

June 9, 2016

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
THE NORTH WEST $\frac{1}{4}$ OF SECTION 27 TOWNSHIP 81 RANGE 14
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(The "Lands")

BETWEEN:

Venturion Oil Limited

(APPLICANT)

AND:

Roy Ralph Juell

(RESPONDENT)

BOARD ORDER

Heard: by written submissions closing April 25, 2016
Appearances: Rick Williams, Barrister and Solicitor, for Venturion Oil Limited
J. Darryl Carter, Q.C., for Roy Ralph Juell

INTRODUCTION AND ISSUES

[1] This is an application for costs following the arbitration of two applications: the first, initiated by Venturion Oil Limited (Venturion), respecting compensation payable by Venturion to Mr. Juell arising from its use and occupation of Lands owned by Mr. Juell for the construction and operation of an access road to an existing wellsite (file 1848), and the second, initiated by Mr. Juell, asking the Board to amend the terms of the surface lease for the existing wellsite (file 1855). The Board accepted Venturion's submission with respect to compensation. In Mr. Juell's application, the Board ordered that the surface lease be amended as requested by Mr. Juell.

[2] Mr. Juell, seeks costs of \$29,527.75 in legal fees and disbursements and \$1,500 in personal costs for himself and his brother. Venturion submits that as success was divided the parties should bear their own costs. In the alternative, Venturion submits Mr. Juell's costs should be reduced to \$7,684.15 in legal costs and \$375 for personal costs.

[3] The issues are:

- a) Should Mr. Juell receive any of his costs of these proceedings, and
- b) If so, how much should he receive in costs?

BACKGROUND

[4] Venturion filed its application to the Board in January, 2015. Mr. Juell filed his application pursuant to section 164 of the *Petroleum and Natural Gas Act* in April, 2015. On April 17, 2015, the Board conducted a telephone mediation and on April 21, 2015

the mediator issued a right of entry order and made an order for payment of a security deposit and partial compensation. By letter dated August 6, 2015, the mediator refused further mediation and referred the applications for arbitration. The Board conducted an arbitration on October 28, 2015 in Dawson Creek.

[5] Mr. Juell has been represented throughout these proceedings by counsel. He and his brother attended the arbitration and gave evidence. Mr. Juell was not successful in his request for compensation, but was successful in his application asking the Board to amend the terms of the 1979 surface lease for the existing well site to make it clear that the surface lease did not cover using any of the land for a water source well or for the drilling of a new horizontal water injection well.

[6] On October 7, 2015 Venturion delivered an offer to settle the compensation issue, expressly reserving its right to bring the offer to the attention of the Board as part of any costs proceeding. Venturion advised that if Mr. Juell refused the offer and was awarded the same or less than the amount offered, it would take the position that no costs should be awarded. The Board awarded an amount less than the amount offered by Venturion in its offer to settle.

ANALYSIS

Should Mr. Juell receive any of his costs of these proceedings?

[7] The Board's authority to require a party to pay the costs of another party is found in section 170(1) of the *Petroleum and Natural Gas Act*. The section provides:

170(1) Subject to any regulations, the board may order a party to an application under this part or an intervener to pay any or all of the following:

- a) All or part of the actual costs incurred by another part or intervener in connection with the application;

[8] Section 168 provides a definition of “actual costs” that includes “actual legal fees and disbursements” and “an amount on account of the reasonable time spent by a party in preparing for and attending a board proceeding”.

[9] The Board has enacted Rules respecting costs. Rule 18(2) provides a presumption in favour of landowners receiving their costs incurred in relation to the mediation process for a right of entry application. The presumption in favour of landowners does not extend to the arbitration of compensation arising from a right of entry, nor does it extend to applications other than those for right of entry and determination of appropriate compensation payable to the landowner arising from the right of entry.

[10] Rule 18(4) sets out the factors the Board will consider in exercising its discretion to require a party to pay all or part of another party’s costs. Those factors include the degree of success in the outcome of the proceeding and the reasonableness of any costs incurred.

[11] Venturion argues that as success was divided in these applications that each party should bear their own costs. This submission ignores the presumption that a landowner will receive costs of the mediation process in an application for right of entry and to determine associated compensation. While Mr. Juell was unsuccessful in the arbitration of the compensation issue, a factor negating his entitlement to costs of the arbitration, his lack of success at arbitration does not negate the presumption that he should receive his costs associated with the mediation process. I find that Mr. Juell should receive his reasonable costs associated with the mediation of Venturion’s application.

[12] As Mr. Juell was successful in his section 164 application, I find he should recover reasonable costs related to the arbitration of that application.

How much should Mr. Juell recover in costs?

[13] A party is only entitled to costs “in connection with the application”. Any legal fees for services in advance of Venturion’s application to the Board may not be claimed as costs as they are not in connection with the application. I disallow the claim with respect to any entries on Mr. Carter’s account in advance of January 22, 2015.

[14] Mr. Carter’s legal fees between January 22, 2015 and August 6, 2015, when the mediator refused further mediation amount to \$10,200.00. The lack of detail in the account makes it difficult to assess the reasonableness of all of the fees charged. I accept the claim for fees between these dates as to \$8,000.00.

[15] Mr. Carter’s fees following the mediator refusing further mediation to December 1, 2015 amount to \$15,420.00. These fees relate to the arbitration of both applications and I find Mr. Juell is only entitled to costs associated with the arbitration of his section 164 application. Assuming the fees can be divided equally between the two applications, reduces the account for this time period to \$7,210.00. Again, the lack of detail makes it difficult to assess the reasonableness of all of the fees charged. I accept \$6,500.00 as reasonable for this part of the claim.

[16] Mr. Carter’s account includes \$222.30 in disbursements. These disbursements are all reasonable, although I reduce by half the claim for mileage of \$136.24 associated with attending the arbitration. I allow costs of \$154.18 towards disbursements.

[17] Mr. Juell also claims \$1,500 for his and his brother’s attendance at the arbitration. His brother is not a party to these proceedings and is not entitled to recover costs for his time. I allow \$400 on account of Mr. Juell’s time.

[18] I find Venturion must pay Mr. Juell costs of \$15,054.18.

ORDER

[19] Venturion Oil Limited shall forthwith pay Roy Ralph Juell \$15,054.18 in costs.

DATED: June 9, 2016

FOR THE BOARD

A handwritten signature in black ink, appearing to read 'Cheryl', with a long horizontal flourish extending to the right.

Cheryl Vickers, Chair