

Ottawa, Friday, July 23, 1999

File Nos.: PR-98-032 and PR-98-033

IN THE MATTER OF two complaints filed by Polaris Inflatable Boats (Canada) Ltd., 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 decisions to conduct inquiries into the two complaints under subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

ORDER

INTRODUCTION

In two determinations issued on March 8, 1999, the Canadian International Trade Tribunal (the Tribunal) awarded Polaris Inflatable Boats (Canada) Ltd. (Polaris), 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.

Polaris submitted to the Tribunal, on May 17, 1999, a combined claim for complaint costs for both cases (File Nos.: PR-98-032 and PR-98-033) in the amount of \$26,647.50 in fees (employee costs) and \$177.60 in disbursements. On June 7, 1999, Public Works and Government Services Canada (PWGSC) sent written comments to the Tribunal with respect to Polaris's claim.

Since Polaris submitted a single claim to cover both complaints and in order to avoid the difficulty now on splitting the two, the Tribunal "joins" the two cases for the purposes of this cost order.

COMPLAINT COSTS

Polaris has claimed an amount of \$26,647.50 as employee costs incurred in pursuing both complaints and disbursements in the amount of \$177.60 related thereto. The employee costs claimed include 76 hours, 57 hours and 54 hours of work, at \$125 per hour, done by the President, the Vice-President and the Managing Director respectively. In addition, GST and PST are added to the hourly rate at 14 percent.

Section 5.2.3 of the Tribunal's *Procurement Cost Guidelines* reads:

Costs will not generally be recoverable in respect of employees, officers or directors of a claimant who, acting in their usual capacity as employees, officers or directors, expended time in connection with a claimant's participation in a procurement proceeding. However, where one of a claimant's employees, officers or directors acts as the claimant's counsel or representative, the claimant may recover its costs in accordance with paragraph 5.2.1 and Appendix B of these guidelines.

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

The Tribunal is of the view that the President of Polaris could in effect be seen as acting as representative in both matters. The Tribunal understands that the Vice-President and Managing Director, in their capacity as employees of Polaris, assisted the President in his capacity as representative for Polaris. The courts have found that absent a situation where employees represent 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 proceeding². Similarly, the courts have not 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

Accordingly, other than the hours worked by the President, the other complaint costs are not allowed by the Tribunal. Polaris has claimed 76 hours at \$125 per hour for the President acting as representative. The Tribunal is of the view that 76 hours for two complaints which proceeded as separate and distinct files is reasonable given the level of complexity of the cases. The Tribunal also concludes that the rate charged for the President is appropriate in the circumstances. Given that the costs represent internal costs only and did not represent a sale of services, GST and PST do not apply. Accordingly, GST and PST are not allowed as part of the claim and the Tribunal awards complaint costs in the amount of \$9,500 for fees (employee costs). As the disbursements claimed are very reasonable and mainly for the preparation and transmittal of documentation related to the proceedings, the Tribunal allows the full amount of \$177.06 for disbursements.

CONCLUSION

The Tribunal hereby awards Polaris costs in the amount of \$9,677.06 in relation to proceeding with its complaints and directs that PWGSC take appropriate action to ensure prompt payment.

Patricia M. Close
Patricia M. Close
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary

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2. See for example, *Energy Absorption Systems Inc. v. Y. Boissonneault & Fils Inc.* [1991] F.C.J. No. 53 (QL); and *Wellcome Foundation Ltd. v. Apotex Inc.*, 52 F.T.R. 241.
 3. See, for example, *Aerlinte Eireann Teoranta v. Canada*, [1993] F.C.J. No. 1462 (QL); and *Bayliner Marine Corp. v. Doral Boats Ltd.* [1987] F.C.J. No. 348 (QL).