, 854 F.2d 1223, 1245 (10th Cir. 1988). "The most direct evidence of 'necessity' is the actual use of materials obtained by counsel or by the court." *Id.* at 1246.

D. Kan. Rule 54.1 provides that a party entitled to recover costs shall file a bill of costs within 30 days after the expiration of time allowed for appeal of a final judgment. Final judgment was entered in this case on February 22, 2001 and the plaintiff had 30 days from the entry of final judgment to file a notice of appeal. Fed. R. App. P. 4(a). Raytheon filed a bill of costs within 30 days of the expiration of the time allowed for filing an appeal and, thus, the filing was timely.

The plaintiff objects to the award of costs on the basis that Raytheon has not shown that the photocopies and deposition transcripts were necessarily obtained for use in the case. In its response, Raytheon addresses each item listed in the bill of costs and argues that they were necessarily obtained. The plaintiff did not file a reply. Raytheon's explanation of its costs satisfies the court that the majority of documents listed in the bill of costs were necessarily obtained. The court, however, does not believe that photocopies of documents made in response to discovery requests and copies of pleadings and other documents filed with the court were necessarily obtained.

As a general rule, prevailing parties are not entitled to recover costs incurred in responding to discovery or for copies of pleadings and documents filed with the court because the party possesses the original documents and the copies are not "obtained" for purposes of section 1920(4). *Pehr v. Rubbermaid, Inc.*, 196 F.R.D. 404, 408 (D. Kan. 2000); *Phillips USA, Inc. v. Allflex USA, Inc.*, 1996 WL



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568814, at *2 (D. Kan. Sept. 4, 1996). Because Raytheon already possessed the originals, the copies were not "obtained" for use at trial and the court denies the costs. The costs denied include \$6.70 for in-house photocopies and \$911.37 paid to IKON Office Solutions for photocopies of documents produced by Raytheon and documents filed with the court. Subtracting these amounts from the total request yields a cost award of \$2,093.06.¹

The plaintiff also argues that he should not have to pay for Raytheon's decision to order a transcript of proceedings before the FAA because a copy of the transcript could have been obtained through discovery. "Even if the court finds the costs were for material or services necessarily obtained, the amount of the award must be reasonable." U.S. Industries, 854 F.2d at 1245. The charge for the transcript of the hearing was \$572.10. The court is not persuaded that taxing this cost is unreasonable because it would have been less expensive to obtain a copy of the transcript through discovery. Courts routinely tax as costs the amount charged by a court reporter for deposition transcripts. See, e.g., Giroux v. Farm Credit Bank of Wichita, 1999 WL 641246 (D. Kan. May 17, 1999); Aramburu v. The Boeing Co., 1999 WL 477251 (D. Kan. March 31, 1999). The plaintiff has not shown how the transcript of the hearing is any different than a deposition transcript. Both contain witness testimony recorded by a court reporter and, in this case, the court is persuaded that the transcript was necessarily obtained.

IT IS THEREFORE ORDERED that the plaintiff's motion to retax costs (Doc. 65) is granted and Raytheon is awarded costs in the amount of \$2,093.06.

IT IS SO ORDERED this 19th day of October, 2001.

1. Because the court does not tax the costs of documents photocopied for discovery requests, the court need not address the plaintiff's argument that he should not be forced to pay for photocopies of discovery documents when Raytheon had the option to either photocopy the materials or allow the plaintiff to inspect them.

