

Date: 20070924

Docket: T-1875-06

Citation 2007 FC 950

BETWEEN:

AYR MOTOR EXPRESS INC.

Applicant

and

MERRILL MCKAY

Respondent

ASSESSMENT OF COSTS- REASONS

W. DOYLE
Assessment Officer

[1] The Applicant, Ayr Motor Express Inc., made an application for judicial review seeking to have the September 28, 2006 Adjudication of a Complaint of Unjust Dismissal under Division XIV, Part III of the *Canada Labour Code* by Adjudicator, Christine A. Fagan, Q.C. quashed with costs to the Applicant. The matter was heard and Mr. Justice Barnes issued a May 17, 2007 Reasons for Judgment and Judgment. The Judgment reads:

“...this Court adjudges that this application for judicial review is dismissed with costs payable to the respondent under Column IV”.

[2] On August 13, 2007 the respondent filed their Bill of Costs with a supporting affidavit requesting the assessment be done in writing without personal appearance.

[3] On August 14, 2007 I issued a timetable for reply and rebuttal materials. To date the plaintiff has not filed a written reply. I am now prepared to assess the costs.

[4] I reviewed the file, the court database abstracts and the Bill of Costs in these proceedings. The Bill of Costs was presented claiming allowable fees under items 2, 4, 13, 14, 25, 26 and 27 with what appear to be real time represented in number of hours and percentages of hours in the column typically reserved for numbers of units. Additionally, under column for the total claimed, the amount appears to have been calculated by taking these measurements of time and multiplying by a unit value of \$100.

[5] Prior to beginning the assessment of the Bill of Costs, I draw counsel's attention to the joint memoranda dated April 26, 2007 in which the Chief Justice of the Federal Court of Appeal and the Chief Justice of the Federal Court announced that the unit value for counsel fees in relation to assessable services pursuant to Tariff B would be 120. The memoranda setting the unit value annually can be found on the courts' websites: www.fca-caf.gc.ca (Federal Court of Appeal) and www.fct-cf.gc.ca (Federal Court).

[6] Since the unit value of the tariff effective April 1, 2007 was established at 120, the amounts in the Bill of Costs will be adjusted accordingly from 100 per unit to 120 per unit.

[7] Turning now to the items claimed under assessable services counsel has requested the following: item 2 – preparation and filing of respondent's record for judicial review and related materials including, but not limited to: legal research, meeting with client, and preparing memorandum of fact and law and record for judicial review (9 units), item 4 – preparation and filing of uncontested motion for extension of time within which to file respondent's record for judicial review (0.8 units), item 13 – counsel fee: preparation for hearing, including correspondence, legal research and other services not otherwise particularized in this tariff (1.9 units), item 14 – counsel fee: to first counsel, per hour in Court (2.3 units), item 25 – services after judgment not otherwise specified: meeting and following up with client (1 unit), item 26 – assessment of costs (4.3 units), item 27 – consultations with client (2.3 units) for a total of 21.6 units.

[8] The Court directed costs payable to the respondent under column IV. I will now present the allowable range under Column IV of Tariff B of the *Federal Courts Rules* for each claimed assessable service followed by a brief explanation of my reasoning in regard to the units I allowed for the items claimed in this Bill of Costs.

[9] The allowable range for item 2 in Tariff B of the *Federal Courts Rules* under column IV is five to nine; since this matter appears straightforward I will allow five units as opposed the requested nine. The allowable range for item 4 is two to five, however, here upon review of the file there does not appear to be have been any motion filed with the court, the units for item 4 are therefore reduced to zero. The allowable range for item 13 is three to nine and for the same reasoning stated in item 2, I will allow the units found at the lower end of column IV, three units will be allowed. The allowable range for item 14 is two to four and here upon review, I note in the abstract of hearing the court registrar has recorded that the hearing began at 9:30am and concluded at 10:50am which is the equivalent of approximately 1.5h ($1.5 \times 2 \text{ units} = 3$) therefore, three units will be allowed for this item. The allowable number of units for item 25 is one unit, item 25 was claimed at one unit and will be allowed as claimed. The allowable range for item 26 is three to seven - since the assessment was done in writing and was not contested, three units will be allowed. Item 27 has an allowable range of one to four - however, respectfully, I believe item 27 is meant to indemnify counsel for extraordinary items not covered elsewhere in the Tariff, therefore zero units will be allowed for item 27.

[10] In summary, for the reasons provided in the preceding paragraph, the 21.6 units claimed for assessable service has been reduced to 15 units.

[11] Based on the foregoing, the total assessable service amount will be reduced from the requested \$2,160.00 to an allowed total assessable service amount of \$1,800.00.

[12] Disbursements, being established by the affidavit of Geraldine Catherine Noiles, are awarded in the amount of \$99.67.

[13] The Bill of Costs presented at \$2,259.67 is accordingly assessed and allowed in the amount of \$1,899.97. A certificate is issued in the Federal Court proceeding for \$1,899.97.

"Willa Doyle"
Assessment Officer

Fredericton, New Brunswick
September 24, 2007

FEDERAL COURT
NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-1875-06

STYLE OF CAUSE: AYR MOTOR EXPRESS INC. – and-
MERRILL MCKAY

ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF
THE PARTIES

ASSESSMENT OF COSTS -
REASONS BY: Willa Doyle, Assessment Officer

DATED: September 24, 2007

WRITTEN REPRESENTATIONS BY:

Christopher R. Lavigne FOR THE RESPONDENT

SOLICITORS OF RECORD:

Hazen F. Calabrese Law FOR THE RESPONDENT
Fredericton, NB