Federal Court Cour fédérale

Date: 20230113

Docket: T-752-21

Citation: 2023 FC 38

BETWEEN:

MICHAEL CHRISTOFOROU

Applicant

and

JOHN GRANT HAULAGE LTD.

Respondent

REASONS FOR ASSESSMENT

AUDREY BLANCHET, Assessment Officer

I. Background

[1] The Applicant, Michael Christoforou, made an application for judicial review of the Remedies Decision of the Canadian Human Rights Tribunal. The Judgment and Reasons of the Federal Court dated February 9, 2022, states: "[…] this judicial review will be dismissed with costs at the usual scale."

[2] On March 10, 2022, the Respondent filed a Bill of Costs, which initiated the Respondent's request for an assessment of costs.

[3] On April 25, 2022, a direction was issued to the parties regarding the conduct and filing of additional documents for the assessment of costs. On May 27, 2022, the Respondent filed a revised Bill of Costs. On June 28, 2022, the Applicant filed Responding Costs Submissions in response to the revised Bill of Costs. As both parties have filed and served their respective costs documents within the prescribed timeframes, I will now proceed with the assessment of costs.

II. Preliminary Issue

A. The Respondent did not provide evidence in support of its Bill of Costs

[4] The Applicant submitted that the revised Bill of Costs was filed without a supporting affidavit to corroborate the services and disbursements claimed. (Applicant's Response, para 5).

[5] Subsection 1(4) of Tariff B of the *Federal Courts Rules* SOR/98-106 [Rules], states that disbursements must be substantiated, and necessary to the conduct of this matter :

Evidence of disbursements	**Preuve**
(4) No disbursement, other than fees paid to the Registry, shall be assessed or allowed under this tariff unless it is reasonable and it is established by affidavit or by the solicitor appearing on the assessment that the disbursement was made or is payable by the party.	**(4)** À l'exception des droits payés au greffe, aucun débours n'est taxé ou accepté aux termes du présent tarif à moins qu'il ne soit raisonnable et que la preuve qu'il a été engagé par la partie ou est payable par elle n'est fournie par affidavit ou par l'avocat qui comparaît à la taxation.

[6] Having reviewed the Respondent's revised Bill of Costs, it appears that only amounts for assessable services were claimed. Since no disbursements were claimed, the absence of an affidavit is not an impediment to assessment of costs being conducted.

[7] Contrary to the evidence of reasonableness of disbursements, the standard of proof for assessable services are determined by reference to the Table of assessable services found in Tariff B. With respect to the necessity of the services claimed, an assessment officer is bound to determine whether these services were actually rendered in a specific proceeding. I will therefore proceed to the assessment of costs in accordance with these principles.

B. The Respondent's Bill of Costs is based on hours instead of units

[8] The Applicant submitted that the Respondent only claimed a number of hours for each assessable service rendered by counsel without reference to the number of units (Applicant's Response, para 5).

[9] Although the Applicant's observations are accurate, this is not a barrier to an assessment of costs being conducted. Thus, I have tried to the best of my ability to convert the number of hours claimed into unit values to reflect Tariff B and in accordance with Rule 407 of Tariff B of the Rules, which reads as follows:

Assessment according to Tariff B	**Tarif B**
407. Unless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III to the table of Tariff B.	**407.** Sauf ordonnance contraire de la Cour, les dépens partie-partie sont taxés en conformité avec la colonne III du tableau du tarif B.

[10] In doing so, an assessment officer shall allocate to a service a number of units. Accordingly, I will assess each item of the revised Bill of Costs separately.

III. Assessable services

[11] The Respondent has claimed $4,520.00 for assessable services.

A. *Item 2 – Preparation and filing of all defences, replies, counterclaims or respondents' records and materials.*

[12] The Respondent's revised Bill of Costs contains 9 hours for first counsel and 3 hours for second counsel under title "Preparation and filing of Responding Record including Affidavit and Memorandum of Fact and Law." These particular fees fall under Item 2 of Tariff B of the Rules, within a range of 4 to 7 units.

[13] Although the Respondent claimed a total of 12 hours – for first and second counsel - for various services that may fall under Item 2, Tariff B for said item provides for preparation and filing "of all […] respondents' records and materials." In *Abbott Laboratories Ltd v Canada*, 2009 FC 399, at paragraph 6, the Assessment Officer stated the following regarding Item 2 of Tariff B:

> In practice, the available range under Column III of 4 - 7 units is applied as a single global allowance for the associated services. This precludes what the Respondents have done under item 2 in each bill of costs, ie. claimed individual and varying amounts from the available range for six areas of service, ie. the notice of appearance, two records and three affidavits. These were not the most complex of matters and there were likely certain common elements of work , but it is difficult to ignore the volume and subject of the records associated with them. I allow a single allowance for item 2 […]

[14] Despite the obvious work that was performed in responding to the application, I conclude that costs of a single Item 2 shall be allowed, in a range of 4 to 7 units. Given that this case is of

usual complexity and that the default level of costs in the Federal Court is the mid-point of Column III in Tariff B (*Allergan Inc. v Sandoz Canada Inc.*, 2021 FC 186, at para 25 [*Allergan*]), I find it reasonable to allow 5 units.

[15] With respect to the claim for second counsel, given that a single item 2 can be claimed in this proceeding, any further claim, should be disallowed. In any event, any second counsel fee under Tariff B is only allowed where Court directs, which is not the case here.

B. *Item 13 - (a) preparation for trial or hearing, whether or not the trial or hearing proceeds, including correspondence, preparation of witnesses, issuance of subpoenas and other services not otherwise particularized in this tariff;*

[16] The Respondent has claimed 9 hours for the "[p]reparation for hearing, including correspondence."

[17] Having reviewed the registry officer's abstract of hearing, I note that the hearing of the application was heard in one day, more precisely over the course of 3 hours and 2 minutes. Therefore, one claim shall be allowed under Item 13(a). Based on *Allergan* and the fact that this case is of usual complexity, I will allow 4 units, which represents the mid-point of Column III in Tariff B.

C. *Item 14 - Counsel fee (a) to first counsel, per hour in Court;*

[18] The Respondent has claimed 4 hours for the "[c]ounsel fee for hearing". This fee shall be assessed under Item 14(a) of Tariff B.

[19] In response to this specific claim, the Applicant submits that the hearing's duration was not 4 hours as claimed, but rather 3 hours 2 minutes. (Applicant's Response, para.15)

[20] In *Nova-Biorubber Green Technologies, Inc. v Sustainable Development Technology Canada*, 2021 FC 102 [*Green Technologies*] at paragraph 21, the Assessment Officer held:

> Utilizing the *Dewji* decision as a guideline, I have taken into consideration that the hearing of the motion was conducted by videoconference and that this requires a party to be ready to proceed well before the hearing begins so that the Court Registrar can ensure that the parties are present and that there are no technical difficulties. I have added 30 minutes to the hearing duration to recognize the time that counsel had to be ready before the starting time for the hearing. This time also provides counsel with a few minutes at the end of the hearing to wrap things up. In *Halford v Seed Hawk Inc*., 2006 FC 422, at paragraph 211, the Assessment Officer states the following with regards to allowing additional time to counsel for hearings:
>
> I have consistently held that counsel must be in court some time before the scheduled start or resumption times to permit the court registrar to satisfy herself that the hearing is ready to go. I consider that integral to attendance. I compared the court file's abstract of hearing, the Seed Hawk Defendants' asserted hours for item 14, those of the Simplot Defendant, Mr. Halford's evidence and information in the trial transcript.

[21] Based on *Green Technologies*, *Halford* and *Dewji & Gheciu Consultants Inc. v A&A Consultants & Felicia Bilc*, [1999] FCJ No 1263, I have added 30 minutes to the hearing duration.

[22] Having reviewed the parties' documents in conjunction with the Court's record, I find it reasonable to allow 2 units per hour for a duration of 3 hours and 30 minutes for the Respondent's attendance at the hearing. This represent 7 units under Item 14(a).

IV. HST

[23] The Respondent has claimed $520.00 in HST associated with the aforementioned assessable services without any evidence to substantiate its claim. The Applicant submitted that they are concerned with the lack of evidence on this issue and refers to the decision in *MacDonald v Canada (Attorney General)*, [2006] FCJ No 1353 [*MacDonald*] (Applicant's Response, para 18).

[24] Having reviewed said decision, I share the concerns of the Applicant regarding this claim by the Respondent. I note that the principles set out in paragraph 7 of the *MacDonald* decision apply in this assessment of costs:

> […] With this rule in mind [*Rule 1(3)(b) of Tariff B of the Rules*], it seems obvious to me that the Respondent is allowed to be reimbursed by the unsuccessful party for the GST or "consumption taxes paid" that are associated with its disbursements. However, the Respondent has extended this claim for GST to the assessable services claimed in its Bill of Costs. I note that the Respondent has not provided any proof that it has invoiced its client for GST. […]

[25] I also rely to the decision in *Carlile v Canada (Minister of National Revenue)*, [1997] FCJ No 885, at paragraph 26:

> […] Taxing Officers are often faced with less than exhaustive proof and must be careful, while ensuring that unsuccessful litigants are not burdened with unnecessary or unreasonable costs, to not penalize successful litigants by denial of indemnification when it is apparent that real costs were indeed incurred. […]

[26] In the absence of any supporting evidence or submissions from the Respondent that could have assisted me in determining the issue of taxes, I have not included any HST for the Respondent's assessable services.

V. Conclusion

[27] For the above reasons, the Respondent's Bill of Costs is assessed and allowed at $2.560.00. A Certificate of Costs will be issued.

"Audrey Blanchet"
Assessment Officer

Ottawa, Ontario
January 13, 2023

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-752-21
STYLE OF CAUSE:	MICHAEL CHRISTOFOROU v JOHN GRANT HAULAGE LTD.

MATTER CONSIDERED AT TORONTO, ONTARIO WITHOUT PERSONAL APPEARANCE OF THE PARTIES

REASONS FOR ASSESSMENT BY:	AUDREY BLANCHET, Assessment Officer
DATED:	JANUARY 13, 2023

WRITTEN SUBMISSIONS BY:

Nikolay Y. Chsherbinin	FOR THE APPLICANT
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