

Attorney's fees

✓ (1983)

Letter re: expert witness fees

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To; Urban League Team  
 From: John Grele  
 RE: Expert witness fees

There have been no cases which answer the question whether or not we can request fees for our expert prior to the end of the case. There are cases which outline the statutory language. From these we can say that expert ~~wit~~ witness fees are definitely "costs" under the statute and are therefore recoverable.

To date there has not been a ruling on costs. We made a motion after the trial court case~~x~~ that was never ~~xxx~~ ruled on. The "serp" has stated that there has been not action as of yet on expert costs. (Letter, 10/8/83).

U.S. Pipe and Foundry co. v. United Steelworkers of America, 37 N.J. 343(1962) stated that among costs generally, such costs as witness fees are recoverable. In that case, the union sought costs ~~xxx~~ for the imposition of an injunction and the defense against it in a labor dispute.

Barberi v. Bochinski, 43 N.J. Super 186 (App. Div. 1956) gave the costs for a surveyor to the plaintiff when the defendant had the information requested but refused to turn it over.

Huber v. Zoning Board of Adjustment of Tp. of Howell, 304 A. 2d 578 (1973) was a challenge to a zoning ordinance whcih was successful. the Plaintiff wanted the costs of the transcript from the committie which denied his request for a zoning change. The court awarded these costs because they were ~~ex~~ considerable, because they were necessary to the proceeding, and because the action was brought on the behalf of all the citizens in that all the citizens would benefit from the correct application of the town's ordinance. The court also considered the fact that these actions should be encouraged and not prohibited by the costs of transcripts.

Finch, Pruyn & Co., Inc. v. Martinelli, 158 N.J. 156 (Ch. Div. ~~xxx~~ (1969) awarded the costs of depositions after the judgement had been awarded. The court claimed the policy was ~~xx~~ that each individual should bear his own expenses in prosecuting and defending his individual interest. This is the policy of the court as stated by the Supreme Court. The plaintiff only secured the costs of the depositions which were required because the ~~xx~~ defendant and attempted to avoid judgement by conveying his property to his wife.

\* N.j. Highway Authority v. Renner, 32 N.J. Super. 199 (App. Div. 1954) was a suit for specific performance on a contract with the state. The state wanted the costs for a day in court with witnesses when the defendant had moved for adjournment unannounced. The trial court granted the costs as a condition for adjournment and they were credited in the final judgement award. The appellate court ruled that the award was proper as an interlocutory appeal but took pains to ~~x~~ call it not costs, but a reimbursement of expenses.

Kronisch v. Howard Savings Bank, 101 N.J. Super. 392 App. Div. 1978)

denied the plaintiff's request for costs ~~because~~ because the plaintiff was not the prevailing party in the action. Also, the court stated that the novelty of the issue precluded awarding costs. It ~~was~~ was a suit against a bank for the interest on money given to the bank for reserves on the payment of taxes on the mortgaged property.

What we can get from all of this is that a claim for costs will be awarded where the defendant has done something which we could call "bad faith". Also, when defending the public's interest, plaintiffs have a better shot at the costs. We must be wary of the line of cases that states because of the novelty of the issue, costs will not be awarded.

*For a cogent argument of the cases and the statute involved see memo on motion for costs presented after the first trial.*