



Ottawa, Tuesday, June 12, 2001

File No. PR-2000-003

IN THE MATTER OF a complaint filed by Canadian Computer Rentals under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND IN THE MATTER OF a decision made pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act* to award Canadian Computer Rentals its reasonable costs incurred in relation to filing and proceeding with the complaint.

ORDER

INTRODUCTION

In a determination made on August 3, 2000, the Canadian International Trade Tribunal (the Tribunal), pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act*,¹ awarded Canadian Computer Rentals (CCR) its reasonable costs incurred in relation to filing and proceeding with its complaint.

On January 22, 2001, CCR submitted to the Tribunal its claim for costs in the amount of \$19,604.75. On January 25, 2001, the Tribunal requested additional information and supporting documents from CCR. On February 12, 2001, CCR revised its claim to \$20,456.13 and submitted further information and documents to the Tribunal. On March 6, 2001, the Department of Public Works and Government Services (the Department) sent comments on CCR's claim. CCR responded to these comments on March 29, 2001.

COMPLAINT COSTS

CCR has claimed \$13,616.59 in representatives' fees incurred for the work by four of its employees in relation to proceeding with its complaint. That amount represents 7.6 days by one employee calculated at \$595.00 per day and 4.1 days by each of the other employees calculated at \$595.00 per day. The amount also includes 15 percent tax. CCR has also claimed disbursements and travel expenses in the amount of \$2,622.46.

CCR has also claimed \$4,217.09 in legal fees charged by Cassels Brock & Blackwell LLP for the work of legal counsel. This claim is supported by an invoice in the amount of \$3,936.21. However, the forms included with the February 12, 2001, submission account for the full amount of \$4,217.09.

1. R.S.C. 1985 (4th Supp.), c. 47.

The Department submitted that CCR's claims are excessive for a complaint of this level of complexity. The claim for a representative's fees, Mr. Bill Guest, exceeds the allowable per diem rate of \$400. The claims for costs for the other CCR employees also exceed the allowable rate and are not generally recoverable under the *Canadian International Trade Tribunal Procurement Cost Guidelines* (the Guidelines). The Department submits that the legal fees claimed exceed the allowable hourly rates indicated in the Guidelines and that there are costs claimed with respect to examining the possibility of judicial review that should not be allowed. The Department also submitted that there is no basis for claiming the disbursements in relation to travel costs and that these costs are not adequately supported.

The Tribunal is of the view that, absent a situation where an in-house counsel or other employee represents a litigant in a proceeding, the power to award costs does not include the power to compensate a litigant for the time spent by its employees in connection with the proceedings.² Similarly, the Tribunal has not generally awarded a litigant its disbursement costs incurred in association with an employee's participation in proceedings unless these costs are associated with an employee's attendance and/or appearance as a witness at a hearing in the proceedings.³ The Tribunal is of the view that one employee acted as a representative of CCR in this proceeding within the meaning of representative⁴ as defined by the Guidelines. For this employee, CCR claimed 7.6 days at \$595 per day. According to Appendix B to the Guidelines, the allowable daily rate for an in-house representative is \$400. The Tribunal sees no compelling reason to deviate from this amount. Therefore, the Tribunal allows in-house representatives' fees in the amount of \$3,040. No tax is allowed in addition to this amount. With respect to the travel costs claimed, the Tribunal is of the view that these are related to the costs of bid preparation and follow-up, as opposed to filing and proceeding with the complaint. Therefore, the travel costs are not allowed.

With respect to the claim for costs for legal services rendered, the Tribunal is of the view that these costs are not costs of legal representation before the Tribunal, but are more akin to costs for advisory services, albeit legal in nature. Of these advisory services, only the costs incurred in relation to filing and proceeding with the complaint are allowed and not those relating to an examination of the potential for subsequent judicial review. The rates that apply are specified in Appendix B to the Guidelines. Therefore, the Tribunal allows 0.3 hours at \$150.00 per hour and 4.2 hours at \$200.00 per hour for legal fees, plus associated disbursements of \$46.22, for a total of \$993.16 (including GST).

With respect to the disbursements claimed by CCR for copies, printing, long distance calls, courier service and postage, these costs are unsupported by invoices; therefore, the Tribunal will only allow the copies at the in-house rate of \$0.10 per copy, for a total of \$100.00.

Therefore, the Tribunal allows total costs in the amount of \$4,133.16.

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2. See, for example, *Energy Absorption Systems v. Y. Boissonneault & Fils*, unreported, Federal Court of Canada - Trial Division, Court File No. T-2263-86, January 30, 1991; and *Wellcome Foundation v. Apotex* (1992), 52 F.T.R. 241.
 3. See, for example, *Aerlinte Eireann Teoranta v. Canada*, unreported, Federal Court of Canada - Trial Division, Court File No. T-1250-80, December 14, 1993; and *Bayliner Marine v. Doral Boats* (1987), 15 C.P.R. (3d) 201.
 4. In the Guidelines, "representative" is defined as a person who represents a party to a procurement proceeding, but who is not a legal counsel. "Procurement proceeding" means a Tribunal proceeding in respect of a complaint.

CONCLUSION

The Tribunal hereby awards CCR costs in the amount of \$4,133.16 in relation to filing and proceeding with the complaint and directs the Department to take appropriate action to ensure prompt payment.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary