



Ottawa, Friday, January 23, 2004

File No. PR-2003-010

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

AND FURTHER TO a determination made pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act* awarding Bajai Inc. its reasonable costs incurred in preparing and proceeding with the complaint.

ORDER

INTRODUCTION

In a determination made on July 16, 2003, the Canadian International Trade Tribunal (the Tribunal) awarded Bajai Inc. (Bajai) its reasonable costs incurred in preparing and proceeding with the complaint.

On August 29, 2003, Bajai submitted its claim for costs to the Tribunal in the amount of \$13,578.75 for representative's fees, which consisted of 159.75 hours at \$85.00 per hour. On September 15, 2003, the Department of Public Works and Government Services (PWGSC) forwarded its comments regarding Bajai's claim to the Tribunal. Bajai provided further comments to the Tribunal on September 16, 2003.

COMPLAINT COSTS

PWGSC submitted that the time that Bajai's representative allegedly spent "in preparing and proceeding with the complaint" was unreasonable and that the award of costs in the present case was not intended to offset the costs against Bajai in File No. PR-2003-001.¹

PWGSC submitted that the case on which the service representative was alleged to have spent 159.75 hours was a very simple one, and it compared this to the 39.00 hours spent by counsel for PWGSC. PWGSC further submitted that this occurred despite the fact that, as noted by the Tribunal, the ground of complaint was merely factual. PWGSC submitted that the complaint was 6 1/2 pages long, raised no legal issues, cited no case law and established no precedents. Furthermore, PWGSC submitted that comments on the Government Institution Report were 7 1/2 pages long and that the complexity of the case did not justify the time claimed by Bajai.

PWGSC further submitted that the time allowed by the Tribunal to compensate representatives in inquiries since fiscal year 2000-2001 averaged 60.18 hours. It referred to a cost order regarding six separate complaints filed by Polaris Inflatable Boats (Canada) Inc.² in which the Tribunal allowed 107.00 hours for representative's fees. PWGSC submitted that the Tribunal noted that "the time spent by the President of

1. Cost order dated January 7, 2004.

2. Cost order dated December 4, 2001, PR-2000-044 and PR-2000-049 to PR-2000-053.

Polaris to prepare and proceed with the complaints is neither excessive nor unreasonable, given the number of complaints and their complexity.”³

Given the single complaint by Bajai and the lack of complexity of the case, PWGSC submitted that Bajai’s claim was excessive and unreasonable. It further submitted that the representative’s time entries indicated that he “[started] the draft of first letters for submission” on April 12, 2003, and that he claimed 55.00 hours which were spent prior to initiating the draft. PWGSC submitted that this claim should be denied.

PWGSC submitted that Bajai was not “preparing and proceeding with the complaint” after the Tribunal rendered its decision on the complaint on July, 16, 2003, and, thus, the 5.50 hours claimed for the period after the Tribunal’s decision should be denied.

PWGSC further submitted that denying Bajai the time it allegedly spent prior to drafting the complaint and after the Tribunal made its decision would still leave an unreasonable claim for time. PWGSC submitted that it was unreasonable to spend 29.00 hours drafting a 6-1/2-page complaint, particularly where Bajai made additional claims for time spent on research and gathering evidence to support the actual drafting. With regard to research and evidence gathering, PWGSC submitted that it was unreasonable to allegedly spend 10.00 hours reviewing the *Canadian International Trade Tribunal Rules*⁴ and 8.00 hours reviewing past cases of the Tribunal and the World Trade Organization, especially since Bajai’s allegations in the complaint were purely factual. Finally, PWGSC submitted that Bajai should be allowed only its reasonable costs and that the “Activity Log” that shows the representative’s alleged time provided no support for what was reasonably spent preparing and proceeding with the complaint.

In response, Bajai submitted that PWGSC’s submission only strengthened its claim. Bajai submitted that, when a 12-year veteran with access to searchable law indexes and the experience of an entire law firm took 39.00 hours on what was called a “simple case”, it was understandable that a person without a law degree, or any experience in litigation, would spend four times longer preparing case material.

With respect to PWGSC’s assertion that the time spent gathering evidence and familiarizing itself with the *Rules*, the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,⁵ the *North American Free Trade Agreement*,⁶ the *Agreement on Internal Trade*⁷ and past Tribunal case law was unreasonable, Bajai submitted that this time was very reasonable, given the fact that it does not have the convenience of a searchable legal index at its disposal.

Bajai closed by submitting that the Tribunal stated in its determination that “it was a serious deficiency in the procurement process to use the original [Request for Proposal] to procure goods that it did not cover.”⁸ According to Bajai, it has suffered a real loss and not to allow it to recover its full costs in performing what amounted to nothing more than an act of public service would be a true miscarriage of justice.

3. *Ibid.* at 3.

4. S.O.R./91-499 [*Rules*].

5. S.O.R./93-602.

6. 32 I.L.M. 289 (entered into force 1 January 1994).

7. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.intrasec.mb.ca/eng/it.htm>>.

8. *Re Complaint Filed by Bajai Inc.* (16 July 2003), PR-2003-010 (CITT) at 8.

While the Tribunal agrees with Bajai's submission that it was reasonable to take more time to prepare its case than legal counsel with significantly more experience, this case was not particularly complex. The Tribunal is of the view that 160.00 hours is excessive for a case of this complexity. Accordingly, the Tribunal finds that a more reasonable allowance is half the hours claimed, or 80.00 hours. Therefore, the Tribunal allows Bajai its costs of \$6,800.00, which amount corresponds to 80.00 hours at \$85.00 per hour.

CONCLUSION

The Tribunal hereby allows Bajai its costs of \$6,800.00 for preparing and proceeding with the complaint and directs PWGSC to take appropriate action to ensure prompt payment.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Ellen Fry
Ellen Fry
Member

Meriel V.M. Bradford
Meriel V.M. Bradford
Member

Michel P. Granger
Michel P. Granger
Secretary