

File No. 1750  
Board Order No. 1750-1

---

August 17, 2012

**SURFACE RIGHTS BOARD**

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS  
ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF  
SECTION 24 TOWNSHIP 87 RANGE 16 WEST OF THE 6<sup>TH</sup> MERIDIAN  
PEACE RIVER DISTRICT  
(The "Lands")

BETWEEN:

FRANK SCHLICHTING

(Applicant)

AND:

CANADIAN NATURAL RESOURCES LTD.

(Respondent)

---

**BOARD ORDER**

---

Heard by written submissions closing July 27, 2012.

---

[1] The applicant landowner, Frank Schlichting, seeks payment of his costs in relation to his application for rent review. The parties resolved the rent review during the Board's mediation process, but have been unable to resolve the claim for costs.

[2] The Board conducted two mediation sessions. Following the first mediation, Mr. Schlichting traveled to Fort St. John to meet with Ms. Scriba of CNRL to continue their discussions, but were unable to conclude an agreement. The Board conducted a second mediation during which the parties agreed on renewed annual rent but did not agree to Mr. Schlichting's costs.

[3] Mr. Schlichting sent CNRL an invoice for \$3,211.00 representing 61 hours of his time at \$50/hour and 140 km of travel at \$1.15/km. He provided Ms. Scriba with his notes itemizing the time spent and describing the activity engaged in. Subsequent email communication between the parties failed to produce any resolution of costs.

[4] Ms. Scriba argues CNRL cannot agree to the hours set out in Mr. Schlichting's notes as many are for issues unrelated to the rent review and are excessive or unreasonable. She agrees to the mileage claim and agrees to 13.5 hours commencing March 6, 2012 with the Board's mediation, for a total of \$836.00.

[5] Mr. Schlichting submits his claim is reasonable and notes that it does not include many expenses that could reasonably have been included such as for registered letters, postage, office expenses and cell phone use. He suspects his actual time spent is much greater than that claimed.

[6] Much of the submissions of both parties are directed at whether or not there was a prior agreement by CNRL to pay costs of \$2,500 representing 50 hours at \$50/hour. Mr. Schlichting argues there was no agreement but notes that CNRL was apparently prepared to accept 50 hours as reasonable at the time the offer was made. He explains the larger claim includes hours and travel costs incurred subsequently. Ms. Scriba argues CNRL had agreed to pay the \$2,500 claim contingent on receiving an itemized statement, and that upon review of the itemized statement they no longer accept the claim as reasonable. I find that interpretation is not born out by the email correspondence before me. The correspondence makes it clear that Ms. Scriba thought there had been an earlier agreement on costs, although there was not, and had in fact received the "ok" to pay that amount. The request for details came later, to support the larger claim.

[7] The Board has the discretion to require that a party pay all or part of another party's actual costs in connection with an application. "Actual costs" are defined in the *Petroleum and Natural Gas Act* and include actual reasonable expenses incurred by a party in connection with a Board proceeding, and an amount on account of the reasonable time spent by a party in preparing for and attending a Board proceeding.

[8] The reasonable time spent in connection with an application, will include time to prepare and file an application, communications and discussions with the other party and the Board in relation to the scheduling and resolution of the application, reasonable time spent on research and preparation for Board proceedings, and attendance at Board proceedings.

[9] I have reviewed Mr. Schlichting's itemization of his time. The time incurred prior to providing CNRL with Notice to Renegotiate, is not time incurred in connection with a Board proceeding and is not properly included in a claim for costs. I accept time spent in preparation to file a Notice to Renegotiate as the commencement of time spent "in connection with a Board proceeding". Most of the activities described in Mr. Schlichting's notes, with the exception of the claim for time spent in discussions with the OGC, I find are properly part of a claim for costs. While some of the entries lack detail making it difficult to determine whether the activity was either properly "in connection with a Board proceeding" or "reasonable", I find a claim for 50 hours in the circumstances of this case involving two telephone mediation sessions, an additional settlement meeting between the parties, and the preparation and research required to participate effectively in the proceedings, is not unreasonable. While Mr. Schlichting's original offer of \$2,500 included time not properly forming part of a claim for costs, his time incurred subsequent to that proposal is clearly time spent in connection with a Board proceeding.

[10] While I accept that Mr. Schlichting undoubtedly incurred disbursements other than that claimed for mileage for a single trip to and from Fort St John, in connection with filing and serving the application, in the absence of receipts, I am not willing to make an order for additional disbursements beyond the \$161.00 claimed and accepted by CNRL.

[11] I find CNRL should pay costs of \$2,661.00 calculated as follows:

50 hours x \$50/hr for time	\$2,500.00
Disbursements	<u>\$ 161.00</u>
Total	\$2,661.00

**ORDER**

The Respondent, Canadian Natural Resources Ltd, shall forthwith pay to the Applicant, Frank Schlichting, the sum of \$2,661.00 as costs pursuant to section 170(1)(a) of the *Petroleum and Natural Gas Act*.

DATED: August 17, 2012

FOR THE BOARD



---

Cheryl Vickers, Chair