Date: 20070823

Docket: T-105-06

Citation: 2007 FC 849

BETWEEN:

D. JOHN HUSBAND

Applicant

and

THE CANADIAN WHEAT BOARD

Respondent

ASSESSMENT OF COSTS – REASONS

Charles E. Stinson
Assessment Officer

[1] The Court dismissed with costs this application for judicial review in respect of a letter from the Respondent characterized by the Applicant as denial of an export licence for feed barley. I issued a timetable for written disposition of the assessment of the Respondent's bill of costs which claimed some counsel fees at the maximum values available in the Tariff and others at the minimum values.

I. The Respondent's Position

[2] The Respondent argued that its success in rebutting all of the Applicant's arguments warrants allowance of the fair and reasonable costs claimed. The Court's decision discloses complex

issues involving a thorough analysis of the enabling legislation for the Canadian Wheat Board, relevant regulations and export licensing policies and procedures. As well, there were constitutional, *Charter* and *North American Free Trade Agreement* issues. All of this necessitated significant research and preparation time for both written materials and oral preparation. This proceeding had serious implications for the Respondent's exports licensing scheme and would have substantially affected its operations far beyond the Applicant's single matter.

[3] The Respondent noted that the hearing took place in Regina for the convenience of the Applicant. The claim of the maximum 5 units ($120.00 per unit) under item 24 for the travel time of counsel from Winnipeg is modest. The circumstances of this case warranted higher costs than those presented in the bill of costs, but the Respondent has limited its claims to a fair and reasonable amount of $5,294.70, in deference to the fact that the Applicant is a Canadian grain farmer.

II. The Applicant's Position

[4] The Applicant argued that the record indicates that he had not intended to assert a constitutional challenge to the validity of the Respondent's enabling legislation and regulations. He intended only a challenge of the manner of the Respondent's application of its export licensing powers under the legislation. The *Canadian Bill of Rights*, S.C. 1960, c. 44, s. 2(e), reprinted in R.S.C. 1985, App. III, provides that "no law of Canada shall be construed or applied so as to … deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations." *Authorson v. Canada (A.G.)*, [2003] 2 S.C.R. 40 at 60, held that s. 2(e) applies only to guarantee the fundamental justice of proceedings

before any tribunal or administrative body that determines individual rights and obligations. The Applicant argued that this guarantee of proceedings means something beyond simple access to the Federal Court.

[5] The enabling legislation for the Respondent makes it a federal government tribunal or administrative body without a mandate to determine individual rights and obligations. The fundamental difference between administrative tribunals and courts was defined in *Ocean Port Hotel Ltd. v. British Columbia (General Manager Liquor Control and Licensing Branch)*, [2001] 2 S.C.R. 781 at 794, i.e. superior courts are constitutionally required to have objective guarantees of both individual and institutional independence whereas administrative tribunals are created precisely to implement government policy. The Applicant argued that the judicial review hearing in the Federal Court was a proceeding before a tribunal that determines individual rights and obligations, but the request to the Respondent for an export licence was not because there is no mandate for the Respondent as a human rights administrative tribunal. That is, the judicial review hearing was a right guaranteed to the Applicant by the *Canadian Bill of Rights*. The term "guarantee" referred to by the Supreme Court of Canada means that costs are the responsibility of the federal government and to be assessed at nil dollars. The Applicant argued that case law and the equality rights asserted in the *Canadian Bill of Rights* means that costs should be assessed at nil dollars. The Court did not award costs in *Jackson v. Canada (A.G.)*, [1997] F.C.J. No. 1603 (F.C.T.D.), a proceeding for judicial review very similar to the Applicant's case. *R. v. Drybones*, [1970] S.C.R. 282 at 297, held that the *Canadian Bill of Rights*, s. 1(b), means that no individual is to be treated more harshly than another under a law of Canada.

[6] The Applicant argued that the 3 units and 1 unit claimed respectively for items 10 (preparation) and 11 (attendance on a pre-hearing conference) are not valid costs. The award of costs did not include the requisite direction of the Court to permit the 5 units claimed under item 24 for travel by counsel to the hearing venue. As well, proceedings for judicial review further to national legislation should be available in any province free of the burden of assessed cost for travel from another province.

III. Assessment

[7] I did not outline the Applicant's submissions on the Rule 410(2) requirement that the party bringing a motion for an extension of time shall bear the associated costs because the Respondent did not present a claim for any such costs. I give no weight to the Applicant's submissions concerning assessment at nil dollars because I view them as a challenge to the Respondent's entitlement to assess costs at all. The Court has already exercised its Rule 400(1) discretion for costs in favour of the Respondent. My jurisdiction flowing from Rule 405 does not permit me to interfere with that exercise of discretion and instead requires that I determine a dollar amount for said award of costs.

[8] I disallow item 24 further to my conclusion in *Marshall v. Canada*, [2006] F.C.J. No. 1282 (A.O.) at para. [6], that there must be a visible direction by the Court to the assessment officer specifically authorizing fees for the time of counsel in transit. Such a direction is not however necessary to assess the associated travel disbursements. A case conference is part of litigation as a

whole. The judgment for costs therefore creates an entitlement for the associated items 10 and 11, which I allow at the minimum values claimed.

[9] I concluded at para. [7] in *Starlight v. Canada*, [2001] F.C.J. No. 1376 (A.O.) that the same point in the ranges throughout the Tariff need not be used as each item for the services of counsel is discrete and must be considered in its own circumstances. As well, broad distinctions may be required between an upper versus lower allowance from available ranges. I agree that this litigation posed serious implications for the operations of the Respondent beyond the single interest associated with this Applicant. I allow item 2 (preparation of hearing record/available range = 4-7 units) at 6 units. I allow items 13 (preparation for hearing) and 14(a) (attendance at hearing) at the maximum 5 units and 3 units per hour respectively as claimed. I allow item 26 (assessment of costs) at the minimum 2 units claimed. Claimed disbursements and GST of $75.00 and $4.50 respectively are allowed. The Respondent's bill of costs, presented at $5,294.70, is assessed and allowed at $ 4,531.50.

"Charles E. Stinson"
Assessment Officer

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-105-06
STYLE OF CAUSE:	D. JOHN HUSBAND v. THE CANADIAN WHEAT BOARD

ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF THE PARTIES

REASONS FOR ASSESSMENT OF COSTS:	CHARLES E. STINSON
DATED:	August 23, 2007

WRITTEN REPRESENTATIONS:

Mr. D. John Husband	FOR THE APPLICANT (self-represented)
Mr. Thor Hansell	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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