

Date: 20021210
Docket: 98-3846(IT)I

BETWEEN:

SPORTS NAUTIQUES CARLETON INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR TAXATION

The Registrar, T.C.C.

[1] This taxation was heard via telephone conference call. It follows the judgment of the Honourable Judge Archambault dated July 6, 2000, in which he stated, [TRANSLATION] “The Court awards the Appellant costs \$500 plus all disbursements (especially travel expenses and photocopy expenses, but not professional fees for counsel) incurred for this hearing”.

[2] Jean-Paul Henry (agent) represented the Appellant and Alain Gareau appeared on behalf of the Respondent.

[3] The bill of costs is reproduced as follows:

Mailing expenses for 1998-99 and 2000:	\$31.20
Travel expenses:	
- Carleton – Maria (32 km) eight (8) times at \$11.20 each for 1998	\$89.60
- Carleton – Maria (32 km) ten (10) times at \$11.20 each for 1999	\$112.00
- Carleton – Maria (32 km) ten (8) times at \$11.20 each for 2000	\$89.60
- For appearing in Court (176 km) twice	\$123.20
- Meal expenses (2 meals while present at Court)	\$25.00
- Photocopying expenses for 1998-99 and 2000	\$175.00
- Compensation for 2 days of work lost while present at Court	\$150.00

P.S.: Add the GST and QST for the expenses listed above, where applicable.

- Expenses for assistance in this file (receipt no. 6894) for 1998	\$4,558.20
- Expenses for assistance in this file (receipt no. 7835) for 1998	\$1,380.30
- Expenses for assistance in this file (receipt no. 10480) for 1999–2000	\$3,669.30

[4] The parties are in agreement on one item of the bill of costs: the travel expenses claimed by the Appellant to get to and from the hearing. As a result, I award the amount claimed: \$123.20.

[5] I will address the other items in the same order as they appear on the bill of costs.

Mailing expenses for 1998–99 and 2000: \$31.20

[6] Mr. Henry states this item is for the sending of income tax returns to Revenue Canada via registered mail for the years 1993, 1994, 1995, 1996 and 1997 with all the receipts. He says he sent at least three or even four envelopes, which cost approximately \$7.00 each.

[7] Counsel for the Respondent argues that because these expenses were related to communications with Revenue Canada and not with the Court, they could not be claimed as appeal-related expenses. He also argues that Mr. Henry did not submit any receipts to justify this amount so it should not be admitted. Mr. Henry responds that Revenue Canada requested the files and receipts after the appeal was filed and that, as a result, the request is related to the appeal before the Court.

[8] During the taxation, Mr. Henry undertook to provide the receipts for the expenses to the Court and the Respondent. However, as the Court did not receive these documents, I have no choice but to disallow this disbursement. Counsel for the Respondent has the right to receive the copies of the receipts for the disbursements claimed by the Appellant.

[9] The following three items can be grouped together as they relate to the travel expenses from Carleton to Maria in 1998, 1999 and 2000. Mr. Henry says that they were visits to the accountant to prepare for the hearing. Mr. Gareau argues that because the travel was to see the accountant, the Appellant could not claim this as an expense related to the appeal. He insists that Mr. Henry did not begin preparations for a hearing held in 2000 in 1998.

[10] I agree with Mr. Gareau. Consultations with an accountant requiring 26 trips over a three-year period for a hearing that lasted one day seems excessive. I will exercise my discretionary power and award 5 trips at \$11.20 each, for a total of \$56.00, and I disallow the sum of \$235.20.

[11] The next item is with regard to the travel expenses to attend the appeal hearing that counsel for the Respondent has accepted as they appeared above.

[12] The following item is with regard to the \$25.00 claim for the meals of Mr. Henry meals, as the agent for the Appellant, for the two days he was in Court. Counsel for the Respondent accepted \$12.00 given that on the second day, the hearing only lasted 30 minutes and Mr. Henry had more than enough time to go home and eat. The amount suggested by Mr. Gareau is one regularly claimed by public servants travelling in the name of Her Majesty.

[13] Mr. Henry says he could have claimed his breakfast but that he did not do so and, as a result, the total amount should be awarded. He had to leave his home an hour and twenty minutes before the hearing started, which was at 9:30 a.m. on the first day and 9:00 a.m. the second day. I do not find that \$25.00 for meals for two days is excessive and award the amount as claimed.

[14] The next item in dispute is the amount of \$175.00 for photocopies. Mr. Henry claims these photocopies were necessary in preparing the case and preparing for the actual hearing. He did not submit any receipts to justify the quantity of photocopies made nor the actual expenses incurred by the Appellant.

[15] Mr. Gareau argues that Mr. Henry had to provide the receipts showing the number of photocopies made and also describe the nature of the documents photocopied. However, Mr. Gareau recognizes that the photocopies were certainly made for the hearing and that they were necessary. I asked Mr. Gareau what amount he would consider to be reasonable for a one-day hearing and he suggested half of the amount claimed.

[16] I agree with counsel for the Respondent for pointing out that Mr. Henry should have submitted the receipts showing what documents were photocopied, the number of copies made and the actual costs incurred.

[17] Subsection 1(2) of Tariff B reads as follows: "...the cost of obtaining copies of any documents or authorities prepared for or by a party for the use of the Court and supplied to any opposite party, which in the absence of proof to the contrary, [my emphasis], will be presumed to be 20 cents per page." Relying on subsection 1(2) of Tariff B, I will exercise my discretionary power and award the amount of \$125. After examining the file and the number of copies presented at the hearing, I consider this to be a reasonable amount.

[18] The next item is the claim for \$150.00 in lost wages. This item was claimed in previous assessments and was not awarded. See *Stacey v. The Queen*, [2000] 2 T.C.C. 2677, *Scarlett v. The Queen*, [1999] 1 T.C.C. 2295 and *Tippet v. The Queen*, [1996] G.S.T.C. 74.

[19] The final three items on the bill of costs were together as one item. During the taxation, Mr. Henry, on behalf of the Appellant, amended the amounts claimed as follows: receipt 6894 is reduced to \$270.00; receipt 7835 is reduced to \$600.00; and receipt 10480 is reduced to \$190.00.

[20] Mr. Henry contends that the revised amounts were disbursements made to the accounting firm handling the financial and tax situation on behalf of the Appellant and providing support for the appeal before the Court. He submits the disbursements must be awarded because they are supported by receipts and cancelled cheques and

because the Court's judgment awards the disbursements [TRANSLATION] "but not professional fees for counsel".

[21] Counsel for the Respondent submits that none of these amounts should be awarded because the Court already decided the Appellant could not claim the professional fees paid to his counsel. He claims that this includes the counsel's disbursements.

[22] Counsel for the Respondent submits that receipts 6894 and 7835 were issued and reimbursed before the Notice of Appeal was filed and, as a result, they should not be admitted. The Notice of Appeal was filed October 21, 1998. Only the costs incurred following the filing of the Notice of Appeal should be granted. I agree with counsel for the Respondent and disallowed these two receipts in the amount of \$870.00.

[23] Receipt 10480 is dated August 24, 2000; it outlines the professional services provided to Sports Nautiques in preparation for the hearing. However, the initial amount claimed by the Appellant was reduced to \$190.00 for only the disbursements claimed by the accountant. It would seem that the disbursements of \$190.00 claimed in this receipt are related to the preparation for the hearing.

[24] Counsel for the Respondent submits that the only disbursement that should be awarded is the receipt for the photocopies. I do not agree; I examined the other disbursements and consider them to be reasonable, and I award them as presented for a total of \$190.00.

[25] The bill of costs in the amount of \$10,403.40 (reduced to \$1,855.60 by the agent for the Appellant during the taxation hearing) is taxed and I award the amount of \$519.20. A certificate will be issued for \$519.20.

Dated at Ottawa, Canada, this 10th day of December 2002.

“R.P. Guenette”

The Registrar

Translation certified true
on this 30th day of March 2008.
Bella Lewkowicz, Reviser