



Ottawa, Thursday, September 25, 1997

File No.: PR-96-030

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

AND IN THE MATTER OF a decision to conduct an inquiry into the complaint under subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

ORDER

INTRODUCTION

In a determination made on May 6, 1997, the Canadian International Trade Tribunal (the Tribunal) awarded Symtron Systems Inc. (Symtron), pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act*¹ its reasonable costs incurred in relation to filing and proceeding with its complaint.

On May 14, 1997, Defence Construction Canada (Defence Construction) wrote the Tribunal stating its intention to implement fully the recommendation in the Tribunal's determination. Symtron submitted to the Tribunal, on June 3, 1997, its claim for complaint costs in the amount of \$61,581.10. The Tribunal requested additional information from Symtron on July 4, 1997, and Symtron filed additional information with the Tribunal on July 9, 1997. On July 18, 1997, Defence Construction sent written comments to the Tribunal with respect to Symtron's claim.

COMPLAINT COSTS

Symtron has claimed an amount of \$39,548.75 as legal fees incurred by it in pursuing this complaint and disbursements in the amount of \$1,809.31 related thereto. The Tribunal, having considered, among other factors, the complexity of the complaint and the degree of experience and skill of counsel for Symtron, is of the view that the hourly fees charged are reasonable and that the hours charged should be allowed. As well, disbursements are allowed as claimed.

Additional disbursements claimed include amounts for long distance calls, facsimile costs, travel and accommodation for a total of \$3,436.99. In-house legal services are also claimed in the amount of \$16,786.05. With respect to the in-house legal services, the Tribunal notes that Symtron retained independent counsel to act on its behalf in pursuing its complaint before the Tribunal and that the in-house counsel who participated in this complaint was acting in the capacity as an employee, not as legal counsel or representative. The courts have found 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 proceeding.² Similarly, the courts have not

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

2. See, for example, *Energy Absorption Systems Inc. v. Y. Boissonneault & Fils Inc.*, unreported, Federal Court of Canada - Trial Division, Court File No. T-2263-86, January 30, 1991; and *Wellcome Foundation Ltd. v. Apotex Inc.* (1992), 52 F.T.R. 241.

generally awarded a litigant its disbursement costs incurred in association with its employees' participation in a proceeding unless associated with an employee's attendance and/or appearance as a witness at a hearing in a proceeding.³ The Tribunal is not, therefore, prepared to allow Symtron's claim for in-house counsel time and associated costs.

CONCLUSION

The Tribunal hereby awards Symtron costs in the amount of \$41,358.06 in relation to proceeding with its complaint and directs that Defence Construction take appropriate action to ensure prompt payment.

Patricia M. Close

Dr. Patricia M. Close
Member

Susanne Grimes

Susanne Grimes
Acting Secretary

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 Corp. v. Doral Boats Ltd.* (1987), 15 C.P.R. (3rd) 201 at 208.