

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

Date: December 13, 2001

File No. 1458

Board Order No. 347ARR

BEFORE THE BOARD:

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 SOUTH
EAST QUARTER OF SECTION 8, TOWNSHIP 85,
RANGE 17 WEST OF THE SIXTH MERIDIAN PEACE
RIVER DISTRICT
(2-8-85-17 W6M)
(THE LANDS)

BETWEEN:

CANADIAN NATURAL RESOURCES LIMITED
220 9900 - 100 AVENUE
FORT ST. JOHN, BC
V1J 5S7
(THE APPLICANT)

AND:

CLIFFORD KIMMIE
SHIRLEY KIMMIE
BOX 71
CECIL LAKE, BC
V0C 1G0
(THE RESPONDENT)

ARBITRATION ORDER OF THE BOARD

BACKGROUND

A rental review arbitration was conducted before a panel consisting of Frank Breault, member of the Board and Rodney J. Strandberg, Chair of the Board, in Fort St. John on 5 October 2001. Cliff and Shirley Kimmie (the "Applicants") appeared on their own behalf. Barry Taylor, surface land man, appeared for Canadian Natural Resources Ltd. (the "Respondent").

Nature of Arbitration

Before the Panel of the Board were applications for arbitration of renegotiation of compensation for two leases by the Respondent of land owned by the Applicants.

By Notice filed May 3, 2001 the Applicants requested a renegotiation and review of compensation for the South ½, 8-85-17, CNRL Forte Cecil 2-8-85-17 West of the 6th Meridian. The original lease between the Applicants and Morrison Petroleum Ltd. was dated October 29, 1993, as amended, providing for annual payments of \$3500.00 on August 20 of each year.

Prior to the hearing the members of the Panel attended at the well site to view it.

By agreement between the parties, in order to expedite the hearing, evidence for this arbitration and another was heard at the same time although two separate orders will be made. The Applicants presented their evidence on both applications followed by the Respondent's presentation regarding both well sites. At the conclusion of the arbitration the Panel reserved its decision. This is that decision.

Well Site 2-8-85-17

This well site is located on the southern boundary of the Applicants' property. The well, together with an access road affects 6.47 acres of the surface.

The well is accessed by an access road which follows the southern edge of the Applicant's property beside a road allowance. The well site is 120 by 102 meters square and is fenced. The well produces oil. On the lease are storage tanks and a pump jack. Any sour gas is recovered from the well. The well site is upwind of the home quarter of the Applicants but is not visible from their home.

The Applicants use their land for grazing purposes.

POSITIONS OF THE PARTIES

Applicants' position

The Applicants indicate that this well site has not been as great a problem as the other well site. The fence around it is tight and neat. Their main concern is with unauthorized persons entering the property along the access road. They indicate that they have asked the Respondent to ensure that gates at the road are locked at all times to prevent both the egress of cattle from their property and entrance by

unauthorized persons, primarily hunters, who believe that the access road gives them the right to enter the property.

The Applicants believe that, in addition to losing the productive grazing land as a result of the well site and access road, they are also losing cattle which are being shot by hunters. They are of the view that the Respondent is responsible for locking and maintaining the gates and posting signs that the road is a private road. It is unclear whether locking the gate on this road would reduce or eliminate this problem because there is an undeveloped road allowance immediately to the south of the access road which might be used by hunters to enter the property. The Applicants testified that they lose eight calves per year each with a value of \$700.00.

The Applicants presented comparable compensation amounts in Exhibits 7 and eight for leases in the immediate area. These comparable leases are recent. Their position is that appropriate compensation is be \$800.00 per acre for annual compensation of \$5,176.00. They also sought an award of interest on unpaid compensation from the date any revised compensation was deemed to commence to the date that payment is received.

Respondent's position

The Respondent acknowledged that the road allowed access onto the Applicants' land and recognized that cows and horses were able to walk over the cattle guard at the entrance to the access road.

The Respondent's view was that calculating compensation on a per acre basis was not the proper approach because the Petroleum and Natural Gas Act sets out criteria to be considered, some of which cannot be calculated on a per acre basis. It was further noted that compensation calculated on a per acre basis would overcompensate for larger well sites.

The Respondent relied on Exhibit #4, a summary of what it considered an assortment of comparable sites showing first year and annual compensation amounts, on both a total basis and on a per acre basis.

The Respondent calculated loss of profit based on a memorandum from Christopher M. Baker of Pioneer Land Services Ltd. to Encal Energy Ltd. dated April 15, 1999 which was Exhibit 5. This sets out a calculation for loss of grazing revenue which, if accepted, would provide a loss of profit of \$75.00 per acre for a total of \$485.25.

The Respondent calculated damage to land at \$250.00 per acre for a total of \$1617.50, allowed nuisance and disturbance at \$1,000.00 and proposed compensation for other factors of \$300.00 providing an offer less than the annual compensation currently paid. Following this analysis the Respondent felt that the existing annual compensation of \$3,500.00 was fair.

The Respondent felt that nothing should be awarded for any cattle loss and suggested a way to determine what loss, if any, was sustained by the Applicants.

Analysis

The Panel's responsibility is to determine what is appropriate compensation to the Applicants for continuing damages incurred resulting from the Respondent's activities in each year. Section 21 of the *Petroleum and Natural Gas Act* guides the Panel regarding the factors which the Panel may consider in determining compensation. Some of the factors are amenable to a form of mathematical calculation based on a unit such as an acre; some are intangible and not susceptible of easy calculation. Once all of the factors are given appropriate consideration the Board still has an overriding duty to consider whether the amount determined is proper. The Panel has the ultimate responsibility to exercise its discretion to adjust that which may be the outcome after a consideration of a consideration of all relevant factors to ensure that compensation is fair to both the surface and sub-surface right's holders.

The Panel does not accept that a calculation on a per acre basis is the appropriate means to determine compensation payable to land owners. The size of the lease is a factor to consider but it is just one of several factors which must be considered.

Of the comparable information provided to the Panel by the parties that provided by the Applicants is of greatest value to the Panel. These comparable are current and relate to property close to the Applicants' land. The information provided by the Respondent in Exhibit #4 does not provide the date on which the compensation was determined and is of little assistance in determining appropriate compensation. The locations chosen by the Respondent are not near the Applicants' land and deal with different uses of the land by the surface right's holder.

The Panel finds Exhibit #5, the memorandum from Pioneer Land Services of limited use. While this Exhibit makes reference to a meeting with officials of the BC Ministry of Agriculture and Food, nothing in it suggests that the figures arrived at by its author were reviewed, commented on or approved of by those officials. The calculations are based on assumptions of forage production, the amount of feed required to support one cow with a calf and an assertion regarding consumption. The value of private grazing for this area is based on anecdotal evidence. The calculation uses what the Panel regards as self-serving language, such as "extremely generous figures." The Panel is aware that the document was prepared for a specific audience and purpose. It cannot be viewed as objective or reliable. Information verified, accepted and approved of by neutral persons is of far greater use to the Panel.

The Panel also accepts that the Applicants have lost cattle, likely due to the unauthorized activities of hunters on the land. This is a loss arising from the activities of the Respondent on the leased land. The Respondent summarily rejected this claim. The Panel finds it likely that there has been a loss similar in nature to what was described. The absence of verifiable data suggests that the total amount claimed for this loss, 8 animals at \$700.00 per animal per year, may not be reliable. The Panel cannot reject a compensable head of damage merely because evidence which might serve to support or prove this loss is unavailable or may not be totally reliable. The Respondent agreed that if the locking of gates and the posting of signs led to a reduction in losses reported by the Applicants then the relationship between unauthorized presence of hunters on the property and loss of cattle might be established. While there is no jurisdiction to order that the Respondent keep gates locked, construct cattle guards which do not allow

cattle to leave the property or to post signs to prevent trespass, if these steps are taken and animal loss reduced then there may be an adjustment to compensation in the future.

Award

After having carefully considered the factors which the Panel is directed by statute to consider in Section 21 of the Act, the direction to consider the time value of money and after having heard and carefully considered the evidence and the submissions of the parties the Panel concludes that the appropriate compensation to be paid to the Applicants by the Respondent is \$4,500.00 per annum. This compensation will commence on the anniversary date of the lease immediately preceding May 3, 2001, the date the application for Arbitration was received by the Mediation and Arbitration Board. This is August 20, 2000. It appeared to the Panel that the renegotiation process had been delayed by changes in the ownership of the lease. The parties, however, were unable to agree on any commencement date earlier than that set by legislation.

IT IS HEREBY ORDERED THAT:

1. Commencing on August 20, 2000 and on the 20th day of August each and every year thereafter until altered by agreement of the parties or further board order the annual compensation payable to the Applicants by the Respondent for this lease is \$4,500.00;
2. In addition to the increased compensation the Applicants will receive interest on the difference between the new compensation and compensation already paid calculated at the rates of interest fixed by the Province of British Columbia as post-judgment interest as set out in Schedule #1 to this Order;
3. The Respondent will within thirty (30) days of this Order provide an accounting to the Board office of the payments made by it since the 20th day of August, 2000 together with confirmation that the revised compensation and interest have been paid and a calculation of the interest paid to the Applicants;
4. The Respondent will, within thirty (30) days, provide to the Board and the Applicants all documents to show the chain of ownership and assignment of this lease from Morrison Petroleum Ltd. to the Respondent.
5. Nothing in this Order varies any terms or conditions of the lease between the Applicants and the Respondent except the compensation payable by the Respondent to the Applicants.

Dated at the City of Fort St. John, British Columbia, this 13th day of December 2001.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

Rodney J. Strandberg, Chair

S. Frank Breault, Member