

MEDIATION AND ARBITRATION BOARD
Under the Petroleum and Natural Gas Act
#114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3

Date: July 30, 2001

File No. 1448

Board Order No. 335A

BEFORE THE MEDIATOR:

IN THE MATTER OF THE PETROLEUM AND
NATURAL GAS ACT BEING CHAPTER 361 OF
THE REVISED STATUTES OF BRITISH
COLUMBIA AND AMENDMENTS THERETO:
(THE ACT)

AND IN THE MATTER OF A PORTION OF
DISTRICT LOTS 1499, 1293 AND 1966 WITHIN
UNIT 1 BLOCK 6, 94-A-15 RIVER DISTRICT
WEST OF THE SIXTH MERIDIAN
(DL 1499, 1293 & 1966 W6M)
(THE LANDS)

BETWEEN:

CANADIAN NATURAL RESOURCES LTD.
BOX 6926, STATION "D"
CALGARY, AB
T2P 2G1
(THE APPLICANT)

AND:

LAWRENCE PATRICK RYAN
8932 117TH AVENUE
FORT ST. JOHN, B.C.
V1J 6P9
(THE RESPONDENT)

ARBITRATION ORDER

BACKGROUND:

An Arbitration Hearing in this matter was held at the offices of the Mediation and Arbitration Board (Board) in Fort St. John on 13 July 2001. Mr. Barry Taylor, Surface Landman for the Applicant, Canadian Natural Resources Ltd. (CNRL) appeared, as did the owner of the surface rights Lawrence Patrick Ryan.

The Panel of the Board consisted of Mavis Nelson, Julie Hindbo and Rod Strandberg. Margo Boyle, a Land and Resource Management student at Northern Lights College attended as an observer.

THE APPLICATION

By application dated 14 February 2001, the Applicant applied for Permission to enter the lands of the Respondent, described as District Lots 1499, 1293 (except the South 80 feet) and 1966, Peace River District for the purpose of surveying, constructing, reclaiming and testing of a flow line to connect a number of wells in the area.

Board Member Frank Breault conducted mediation in this matter on 8 March 2001. Although the issues between the parties could not be resolved at the mediation, a Right-Of-Entry Order was granted to the Applicant upon payment of the sum of \$ 15,000.00 by the Applicant to the Respondent. The Mediator's Order contained other conditions.

Although there was a delay in payment by the Applicant, as of the date of the Arbitration the money had been paid.

POSITION OF THE PARTIES

A APPLICANT

The Applicant wished to commence construction of the flow line on or about 17 July 2001. As initially contemplated, the project would impact 8.66 acres of the Respondent's land. Additional temporary workspace would be required for the project. Additionally, there would be crop loss for the land, which was used for the production of barley. The Applicant was prepared to include an amount for crop loss in the award of the Board, either calculated at 100% crop loss for the first two years and 50% crop loss for the third year. Alternatively, to await a determination of the actual crop loss to be dealt with at a subsequent time.

The Quantum of compensation offered by the Applicant was;

1. \$ 950.00 per acre for the land affected by the flow line,
2. \$ 400.00 for the temporary work space in the construction of the flow line and
3. crop loss at \$ 600.00.
4. The total of the initial offer by the Applicant at the Arbitration was \$ 9,927.00.

B RESPONDENT

The Respondent wished the flow line to be constructed along a straighter route than that proposed by the Applicant to reduce the future consequences and effect of the flow line on his farming operations. He wished the flow line to be buried to a minimum depth of 48 inches because he tills his land to a depth of 36-38 inches. He requested that in areas of peat that there be a minimum covering of two feet of clay.

The Respondent calculated between eight and nine acres of crop loss would occur as a result of the flow line construction. He advised that he purposely had not planted crops over the area to be affected by the flow line for this crop year, as construction of the flow line would have rendered this work superfluous. He advised that the land was planted with canola and barley with timothy under seed and that in the 2002 crop year he would expect a crop of timothy. He calculated his crop loss at \$ 2,382.00 based on his view of expected yields.

The Respondent also sought compensation for the surface rights impacted by the construction or moving of fences on the surface and compensation for his time and the inconvenience of dealing with the Applicant, surveyor and others involved in the project and attending the Mediation and Arbitration Hearings in this matter. The Respondent felt that the amount he had received from the Applicant pursuant to the Mediator's Order was fair in the circumstances.

DISCUSSION

The Applicant indicated that it had no difficulty changing the routing of the flow line. The Mediation and Arbitration Board had no jurisdiction to order the routing of the flow line. However, this award is predicated on the Applicant changing the routing of the flow line. This re-routing of the flow line, by agreement and with the consent of the parties, will eliminate some of the temporary workspace required in the construction of the flow line. Re-routing will result in 9.52 acres being impacted.

The parties appeared to be in substantial agreement on the estimated crop loss as a consequence of the construction of the flow line; both as to expected yields and commodity prices. The parties wish the Board to determine crop loss and to include it in the award. Should crop loss be more extensive than is currently anticipated then the parties are at liberty to either negotiate an additional award or to apply to this Board for an assessment of consequential damage.

The Board concludes that the Respondent is entitled to compensation for:

- the rights given up over 9.52 acres of his land,
- crop loss on Right-Of-Way and temporary work space,
- the nuisance and inconvenience associated with the construction of the flow line,
- the nuisance and inconvenience associated with the restoration of the surface upon the conclusion of construction, and
- compensation for his time, although it is the view of the Board that much of the time which he has spent in discussions with the Applicant related to matters other than this flow line.

DECISION

After carefully considering all of the evidence presented to it at the Hearing and the submissions of the parties and all of the factors enumerated under Section 21 of the Petroleum and Natural Gas Act, as well as all other additional factors which may be relevant in the specific facts of this case, the Board's award is as follows;

1. For granting of Right-Of-Way over surface rights;	\$ 9,044.00
2. For crop loss as agreed by the parties;	\$ 2,618.00
3. As compensation for work performed by the Respondent on the project;	\$ 300.00
4. For the time and expenses of the Respondent in participating in the Mediation and Arbitration process;	\$ 1,700.00
TOTAL AWARD	\$ 13,662.00

The Applicant had paid the Respondent \$ 15,000.00 pursuant to the order of the Mediator in this matter. Accordingly the Respondent has been overpaid by \$ 1,338.00.

Accordingly, the Board orders as follows;

IT IS HEREBY ORDERED THAT:

1. Pursuant to Section 20 (3) (b) of the Petroleum and Natural Gas Act, the order of the Mediator (Board Order 335M) is varied to provide that the Applicant has the right to construct the flow line which is the subject matter of his arbitration and to carry out all work necessary to bring the flow line into operation.

This Order does not authorize the Applicant to enter upon or pass over the Respondent's land for any other purpose once the flow line is in operation. Should the Applicant need to enter upon or pass over the Respondent's property at any time after the flow line is in operation it will require the permission of the Respondent or further order of the Board.

2. The Respondent will forth with, and in any event within 90 days of this Order, reimburse the Applicant the sum of \$ 1,338.00 and provide proof of reimbursement to the Board.
3. Nothing in this order is, or operates as consent, permit or authorization that by enactment, a party is required to obtain in addition to this order.

Dated at the City of Fort St. John, British Columbia, this 30th day of July 2001.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

Rod Strandberg, Chair

Mavis Nelson, Member

Julie Hindbo, Member