

Date : 20110221

Docket: T-1029-92

Citation : 2011FC197

JOSEPHINE E. MARSHALL

Plaintiff

-and-

**HER MAJESTY THE QUEEN, the PUBLIC SERVICE ALLIANCE OF CANADA,
and the UNION OF PUBLIC SERVICE EMPLOYEES**

Defendants

ASSESSMENT OF COSTS – REASONS

**Willa Doyle
Assessment Officer**

[1] November 1, 2005 in Halifax Nova Scotia, the Honourable Mr. Justice Blais (as he then was) heard two interlocutory motions brought by the defendants for summary judgment dismissing the above noted action.

[2] January 19, 2006 The Honourable Mr. Justice Blais (as he then was) issued his Reasons for Order and Order. The Order read as follows:

“THIS COURT ORDERS THAT:

1. **The interlocutory motion for summary judgement be granted;**
2. **The plaintiff’s amended statement of claim is struck out.**
3. **The plaintiff’s action is dismissed;**
4. **The defendants shall file and serve their written submission on costs no later that 15 days from the date of this order;**
5. **The plaintiff shall file and serve her written submissions on costs no later that 15 days after the filing of the defendants’ submission; and**
6. **The defendants are allowed 5 days after the filing of the plaintiff’s submission to file a reply, if necessary.”**

[3] September 8, 2006 Mr. Justice Blais (as he then was), following receipt and subsequent analysis of both the defendants’ and the plaintiffs’ submissions on costs issued his Reasons for Order and Order. The Order addressed topics listed under the following subtitles: relevant facts, analysis for costs, particular circumstances, disability, delay, written offers, and conclusion. The Order issued read as follows:

“THIS COURT ORDERS:

The defendants are awarded their costs in accordance with the regular column of the Tariff B (Column III). ”

[4] December 17, 2010 the defendants’ filed their bill of costs and affidavit of disbursements in the registry of the Federal Courts in Halifax, Nova Scotia. The cover letter confirmed that no response from the plaintiff was received when an attempt to negotiate a settlement of this claim was made. The letter also requested that the assessment be by way of written submissions. I issued a timetable to the parties regarding service and filing of reply and / or rebuttal materials, if any. The timelines were lengthened in this instance with due consideration of the *Federal Courts Rules*

provision for the “Christmas recess”. (the period beginning on December 21 in a year and ending on January 7 of the following year). Those timelines are now expired.

[5] February 3, 2011 the Halifax registry received a letter from the defendant stating:

“...We respectfully request that, if submissions are not served and filed by Ms. Marshall by the close of business on Friday February 18, 2011, the Assessment Officer proceed to consider the matters on the basis of the material files, and issue a decision....”

I took this letter to indicate the defendants’ awareness of the passage of their January 31, 2011 deadline regarding their final opportunity to have served and filed on all parties any rebuttal materials they may have wished to place before the Court for consideration. There was never any request to extend the January deadlines for submissions.

[6] Since the plaintiff has not presented any challenge to the amounts claimed by the defendants, either in the assessable services section or in the claimed disbursement section of the bill of costs, I must continue based on the information in the Court file. As is often stated, the assessment officer is not to advocate for a party when they choose not to contradict nor challenge items claimed. It is the role of the assessment officer to assess the costs claimed in accordance with criteria established in Part 11 – Costs of the *Federal Courts Rules*.

[7] I reviewed material on the voluminous file as well as each of the items individually listed in the defendants’ bill of costs; both the assessable services and the disbursements claimed. In the affidavit of disbursements, I noted that the defendants state that because this case has been ongoing

for some time (May 6, 1992) they would be claiming only those disbursements from the year 2000 onward. I will begin with the assessable services requested at \$12,430.00.

[8] There is an item 5 entry listed as *Motion record; filed July 29, 1999 Re: Extension of Time No Personal Appearance*. This item will be reduced from the requested three units to zero. No units may be awarded for this item since the Order is silent with regard to costs. The August 20, 1999 Order about that matter states:

“...My direction of June 28, 1999 is varied by the addition of sixty (60) days to each of the dates stipulated for performance in the within time line.”

[9] Similarly, there is another item 5 entry listed as *Motion Record; filed September 16, 2003 Re: appeal of decision of Aronovitch dated August 20/03*. The September 29, 2003 Order about that matter states:

“...This motion is denied. If the parties cannot agree as to the costs of the motion, these may be separately spoken to.”

My review of the file does not reveal any such specific submissions about that item therefore no amount may be claimed. This claim for three units is reduced to zero.

[10] Additionally, in the assessable services section, there is an item 6 entry listed as *Appearance: April 15, 2004 3hrs*. Upon review of the court file, the duration reported by the registry officer in attendance was entered as two hours forty-seven minutes. Therefore, that claim

will be reduced from the requested nine units to an assessed and allowed eight and one-quarter units. In summary, and for the above stated reasons, the total assessable services claimed at \$12,675.00 are reduced to \$11,797.50.

[11] In regard to the claimed disbursements, the item listed as *Discovery Services* at \$3,469.17 is a statement of account provided at tab F as an exhibit to the December 2, 2010 affidavit of Annette Caines. Upon review of that exhibit, I see that the actual amounts invoiced for the discoveries were \$1,744.72 and \$1,655.14 respectively. The statement shows a total due and that total also includes an additional \$69.31 that appears to represent interest (Aug-02) – this interest amount is not allowed. All other disbursements are allowed as requested and established by the sworn affidavit of Annette Caines complete with attached exhibits. The total for disbursements requested at \$6,311.31 is now assessed and allowed at \$6,242.00.

[12] The bill of costs presented at \$18,986.31 is assessed and allowed in the amount of \$18,039.50. A certificate is issued in the Federal Court proceeding for \$18,039.50.

“Willa Doyle”

Willa Doyle
Assessment Officer

Fredericton, New Brunswick
February 21, 2011

FEDERAL COURT
NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-1029-92

STYLE OF CAUSE: JOSEPHINE E. MARSHALL –and-
HER MAJESTY THE QUEEN, the PUBLIC SERVICE
ALLIANCE OF CANADA, and the UNION OF PUBLIC
SERVICE EMPLOYEES

ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF THE
PARTIES

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

DATED: February 21, 2011

WRITTEN REPRESENTATION BY:

FOR THE PLAINTIFF

James Gunvaldsen-Klaassen THE DEFENDANT

SOLICITORS OF RECORD:

FOR THE PLAINTIFF

Myles J. Kirvan
Deputy Attorney General of Canada

FOR THE DEFENDANT