SUPREME COURT OF YUKON

Citation: *Wood v. Yukon (Occupational Health and Safety Branch)* , 2018 YKSC 29

Date: 20180604
S.C. No. 17-AP015
Registry: Whitehorse

BETWEEN

JUANITA WOOD

PETITIONER

AND

DIRECTOR, OCCUPATIONAL HEALTH AND SAFETY BRANCH
YUKON WORKERS' COMPENSATION HEALTH AND SAFETY BOARD

RESPONDENT

Before .Madam Justice M. Bielby

Appearances:
Juanita Wood — Appearing on her own behalf
Sacha R. Paul — Counsel for the Respondent

REASONS FOR JUDGMENT

INTRODUCTION

[1] In an earlier decision in this matter, reported at 2018 YKSC 24, I granted the Respondent's application for an order dismissing a petition filed by Ms. Wood and awarded costs against her in an amount to be set after receipt of written submissions from the parties. I have now received those submissions.

[2] Rule 60 of the Yukon *Rules of Court*, YOIC 2009/65, governs the awarding of costs. It provides, in rule 60(1), that where costs are payable to a party by order they shall be assessed as party and party costs under Appendix B to the *Rules*, unless otherwise ordered. Rule 60(2) provides that on "assessment of party and party costs, the clerk shall allow those fees under Appendix B that were proper or reasonably

necessary to conduct the proceeding." Rule 60(14) provides that, as an option to assessment, a court may order a lump sum as the costs and either fix that sum, inclusive or exclusive of disbursements, or order that costs be set in accordance with Schedule 3 of Appendix B.

[3] Further, s 2(a) of Appendix B to the Yukon *Rules of Court*, establishes three scales under which costs are to be assessed. Scale A is to be applied to matters of "little or less than ordinary difficulty", Scale B is to be applied for matters of "ordinary difficulty" and Scale C is for matters of "more than ordinary difficulty". The Tariff portion of Appendix B establishes a minimum and maximum number of "units" to be awarded by an assessor to various steps in an action. Total assessed costs can then be established by multiplying the number of units awarded for each step by the value of those units, as determined by whether they are to be assessed on Scales A, B or C. Section 3 of Schedule B provides the value of each unit of work at $60 for work assessed on Scale A, $110 in relation to work done on Scale B and $170 for work done on Scale C.

[4] No assessment of the number and type of units of work claimed to have been done by Respondent's counsel has been ordered or made. Section 2(d) of Appendix B to the Rules creates assessment as the default mechanism for establishing costs by stating "costs must be assessed under Scale B, unless a party, on application, obtains an order of the court that the costs be assessed under another scale". The Respondent nonetheless submits that I should use my discretion to order that costs be set as a lump sum pursuant to rule 60(1) and that lump sum, inclusive of disbursements, should be set at $12,500.

[5] It argues that any lump sum awarded should be relatively generous, based on its view that if costs had been assessed, Scale C would apply. It argues this highest scale would be appropriate given my earlier finding that Ms. Wood's petition was vexatious and an abuse of process, and given the numerous times Ms. Woods amended that Petition prior to the application to strike, including a final amendment made only a few days before that application was heard. Each of the amendments resulted in the expenditure of time by the Respondent's counsel, in reviewing and analysing the changes made.

[6] It advises that 81.5 units of time and effort were expended by its counsel, which works out to an entitlement $13,855 if costs were set on Scale C. It offers an alternative by way of comparison, to the effect that costs would be $8,965 if set on Scale B. To whichever of these scales and sums is used as a comparison to its lump sum proposal it submits that $1,000 be added, to reflect the costs of its counsel to travel to Whitehorse from Winnipeg to make the oral application. As compared to $14,855 the $12,000 lump sum is arguably reasonable.

[7] Ms. Woods responds by suggesting that I have no discretion to order costs in any amount other than those set under Schedule 3, Item 2 of Appendix B, that provides:

> If the application is opposed and requires a ½ day or less for the hearing
>
> (a) Scale A....$300
>
> (b) Scale B...$550
>
> (c) Scale C...$850
>
> And, in addition,
>
> (d) in lieu of disbursements....$120

[8] This submission misunderstands the role of Schedule 3 to Appendix B. That Schedule may be applied by a judge who orders lump sum costs under rule 60(14)(b) as a means of calculating those costs. It does not, however, limit a judge to setting lump sum costs pursuant to that rule. Rule 60(1) permits a judge to fix costs in another manner, which would include setting a lump sum in a different amount than that prescribed in Schedule 3.

[9] Ms. Woods does not otherwise argue that costs should be assessed rather than set as a lump sum, but submits that for the latter purpose Scale A should be used as a comparitor. Under that scale, costs are set in the amount of $60 a unit. An award of costs based on 81.5 units would thus amount to an award of 81.5 times $60 or $4,890. She submits that this is the appropriate figure for lump sum costs given the lack of express permission in the *Rules* to set costs awarded on the striking of a vexations petition on the basis of Scale B or C. She also notes that the Respondent did not amend its materials on the lead-up to the oral application notwithstanding her various amendments to the Petition.

[10] She further suggests that the Respondent's scale of costs be set on Scale A because it was advantaged by having the assistance of both in house and private legal counsel whereas she was self-represented. She otherwise characterizes her matter as a simple application, attracting the application of Scale A and challenging the number of units the Respondent identifies as having been spent on various steps in the matter.

[11] Ms. Wood's petition was not a simple matter in that it was one more step in a series of vexatious steps she has repeatedly taken, each of which was not common or routine and at which she has consistently failed to succeed. Rule 60(1) grants a judge a

general discretion to set costs in any matter, which would include vexatious litigation. I do accept, however, that given the absence of an assessment, I do not have confirmation that the 81.5 units claimed were each justified and nothing before me suggests that conflict, lack of local expertise or other special circumstances mandated the choice made by the Respondent to retain private counsel from outside of the Yukon.

[12] This would therefore be an appropriate case to apply the default rule directed by section 2(d) of Appendix B, if it were not for the lengthy, litigious and expensive history between the parties. That, plus my direction in paragraph 28 of my decision dismissing the petition and inviting costs submissions based on a proposed dollar amount, leads me to accept that costs should be set by way of a lump sum figure, informed by Scale B, to avoid the need for further contact between the parties during an assessment proceeding.

[13] I therefore order that Ms. Woods pay the Respondent the sum of $9,000 inclusive of disbursements, by way of the costs ordered payable by her in 2018 YKSC 24.

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BIELBY J.