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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

DEANNA L. BEARD,	*	
	*	
Plaintiff	*	3-98-CV-90106
	*	
v.	*	
	*	
FLYING J. INC. and RICHARD KROUT,	*	
	*	
	*	ORDER ON ATTORNEY FEES
Defendants.	*	
	*	

The sole issue before the Court is the determination of attorney fees to award Plaintiff Deanna L. Beard in the above-captioned case. Pursuant to 42 U.S.C. § 2000e-5, Federal Rule of Civil Procedure 54(d)(2), and Iowa Code § 216.15, Plaintiff, through her attorney, requests attorney fees for trial-related work[1] and work performed after trial, as well as certain non-taxable costs that are recoverable as attorney fees.[2] In total, Plaintiff requests $152,792.50[3] from Defendant Flying J and approximately $120,000.00 from Defendant Richard Krout. Plaintiff also seeks $4,534.55 in taxable costs from both Defendants. Flying J and Richard Krout separately have filed resistances to Plaintiff's requests for attorney fees (and non-taxable costs). The Court was unable to rule on the attorney fee question in its post-trial Order of September 8, 2000 because of an inadequate record. The Court did however rule on taxable costs, awarding Plaintiff

[1] *See* "Pl.'s Submission of Att'y Fee Bill on Sexually Hostile Env't Claim," filed June 30, 2000 (Clerk's #164), *clarified by*, "[Pl.'s] Statement of Clarification Regarding Pl.'s Filing of June 30, 2000/Amended Mot. for Costs and Att'y Fees," filed July 6, 2000 (Clerk's #166) [hereinafter Statement of Clarification], *modified by*, "Pl.'s Modification of Request for Att'y Fees," filed July 10, 2000 (Clerk's #171).

[2] *See* "Pl.'s Supplemental Mot. for Att'y Fees Related to Post-Trial Efforts and for Expenses not Taxable as 'Costs,'" filed August 9, 2000 (Clerk's #187), *amended by*, "Pl.'s Amended Supplemental Mot. for Att'y Fees Related to Post-Trial Efforts and for Expenses Not Taxable as 'Costs,'" filed August 28, 2000 (Clerk's #193), *corrected by*, "Pl.'s Correction to Mot. for Att'y Fees Related to Post-Trial Efforts and for Expenses Not Taxable as 'Costs,'" filed October 30, 2000 (Clerk's #214).

[3] This figure encompasses trial-related fees totaling $127,356.25 and post-trial fees totaling $25,436.25.

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$3,650.69 in such costs. On November 6, 2000, the Court held a hearing in Davenport, Iowa to inquire further into the attorney fees issue. Plaintiff has filed additional submissions to further substantiate her requested fee amount. Satisfied that the record is now sufficient upon which a fair award can be based, the Court considers the matter fully submitted.

I. Background

In its September 8, 2000 Order, the Court affirmed a $25,000 jury verdict in favor of Plaintiff on her Title VII sexually hostile work environment claim as against Flying J. The jury rejected Plaintiff's claim of constructive discharge, as well as Flying J's affirmative defense under *Faragher v. City of Boca Raton*, 524 U.S. 775, 805-07 (1998) and *Burlington Indus., Inc. v. Ellerth*, 524 U.S.742, 763 (1998). The Court let stand these findings. As against Richard Krout in his individual capacity, the jury found him not liable for sexual harassment under Iowa Code § 216. The jury also rejected Plaintiff's common law assault claim against him. The jury did return a $10,000 verdict in Plaintiff's favor on her Iowa common law battery claim. The Court affirmed these findings as well. The present Order picks up where the Order of September 8 left off: deciding a reasonable attorney fee.

After setting forth the legal framework to follow in awarding attorney fees under Title VII (which is also the framework utilized in Chapter 216 fee cases, *see Dutcher v. Randall Foods*, 546 N.W.2d 889, 897 (Iowa 1996) ("[W]e adopt the federal analytical framework for the calculation of attorney fees under the Iowa Civil Rights Act."), the Court will analyze and discuss the fee liability for both Flying J and Richard Krout.

II. Fee standards

By statute, the district court may, in its discretion, award "the prevailing party" in a Title VII action a "reasonable attorney's fee." 42 U.S.C. § 2000e-5(k). Plaintiff is a "prevailing party" if she "succeed[s] on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

In determining what a "reasonable" fee is, the Supreme Court in *Hensley* stated: "The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley*, 461 U.S. at 433. The resulting fee, typically called the lodestar amount, should be one that is "adequate to attract competent counsel, but does not produce windfalls to attorneys." *Hendrickson v. Branstad*, 934 F.2d 158, 162 (8th Cir. 1991) (internal quotations and brackets omitted). Because there is no magic formula for making these determinations as to time reasonably spent on the litigation, the district court "necessarily has discretion in making this equitable judgment," and to that end, it may eliminate certain hours charged, including "excessive, redundant, or otherwise unnecessary" work. *Hensley*, 461 U.S. at 434.

In addition to determining the number of hours reasonably spent on the case, the Court must also decide on a reasonable hourly rate. A reasonable rate should be calculated according to similar services by lawyers of reasonably comparable skill, experience, and reputation in the relevant community. *See Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984). It is incumbent on the party seeking the award of fees that they clearly and thoroughly document the hours worked and the rates claimed. *See Hensley*, 461 U.S. at 433.

In civil rights cases, the Supreme Court has cautioned against segregating hours by claim because "plaintiff's claims for relief will involve a common core of facts or will be based on

related legal theories." *Hensley,* 461 U.S. at 435. "Much of counsel's time," continued the Court, "will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis." *Id.* Because such a lawsuit cannot be viewed as a series of discreet claims, the district court "should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." *Id.* Thus, where necessary, the Court will analyze the fee award, not in terms of how much time was spent on Plaintiff's separate claims, but rather on the "litigation as a whole," and how the result compares to the whole of counsel's efforts.

These basic considerations guide the Court's analysis for determining the reasonableness of its fee award.

III. Fee liability for Flying J

Because Plaintiff was successful on her core sexually hostile work environment claim against Flying J, the parties do not dispute that Plaintiff is a "prevailing party" for purposes of Title VII's fee recovery provision, 42 U.S.C. § 2000e-5(k). The Court therefore will address the lodestar factors as clarified in *Hensley*.

A. Reasonable hourly rate

Plaintiff Deanna Beard was ably represented by a single attorney of record, Jeffrey Bittner, a lawyer with the Davenport firm of Carlin, Hellstrom & Bittner. Mr. Bittner, a 1984 graduate of the University of Iowa College of Law, requests compensation at the rate of $175.00 per hour. He has submitted the affidavits of two attorneys in the Davenport area who practice in the area of civil rights employment litigation. Counsel's classmate Dorothy O'Brien states, by affidavit, that she charges $200.00 per hour for plaintiff's work on Title VII cases. Catherine Zamora Cartee, a practicing lawyer since 1987, states in her affidavit that she charged $150.00

per hour on a civil rights case she tried in 1996. At the hearing held November 6, 200, Mr. Bittner represented that this was his first Title VII case tried to verdict, and that the $175.00-per-hour rate is the highest of three he charges. It's plain that Mr. Bittner expended an enormous effort into prosecuting his client's case. He presented helpful briefs throughout the course of this litigation and otherwise exhibited zealous advocacy for his client. And while private civil rights cases are among the most important brought in federal court, *see Casey v. City of Cabool*, 12 F.3d 799, 805 (8th Cir. 1993) ("A plaintiff bringing a civil rights action does so not for himself alone but also as a private attorney general, vindicating a policy that Congress considered of the highest priority.") (quoting *Newman v. Piggie Partk Enterprises, Inc.*, 390 U.S. 400, 402 (1968)) (internal quotes omitted), the Court finds that an hourly rate of $175.00 per hour to be high in light of Mr. Bittner's experience in trying Title VII cases. Mindful that a reasonable fee should be high enough to attract competent counsel and not higher, *Hendrickson*, 934 F.2d at 162, the Court finds $150.00 to be a reasonable hourly rate for Mr. Bittner's efforts in this case.

B. Hours reasonably expended — trial-related work

Under *Hensley*, this Court is obligated to identify the hours reasonably expended on the litigation, and to subtract hours that are "excessive, redundant, or otherwise unnecessary," and hours for which "documentation is inadequate." 461 U.S. at 433-34. Local Rule 54.2, which for the most part was complied with, requires that fee claims be supported by adequate itemization, including the amount of time claimed for any specific tasks, as well as the hourly rate.

Initially, Plaintiff sought compensation for 727.75 hours of work. *See* Pl.'s Submission of Att'y Fee Bill on Sexually Hostile Env't Claim (Clerk's #164) filed June 30, 2000 (statement summary). In resistance, Flying J lodged several objections. Conceding certain of these objections, Plaintiff subtracted the following hours from her total: 6.25 hours devoted to

amending her Complaint to add Richard Krout as a Defendant; 20.5 hours related to Plaintiff's unrelated and unsuccessful Fair Labor Standards Act claim;[4] and 2 hours spent researching assault and battery and incorporating those counts into her amended Complaint. In short, Plaintiff concedes a reduction of 28.75 hours as they relate to time spent litigating against Flying J, dropping the total requested hours to 699 hours. The Court finds these reductions to be fair and reasonable.

Flying J, however, urges additional reductions. First, Flying J contends that 5.25 hours that Plaintiff's counsel logged on 6/29/98, 7/21/98, and 7/31/98 are not compensable because that time does "not deal with this action but with Plaintiff's charge filed with the Iowa Civil Rights Commission." Def. Flying J, Inc.'s Resistance to Pl.'s Submission of Att'y Fee Bill on Sexually Hostile Env't Claim (Clerk's #169) filed July 10, 2000 at 3 [hereinafter Flying J's Resistance Brief]. Contrary to Flying J's contention, legal work expended on behalf of a Title VII plaintiff during mandatory administrative proceedings is compensable. *See New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 64-65, 71 (1980) (given the language, structure, and history of 42 U.S.C. § 2000e-5(k), Congress intended to authorize an award of attorney fees and costs for expenses incurred in state administrative proceedings). Because Plaintiff first had to present her discrimination claim to the Iowa Civil Rights Commission before filing her Title VII action in federal court, *see* 42 U.S.C. § 2000e-5(c); *Carey*, 447 U.S. at 64, the time spent during these proceedings is compensable. The Court will not subtract the additional 5.25 hours as urged by Flying J.

In addition to time spent before the Iowa Civil Rights Commission, Flying J argues that

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[4] *See* Order of June 23, 2000 (Clerk's #148) rejecting Plaintiff's FLSA claim on the merits.

all the time spent on Plaintiff's unsuccessful constructive discharge claim — estimated by Flying J to be one-third of all time spent on the case — should be discounted. It is the Court's belief that the constructive discharge claim interrelates with, and stems from the same facts as, Plaintiff's successful sexually hostile work environment claim. Because the law discourages parsing out, and therefore ultimately denying fees for, unsuccessful but related claims, the Court will not subtract time reasonably spent prosecuting Plaintiff's constructive discharge claim.[5] *See Hensley,* 461 U.S. at 435; *Casey v. City of Cabool*, 12 F.3d 799, 806 (8th cir. 1993), *cert. denied*, 513 U.S. 932 (1994) ("Once a party is found to have prevailed, a fee award should not be reduced merely because a party did not prevail on every theory raised in the lawsuit." (Citations, internal quotations and brackets omitted); *Hendrickson*, 934 F.2d at 164.

Flying J also objects to time spent by Plaintiff's counsel in mid-January and early February of 2000[6] preparing a summary judgment motion that Plaintiff did not file after it was discovered that Plaintiff could not prevail on the motion. In all, the Court counts a total of 59.75 hours devoted to preparing this non-filed motion for summary judgment. Plaintiff's counsel states that he worked on the motion for summary judgment under the assumption that unemployment proceedings had preclusive force in Title VII actions. Plaintiff claims that Iowa Code § 96.6(4) (West 2000),[7] — which Plaintiff discovered only after her motion for summary

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[5] One brief note about the constructive discharge claim is in order. Flying J objects to the claimed time Mr. Bittner spent interviewing his expert, Dr. William Conway. By the Court's count, there were a total of 2 hours claimed in connection with Dr. Conway. *See* Pl.'s Submission of Att'y Fee Bill on Sexually Hostile Env't Claim (time sheet entries of 1/16/00 and 6/2/00). It should be remembered that Dr. Conway testified to future economic loss (information relevant to Plaintiff's constructive discharge claim) and to Plaintiff's FLSA claim. The Court will subtract 1 hour from the 2 that are claim to account for Plaintiff's unsuccessful and unrelated FLSA claim.

[6] The relevant dates are: 1/10/00 - 1/13/00, 2/1/00, 2/2/00, 2/4/00 - 2/9/00.

[7] Section 95.6(4) of the Iowa Code states that a "finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of the department, administrative law judge, or the employment appeal board, is binding only upon the parties to proceedings brought under this chapter, and is not

judgment was written, briefed, and ready to file — prevented her from using a favorable unemployment decision preclusively in her Title VII case.[8] Whether or not Iowa Code § 96.6(4) has the claimed legal effect, it should have been plain to Plaintiff's counsel that any unreviewed state administrative proceeding (which Plaintiff's unemployment proceeding was) would not enjoy preclusive effect in a subsequent Title VII action. *See Abramson v. Council Bluffs Community Sch. Dist.*, 808 F.2d 1307, 1308 (8th Cir. 1987) (citing *University of Tennessee v. Elliott*, 478, 796 (1986)). Technically, Plaintiff could have still filed her motion, just not on a theory of preclusion. In any event, Plaintiff should not be given full credit for work performed in connection with a (non-filed) motion for summary judgment that could not have been sustained under claim preclusion principles. Plaintiff asserts that her efforts were not in vain as she was able to incorporate much of the summary judgment material in her resistance to Flying J's own motion for summary judgment on the Title VII claim. There is no way to tell exactly how much of Plaintiff's summary judgment work was used in her resistance papers, although Plaintiff was able to get her lengthy resistance brief (together with a ten page statement of undisputed facts and 247 pages of exhibit material) filed timely without an extension. The Court will permit Plaintiff's counsel to recoup 30 hours from the claimed 59.75 devoted to her motion for summary judgment.

In addition to the above, the parties also dispute a settlement letter written by Plaintiff's

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binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of workers' compensation, other state agency, arbitrator, court, or judge of this state or the United States."

[8] The decision in question was a finding by an administrative law judge (ALJ) from the Iowa Employment Appeals Board. The ALJ, by decision dated December 7, 1998, found that Plaintiff voluntarily quit "with good cause" within the meaning of 871 IAC 24.26(4) because of an "intolerable and detrimental work place" and therefore Plaintiff would not be disqualified for unemployment benefits. *See* Ex. 4 attached to Clerk's #40.

counsel. The letter involved 1.25 hours of counsel's time. Flying J states it never received the letter; Plaintiff's counsel says that he sent the letter. It would be speculation for the Court to believe one side over the other. The Court will allow counsel to claim the 1.25 hours for this letter, which, even if not sent, bears a reasonable relationship to the litigation effort as a whole. *Cf. Grant v. Martinez*, 973 F.2d 96, 99 (2d Cir. 1992), *cert. denied*, 506 U.S. 1053 (1993) (issue is "not whether hindsight vindicates an attorney's time expenditures, but whether at the time the work was performed, a reasonable attorney would have engaged in similar time expenditures") (citation omitted); *accord Independent Sch. Dist. No. 623 v. Digre*, 893 F.2d 987, 992 (8th Cir. 1990).

The Court has examined the balance of Plaintiff's time sheet and finds it to be sufficiently precise in terms of the nature of the work performed, the amount of time worked on a particular task, and the date on which the work took place. The Court has carefully read these time sheet entries and finds that they describe work reasonably related to litigating the Title VII case against Flying J. After subtracting the necessary hours from Plaintiff's requested total of 727.75 hours, the Court arrives at a total of 669.25 hours for which Plaintiff can receive attorney fee compensation from Flying J. At the hourly rate of $150.00, the total trial-related fee the Court awards is: $100,237.50. Although Plaintiff lost on her constructive discharge claim, the jury's $25,000 verdict in her favor on the sexually hostile work environment claim represented a substantial judgment against Flying J, "vindicat[ing] important personal rights as envisioned by the statute, [and] also further[ing] the public's interest in providing a fair playing field in the work world." *Wal-Mart Stores, Inc. v. Barton*, 223 F.3d 770, 773 (8th Cir. 2000). Accordingly, a fee award of $100,237.50 is reasonable in light of Plaintiff's significant victory against Flying J, and the Court sees no reason to reduce that amount further. *See Barton*, 223 F.3d at 773

(award of $116,217.82 in attorney fees and costs was affirmed on a jury verdict for $25,000 on Title VII sexual harassment claim); *see also City of Riverside v. Rivera*, 477 U.S. 561, 574 (1986) (rejecting the notion that a civil rights action for damages constitutes nothing more than a private tort suit benefitting only the individual plaintiffs whose rights were violated, the Court observed: "Regardless of the form of relief he actually obtains, a successful civil rights plaintiff often secures important social benefits that are not reflected in nominal or relatively small damages awards.")

C. Hours reasonably expended — post-trial work

In addition to recouping fees spent on trial-related work, Plaintiff seeks application for post-trial attorney fees and certain "out-of-pocket" non-taxable expenses that are recoverable as part of an attorney fee award. There is authority for the Court to award these non-taxable costs as part of a fee award. *See* Fed. R. Civ. P. 54(d)(2) (providing for "attorneys' fees and related non-taxable expenses"); *Pinkham v. Camex, Inc.*, 84 F.3d 292, 294-95 (8th Cir. 1996) (per curiam) (reasonable out-of-pocket expenses of the kind normally charged to clients by attorneys is included as part of the reasonable attorney fee). In terms of a post-trial fee award, Plaintiff has applied for $25,436.25 (or compensation for 145.35 hours of work). Plaintiff has applied for a total of $4,534.55 in non-taxable, out-of-pocket expenses.

First, the issue of time reasonably spent on post-trial matters. The Plaintiff's attorney has submitted time sheets documenting his post-trial efforts. The entries document work that began on June 17, 2000 and continued up to and including August 7, 2000. Plaintiff concedes that 6.5 hours of his requested total of 145.35 hour should be reduced as time spent on matters particular to Richard Krout. The Court will not disturb this concession. The Plaintiff also admits that the 6/18/00 entry for 3 hours regarding the call to the court reporter was a clerical error. The Court will subtract 3 hours from the total. The entry of 6/28/00 for "Legal research re: timeliness

issue" lacks specificity. The 2 hours claimed for this entry will be denied. Counsel's entry of 7/12/00 for .25 hours appertaining to "Review Richard's Krout's joinder in Flying J's Resistance" will be denied. The document which counsel reviewed, *see* Clerk's #175, and for which he seeks 15 minutes of compensation, consists of a one-line sentence stating that Defendant Krout "joins" in Flying J's Resistance to Plaintiff's request for attorney fees. The Court therefore denies the claimed .25 hours of time. After factoring out the non-allowed hours, the Court arrives at a total of 133.6 post-trial hours for which Plaintiff's counsel should receive compensation. When this time is multiplied by the hourly rate of $150, the resulting post-trial fee award equals $20,040. The Court finds this amount to be reasonable in relation to counsel's overall efforts in pressing his post-trial claims and responding to those asserted by opposing counsel. The Court also finds this amount to be reasonable in relation to the overall results obtained by Plaintiff.

As to the issue of non-taxable, out-of-pocket expenses, the Court has looked at the claimed entries. *See* Pl.'s Supplemental Mot. for Att'y Fees Related to Post-Trial Efforts and for Expenses Not 'Taxable as 'Costs,'" (Clerk's #187) (1 ½ page spreadsheet itemizing these expenses, the dates on which the activities were performed, the payee, and the amount claimed). Plaintiff seeks to recover a total of $4,534.55 in costs related to the taking of depositions of key figures in this case. The depositions of Plaintiff Deanna Beard, Michael Snider, Defendant Richard Krout, Christie Ferring, Tim Strohmeier, Sarah Weindruch, Wendy Cervantes, and Randy Beard are listed. With the exception of Tim Strohmeier, these individuals featured prominently at trial and the Court knows of no reason why the costs associated with the taking of these deposition should not be recovered. The deposition costs of Ronald Burchetee will be denied due to his non-involvement with this case. The costs associated with Mr. Strohmeier's deposition will be allowed because although he was never called to testify, he was listed as a

potential witness on the Final pre-trial Order. In light of these observations, the Court finds that Plaintiff may recover $4,498.40 in non-taxable costs.

D. Summary of fee award against Flying J

Flying J's liability in attorney fees is summarized below:

1. Total requested trial-related hours:	727.75
less time spent amending Complaint	-6.25
less time spent on FLSA claim	-20.5
less time spent on assault/battery research	-2
less time spent with Dr. Conway	-1
less time spent on non-filed summ. j. mot.	-29.75
Allowed trial-related hours:	668.25
Total trial-related fee award (at $150/hr):	**$100,237.50**
2. Total requested post-trial hours:	145.35
less time spent on Krout matters	-6.5
less time for clerical error	-3
less time for entry lacking specificity	-2
less time for review of joinder statement	-.25
Allowed post-trial hours:	133.6
Total post-trial fee award (at $150/hr):	**$20,040**
3. Total requested non-taxable costs:	$4,534.55
less Burchetee Deposition costs	-$36.15
Total non-taxable costs award:	**$4,498.40**
TOTAL attorney fee award:	**$124,775.90**

IV. Fee liability for Richard Krout

As Plaintiff points out, "[l]iability for attorney's fees against Mr. Krout is premised on Iowa Code § 216.15." Statement of Clarification filed July 6, 2000 (Clerk's #166). Plaintiff, however, lost on her § 216 claim of sexual harassment against Richard Krout. Had she won on that count, then Plaintiff could have recovered attorney fees under that statute's fee-shifting provision, *see* Iowa Code § 216.15(8)(a)(8),[9] and probably would have received fees reasonably related to her successful sexual battery count. *See Carter-Herman v. City of Philadelphia*, 1997 WL 48942, No. Civ. A. 95-4030, at **4-5 (E.D. Pa. Jan. 31, 1997) (attorney fees for state law assault and intentional infliction of emotional distress were recoverable against individual defendants who were also found liable under Pennsylvania's civil rights law); *cf. Barton*, 223 F.3d at 773 (plaintiff prevailed against Wal-Mart on Title VII sexual harassment claim, but lost on assault, battery, outrage, and negligent retention; Court held that district court did not abuse its discretion in not further reducing the fee award, because unsuccessful common law claims and winning Title VII claim "shared a common core of facts").

The outcome in this case was otherwise as the jury rejected Plaintiff's § 216 claim against Mr. Krout on the merits. Section 216.15(8)(a)(8) makes clear that fees are only available for "injury caused by the discriminatory or unfair practice" within § 216, a finding which the jury rejected. Even though Plaintiff won her battery case, she needed to prevail on her Iowa civil rights claim before she could be eligible for attorney fees against Mr. Krout.[10] *See Ayala v.*

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[9] This subsection provides: "Payment to the complainant of damages for an injury caused by the discriminatory or unfair practice which damages shall include but are not limited to actual damages, court costs and reasonable attorney fees."

[10] The Supreme Court has observed that counsel who represent civil rights plaintiff may contract privately with their clients for contingent fees, in addition to any statutory fee award. *See Venegas v. Mitchell*, 495 U.S. 82 (1990) (in a civil rights case involving a statutory fee award, an attorney and his client may still enter into a contingent-fee agreement). Thus, because contingent fees and statutory fees can co-exist within a single case, there is still incentive for civil rights lawyers, like counsel in this case, to press on with pendent claims that are not governed by a fee statute.

Center Line, Inc., 415 N.W.2d 603, 605 (Iowa 1987) ("Only upon a finding that an employer has engaged in a discriminatory practice are attorney fees recoverable. Iowa Code § 601A.15(8)(a)(8)."). With limited exception not applicable here, the rule in the federal courts is not to the contrary. *See Mateyko v. Felix*, 924 F.2d 824, 828 (9th Cir. 1991) (action against a city and certain police officers for § 1983 violations as well as common law assault, battery, negligence, and negligent infliction of emotional distress; all claims rejected on the merits except emotional distress; held: "All circuits that have considered the issue have held that a plaintiff, like Mateyko, who loses on his federal claim and recovers only on a pendent state claim is not a prevailing party under section 1988 and may not be awarded fees.") (citations omitted); *Reel v. Arkansas Dep't of Correction*, 672 F.2d 693, 697 (8th Cir. 1982) (in this pre-*Hensley* case, decision of district court to deny attorney fees to plaintiff who failed on the merits of his constitutional claims, but succeeded on pendent assault and false imprisonment claims, affirmed); *see also* Alan Hirsch and Diane Sheehey, *Awarding Attorneys' Fees and Managing Fee Litigation* 10 (1994) ("The courts of appeals have consistently held that where plaintiffs lose a claim governed by a fee statute but prevail on another claim, they are not entitled to fees." (footnote omitted). Notwithstanding a winning verdict on the battery count, Plaintiff is not eligible for an award of attorney fees under the Iowa statute as against Richard Krout.

V. Conclusion

For the foregoing reasons, Plaintiff is entitled to an award of attorney fees (and non-taxable costs) against Flying J in the amount of **$124,775.90**. Plaintiff is not entitled to recover any attorney fees against Richard Krout.

IT IS SO ORDERED.

Dated this 4th day of December, 2000

Robert W. Pratt

ROBERT W. PRATT
U.S. DISTRICT JUDGE

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