

FILED

IN THE SUPREME COURT OF THE CHEROKEE NATION

IN THE MATTER OF THE APPEAL OF

DORIS SHELL

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NO. SC-2013-01

2016 JAN 25 AM 4:18
CHEROKEE NATION
SUPREME COURT
KENDALL BIRD, COURT CLERK

APPEAL FROM THE EMPLOYEE APEALS BOARD
OF THE CHEROKEE NATION
TAHLEQUAH, OKLAHOMA

EMPLOYEE ADMINISTRATIVE APPEAL 12-007

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CHEROKEE NATION
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Before:

John Garrett, Justice
James G. Wilcoxen, Justice
Troy Wayne Poteete, Chief Justice

OPINION

This matter comes again to this Court on the issue of attorney fees.

Doris Shell originally applied to the Employee Appeals Board (EAB) for attorney's fees Oct. 29, 2012, and the EAB issued an order awarding her fees on December 10, 2012. The Cherokee Nation appealed that award on January 9, 2013. On November 15, 2013, this Court upheld the EAB and determined that the attorney's fees were

properly awarded. Shell then applied to the EAB for attorney fees associated with defending that appeal. In an order dated January 7, 2014, the EAB awarded Shell Two Thousand Eight Hundred Seventy-Five and 00/100 Dollars (\$2,875.00).

Shell then appealed that award on grounds that the amount did not include attorney fees for defending the appeal by the Cherokee Nation. In an order dated April 1, 2015 the EAB determined that she was not entitled to additional fees but stated the amount awarded represented both fees before the EAB and for appellate work.

Shell now appeals this award contending that the EAB failed to award her attorney fees for defending against Cherokee Nation's appeal of January 9, 2013; and, requesting a determination that she is entitled to attorney fees for defending that appeal and for prosecuting the appeal of the amount awarded on January 7, 2014.

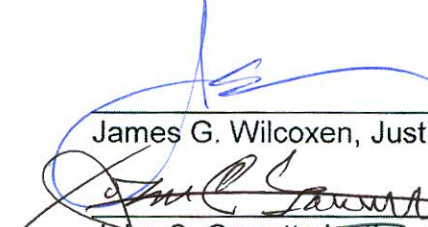
The Cherokee Nation argues that an award of attorney fees is discretionary, and that the amount of Two Thousand Eight Hundred Seventy Five and 00/100 Dollars (\$2,875.00) for attorney fees awarded by the Employee Appeals Board for both work before the EAB, and for defending Cherokee Nation's appeal is reasonable.

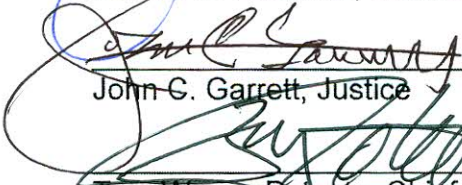
Fees should be awarded prevailing employees for representation before the EAB; for successfully defending any appeal thereof; and for successfully contesting the amount of such awards. This must be so in order to fulfill the purpose of 51 CNCA 1029(B). We find that the amount of \$2,875 does not reflect compensation for Shell's defense of the Cherokee Nations appeal of the award of attorney fees before this Court or her prosecution of the appeal of the amount awarded by the E.A.S. We find that Shell is entitled to attorney fees for contesting this award before the EAB, and this Court.

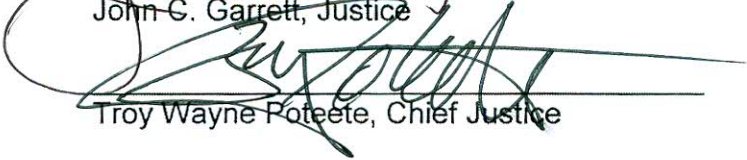
THEREFORE Shell is awarded attorney fees, consistent with our decision in *McAlvain, et al. v. Cherokee Nation*, for work on appeal before this Court, and before the EAB in the instant appeal. This case is remanded to the EAB to determine a reasonable amount of time to compensate for her fees on appeal.

IT IS SO ORDERED this 25th day of January, 2016, ~~December, 2015~~

Concurring:


James G. Wilcoxon, Justice


John C. Garrett, Justice


Troy Wayne Poteete, Chief Justice

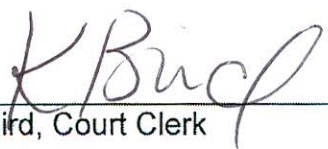
CERTIFICATION OF MAILING

I certify that a true and correct copy of the foregoing document was mailed and/or transmitted via facsimile on this 25th day of January 2016, ~~December, 2015~~ to the following:

Chad Smith, chad@chadsmith.com

Chrissi Nimmo, chrissi-nimmo@cherokee.org

Employee Appeals Board, laura-adair@cherokee.org


Kendall Bird, Court Clerk