

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. 1449

Board Order No. 341ARR

BEFORE THE ARBITRATOR:

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 THE
NORTHEAST ¼ OF SECTION THIRTEEN, TOWNSHIP
EIGHTY-FOUR, RANGE SEVENTEEN, WEST OF THE
SIXTH MERIDIAN, PEACE RIVER DISTRICT,
(16-13-84-17 W6M)
(THE LANDS)

BETWEEN:

KEN THOMPSON
HOLLY THOMPSON
BOX 199
CECIL LAKE, BC
V0C 1G0
(THE APPLICANT)

AND:

CALPINE CANADA RESOURCES LTD.
10228 101ST AVENUE
FORT ST. JOHN, BC
V1J 2B5
(THE RESPONDENT)

RENT REVIEW ARBITRATION ORDER

BACKGROUND

A rental review arbitration was conducted in Fort St. John in the offices of the Mediation and Arbitration Board on 10th of April 2001 concerning land owned by Kenneth and Holly Thompson on which the Respondent Calpine Canada Resources Ltd. (Calpine) has a lease for a well site and access road. The well site in issue in this proceeding is known as "Encal et al Flatrock, 16-13-84-17".

The Applicant had sent the 60 day notice pursuant to Section 11 of the Petroleum and Natural Gas Act, requesting renegotiating of the rental conditions on 25 April 2000.

Present at the arbitration were the surface rights owners, Ken Thompson and Holly Thompson, and Kevin Aitchison representative of Calpine.

As the two parties were unable to reach a satisfactory annual payment, an Arbitration Hearing was scheduled for 10 April 2001.

The Arbitration Panel consisted of Mavis Nelson, Ivor Miller and Rodney Strandberg.

The current landowners Ken and Holly Thompson acquired the land in 1998. The last increase in rent was 26 October 1983. The current rent is \$ 1,600 per annum. The parties agree that any new rate of compensation will be retroactive to October 1998.

NATURE OF THE LAND

The land is farmland located north of the residence of the landowners in the Cecil Lake area. The lease site and access road occupy 3.208 acres, which is somewhat smaller than a normal lease. It appears that some of the leased surface area is, in fact, used by the Landowners so the lease affects less than 3.208 acres. The road and well site are fenced. It appears that the land around the access road and lease site can be farmed close to the fence. The land produces hay.

Some problems have been encountered with a power line, which limits the use of the ability for a combine to pass under it. It also appears that soil sterilant used around the well site may have migrated outside the lease area and remedial work may be required.

POSITION OF THE PARTIES

Applicant

The Applicant/landowners submitted that based on comparable well sites in the area including leases between Calpine and other surface right's holders that an increase was in order.

The landowners expressed concerns with run off traveling throughout the lease and onto their property and wish that a berm be constructed to avoid run off running through the well site downhill to their residence.

The landowners report that there is odour, not daily, and usually more problematic in the winter with the north winds. It is a sour gas well. It was suggested that the smell might not be sour gas but rather glycol.

The landowners suggested that they could produce alfalfa on the site and that the land immediately adjacent to the access road and lease site is of lesser productivity. Calpine agrees that because this is an older well site constructed when the soil conservation was not of great importance that there may be a need for remedial work on the soil outside of the access road and well site.

It appears that there have been minimal problems with the leased site. Generally there have been good relations between the landowner and Calpine.

The Applicants sought an increase in compensation suggesting a global amount for this access road and well site based on comparables in the area. Their suggestion was that annual rental of \$ 4,300.00 was appropriate. They also sought costs of the Arbitration in the sum of \$ 200.00.

Respondent

Mr. Kevin Aitchison, on behalf of Calpine, noted that this was a small lease, 110 metres by 110 meters, for a total lease and access road area of 3.208 acres, smaller than a standard lease in the area. He acknowledged that a white spot which appeared on photographs to the east of the lease appears to be contaminated land likely caused by soil sterilant used on the well site migrating onto the land. He advised that the power line which was causing difficulties with the combine may not be currently in use and that it could be taken out. He agreed that a berm could be constructed around the lease site.

Calpine calculated crop loss at \$ 96.25 per acre X 3.2 acres for a total of \$ 308.00. Calpine calculated compensation for nuisance and disturbance at \$ 757.34 based on a review of comparable awards of this Board for these heads of damage, on a per acre basis. Calpine also factored in other costs and factors associated with the existence of the lease at \$ 300.00 and made an offer of \$ 1,265.34 per annum. This would be a reduction in the total annual compensation from the existing amount.

Calpine quite frankly admitted that it did not expect that the Board would make an award in the amount it suggested. Calpine further conceded on the issue of costs if the parties were not putting forward reasonable proposals to the Board or making reasonable efforts to put forward an unacceptable proposal that the cost should be awarded to the successful party.

DISCUSSION

The Board is conscious of the fact that in a rental review it must take into account the factors enumerated in Section 21 of the Petroleum and Natural Gas Act, and that it is specifically directed to take into account the differences or changes in the value of money since the last time of the last rental renegotiating. This can be done by either applying the appropriate amount for inflation or to consider the rates being paid on comparable leases in the immediately surrounding community which would generally reflect the current value of money.

In considering the amount properly payable for this lease and after having carefully considered the submissions of the parties and the factors towards which this Board is directed to consider, this Panel concludes:

- that this lease is smaller than the normal sized lease,
- is able to be farmed very close to the fences,
- has not presented extreme inconvenience to the landowners,

- a portion of the lease and the lease road is not being used by Calpine and is being farmed by the landowners.

While all of the factors enumerated in Section 21, are of importance in making this determination the Board finds that the appropriate compensation to be paid for this lease is \$ 3,050.00 per annum commencing 26 October 1998 and payable on the 1st day of October of each year thereafter.

The Board also concludes that the landowners should receive the \$ 200.00 in costs, which were sought because it is the Board's impression that the approach of the landowners was in a more realistic approach in dealing with the question of the rental review and the fixing of compensation than the approach taken by Calpine.

DECISION

Therefore, it is the order of this Board as follows:

IT IS HEREBY ORDERED THAT:

1. Pursuant to Section 12 (3) of the *Petroleum and Natural Gas Act*, the rental provisions of the surface lease, paid by the Respondent to the Applicant are varied from \$ 1,600.00 per annum to \$ 3,050.00 per annum. The varied rental provisions are effective from October 26, 1998 and shall be due and payable on 1 October of each year until agreement of the parties or further order of this Board.
2. The payment of the retroactive increase of \$ 9,150.00 is due and payable as of the date of this order, less any annual payments the Respondent has made to the Applicant pursuant to the existing lease agreement.
3. The Respondent shall within sixty (60) days of this order, provide an accounting to the Board of the dates and amounts paid to the landowners since 26 October, 1998 to date and provide proof of payment of the difference between the amounts paid and the amounts due and owing pursuant to this order.
4. The Respondent will forthwith pay to the landowners the sum of \$ 200.00 and provide proof of that payment to the Board.
5. The Respondent will forthwith cause to be registered in the Land Title Office a certified copy of this order.
6. If the amounts ordered to be paid by the Board to the landowners are not paid within sixty (60) days, then the amounts due and owing to the landowners will accrue interest at the prescribed rates set out pursuant to the *Court Order Interest Act* for post judgement interest.
7. In the event that monies not paid as determined by this Board leave is granted to the landowners to make application to this Board and for such other relief as may be appropriate.
8. Nothing in this Order shall be considered to change, alter or amend and part of the existing lease between the Landowners and the Respondent except with respect to annual compensation payable.

9. Nothing in this order is or operates as consent, permit or authorization that by enactment a person 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

Rodney Strandberg, Chair

Ivor Miller, Member

Mavis Nelson, Member