

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

Date: 21 May 2002

File No. 1442

Board Order No. 352A (Costs)

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 6, TOWNSHIP 80, RANGE 13 WEST OF THE SIXTH MERIDIAN PEACE RIVER DISTRICT
(THE LANDS)

BETWEEN:

AEC Oil & Gas
3700, 707-8TH AVENUE
CALGARY, ALBERTA
T2P 1H5
(THE APPLICANT)

AND:

FREDERICK SAMUEL NOBBS
BOX 156
BONANZA, ALBERTA
T0H 0K0
(THE RESPONDENT)

ARBITRATION ORDER

Nature of application

Arbitration was held before a panel of the Mediation and Arbitration Board consisting of Ivor Miller, Frank Breault and Rod Strandberg in Fort St. John on 19 November 2001, regarding an application by AEC Oil & Gas Ltd. (the Applicant) to register a flow line on, or have documents for a statutory Right-Of-Way executed for registration on title to property owned by the Respondent, Fred Nobbs.

Mr. Dellow appeared as counsel for the Applicant with Raymond Fromme, a land man working on behalf of the Applicant. Mr. Nobbs appeared on his own behalf.

At the conclusion of the Arbitration the Board asked the parties to provide further submissions. The sole remaining issue to be addressed is Mr. Nobbs's entitlement to cost under Section 27 of the *Petroleum and Natural Gas Act*.

Background

When Mr. Nobbs provided the additional information requested of him following the arbitration he included an account from Darryl Carter, Q.C. a lawyer in Grande Prairie for which he sought reimbursement. Mr. Nobbs advised that when Mr. Fromme first approached him, representing the Applicant, Mr. Fromme advised that the Applicant would pay for any fees encountered.

Mr. Dellow, counsel for the Applicant, took the position that Mr. Nobbs was not entitled to costs. Citing the British Columbia Supreme Court decision of *Viens*, the Applicant noted that the decision stood for the proposition that until the Mediation and Arbitration Board developed a scale of costs, that the Tariff of costs used in the Supreme Court would, by default, apply to proceedings before the Board. Rule 57 of the **Rules of Court** provide that a Plaintiff who brings proceedings in Supreme Court but whose claim is less than \$ 10,000.00 is not entitled to costs, only disbursements, in that proceeding.

In the Application before the Board both the amount sought by Mr. Nobbs and the amount ultimately awarded was less than \$ 10,000.00. Accordingly, the Applicant was of the view that Mr. Nobbs was not entitled to costs, either for the arbitration or the mediation which proceeded it.

Discussion

Proceedings before the Board are not the same as proceedings in Court. As an administrative tribunal attempting to balance the rights of the owners of the surface and the subsurface other considerations besides the quantum involved and the success of one part or another govern an award of costs. Costs are as important in the consideration of compensation as any other factor.

The Board rejects the position of the Applicant that the principles, which are applicable in Supreme Court, are of equal application in proceedings before the Board.

Part of the rationale for entitlement to costs in Supreme Court is that, for smaller claims. There is an alternative forum in which a remedy can be obtained, namely Small Claims Court. Depriving a party of costs for proceedings commenced in Supreme Court which were more properly brought in small claims court acts, in part, as a penalty for bringing proceedings in the wrong forum.

In this case, it was the Applicant, and not the Respondent, who made this application. Accordingly, the Applicant chose the forum to deal with this matter. Additionally, there is no other alternative forum available to deal with the issues dealt with in this matter. Therefore, it would be an illogical conclusion for the Board to reach that the Respondent in this case should be deprived his costs.

The Board does not accept that the Applicant is responsible for any of the account of Darryl Carter, Q.C. There is no evidence that this account was paid or intended to be paid by Mr. Nobbs. Mr. Carter appeared neither at the mediation nor the arbitration in these matters.

Mr. Nobbs is entitled to be compensated for his time and out of pocket expenses of having been brought before the Board and attending both a mediation and arbitration as well as making submissions after the arbitration. If the factor of success is to be given any weight, then the award made by the Board exceeded the offer of the Applicant and, accordingly, Mr. Nobbs was entitled to have this process followed.

The Board awards Mr. Nobbs the sum of \$ 600.00 to compensate him for his time and out of pocket expenses necessarily incurred in dealing with the application brought before the Mediation and Arbitration Board by the Applicant.

IT IS HEREBY ORDERED THAT;

1. The Applicant will forthwith pay to the Respondent the sum of \$ 600.00.
2. The Applicant will within 30 days (20 June 2002) provide to the Board proof of this payment.
3. 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 25th day of May 2002.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

Rodney J. Strandberg, Chair

S. Frank Breault, Member

Ivor Miller, Member