

Federal Court



Cour fédérale

Date: 20110623

Docket: T-894-10

Citation: 2011 FC 761

BETWEEN:

YVES MAYRAND

Applicant

and

CANADA REVENUE AGENCY

Respondent

[ENGLISH TRANSLATION]

REASONS FOR ASSESSMENT OF COSTS

ASSESSMENT OFFICER JOHANNE PARENT

[1] On February 10, 2011, the Court granted the application for judicial review of the decision rendered on April 15, 2010, with costs limited to the applicant's disbursements. On March 29, 2011, the applicant submitted his bill of costs to the Court. Directions were given on April 5 and May 25, 2011, informing the parties that the assessment of costs would proceed in writing along with the time limit for the filing of submissions.

[2] In the bill of costs filed in the Court record on March 29, 2011, the applicant sought \$2,212.70 for his disbursements, to which he added \$2,000.00 for his work on the case. A second

bill of costs subsequently served by the applicant includes a claim for \$2,695.58 for his disbursements without any further reference to the costs previously requested for his work on the case. Based on the respondent's submissions, it is observed that out of this \$2,695.58, only the amount of \$832.26 representing compensation for "lost wages" on the part of the applicant is contested. In support of its argument, the respondent maintains that the applicant did not suffer any lost wages since, according to the information obtained, he used paid sick leave and vacation leave on the six days during which he was absent from work in relation to this matter. The respondent seeks further, under Rule 408(3) of the *Federal Courts Rules*, that the assessment officer allow it costs for the preparation of its submissions.

[3] The applicant, meanwhile, maintains that "sick leave in no manner constitutes part of an employee's earnings" [TRANSLATION] and that the vacation leave was taken after his employer refused to grant "court leave" as provided in the agreement between the Canada Revenue Agency and the Public Service Alliance of Canada.

[4] Disbursements are typically considered compensation in payment for a service provided by a third party. In *Entreprises A.B. Rimouski Inc. v. Canada* (2000) FCA no. 501, The Court of Appeal determined as follows in paragraph 4:

4 The appeal cannot succeed. According to the file, the claim for loss of income is an estimate of the earnings Mr. Banville could have generated during the period of time he represented himself in these proceedings. Clearly, reimbursement of this amount cannot be ordered, as it is not a "disbursement" within the meaning of the *Federal Court Rules*, 1998.

In light of the preceding, the applicant's lost income, if it may be called such, is not a disbursement. I consequently do not find it necessary to address the question as to whether or not the applicant was

compensated for the six days in question. The claim of \$832.26 corresponding to compensation for possible lost income on the part of the applicant cannot be allowed.

[5] As for the respondent's application to be awarded costs for the preparation of submissions in this matter under Rule 408(3) of the *Federal Courts Rules*, the sole argument brought forward by the respondent in this regard reads, "According to Rule 408(3) of the *Federal Courts Rules*, an assessment officer may allow the costs of an assessment to either party. The respondent consequently seeks \$130.00 for the preparation of submissions." [TRANSLATION]

[6] In *Carter-Wallace Inc. v. Wampole Canada Inc.* 2003 FC 990, assessment officer Stinson states in paragraph 11:

The *Federal Courts Act*, s. 4 and 5.1 defining the Court, and Rule 2 of the *Federal Court Rules*, 1998, defining an assessment officer, preclude me from usurping the discretion vested in the Court by Rule 400(1) to award costs. However, a Rule 400(1) award of costs does vest an assessment officer with jurisdiction to decide which items of costs are to be allowed and their quantum. Rule 408(3), which provides that an "assessment officer may assess and allow, or refuse to allow, the costs of an assessment to either party," is an exception in that it would permit me to allow costs in this matter to the Applicant, who does not have a Rule 400(1) award of costs.

[7] Notwithstanding the discretionary power vested in the assessment officer under Rule 408(3), I do not find any justification in the respondent's submissions to support this application. In the absence of additional details to support the respondent's claim, it will not be allowed.

[8] In the absence of challenges concerning any of the other disbursements claimed and taking into account their justification in the bill of costs, said disbursements are deemed necessary expenses to the conduct of this matter. The amounts are justified and reasonable and will thus be granted.

[9] The applicant's bill of costs is granted in the amount of \$1,733.32.

“Johanne Parent”
Assessment Officer

Toronto, Ontario
June 23, 2011

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-894-10

STYLE OF CAUSE: YVES MAYRAND v. CANADA REVENUE
AGENCY

**ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF
THE PARTIES**

REASONS FOR ASSESSMENT BY: ASSESSMENT OFFICER
JOHANNE PARENT

DATED: June 23, 2011

WRITTEN SUBMISSIONS:

Yves Mayrand FOR THE APPLICANT

Agnieszka Zagorska FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A FOR THE APPLICANT

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada