

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230602

Docket: A-70-22

Citation: 2023 FCA 124

**CORAM: BOIVIN J.A.
LOCKE J.A.
MONAGHAN J.A.**

BETWEEN:

TARIQ RANA

Appellant

and

TEAMSTERS LOCAL UNION NO. 938

Respondent

Heard at Toronto, Ontario, on May 31, 2023.

Judgment delivered at Ottawa, Ontario, on June 2, 2023.

REASONS FOR JUDGMENT BY:

LOCKE J.A.

CONCURRED IN BY:

**BOIVIN J.A.
MONAGHAN J.A.**

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REASONS FOR JUDGMENT

LOCKE J.A.

[1] Tariq Rana appeals a decision of the Federal Court (*per* Justice James W. O'Reilly) that dismissed his motion to review an assessment of costs (hereinafter the Assessment, 2022 FCA 31, *per* Assessment Officer Garnet Morgan). For the reasons set out below, I would dismiss the appeal.

[2] At the core of Mr. Rana's argument is that the Assessment Officer failed to be guided by an agreement between the parties fixing the costs at \$2,500. Instead, the Assessment Officer assessed costs in accordance with Tariff B of the *Federal Courts Rules*, S.O.R./98-106 (the *Rules*), in the amount of \$5,979.50.

[3] The Federal Court found that, to be successful in that Court, Mr. Rana had to show that the Assessment Officer had made an error of principle. The respondent, Teamsters Local Union No. 938 (the Teamsters), agrees, and I see no reason to disagree (see *Apotex Inc. v. Merck & Co. Inc.*, 2008 FCA 371 at paragraph 10). The Federal Court also found that the Assessment Officer made no error of principle when he proceeded with an assessment of costs without taking into account the alleged agreement between the parties. This Court's task, therefore, is to decide whether the Federal Court made an error in so finding.

[4] The following facts are relevant to this issue:

- A. On November 4, 2020, this Court dismissed an application by Mr. Rana with costs payable to the Teamsters (2020 FCA 190);
- B. In a series of emails between that date and December 9, 2020, the parties successfully negotiated a detailed schedule for the payment of costs in the amount of \$2,500 by instalments on certain dates from December 15, 2020 to December 1, 2021;

- C. Though Mr. Rana disputes the fact, the parties also agreed, at his suggestion, that he would make the scheduled payments by cheque (see appeal book, pages 34, 35 and 105);

- D. On December 30, 2020, the first of Mr. Rana's cheques not yet having been deposited, he advised the Teamsters that he had cancelled the cheques because he was concerned about long-outstanding cheques on his account (as had allegedly happened before), which created a risk of a cheque not being honoured. Instead, Mr. Rana made an e-transfer to the bank account of his contact at the Teamsters, Rick Davies, whose email address was connected to his personal bank account where e-transfers were automatically deposited;

- E. On January 5, 2021, the Teamsters advised Mr. Rana that this method of payment was not acceptable, and that Mr. Davies had returned the funds;

- F. On February 2, 2021, Mr. Rana again made an e-transfer to Mr. Davies' bank account. In response, the Teamsters again advised Mr. Rana that this method of payment was not acceptable, and that Mr. Davies had returned the funds. Mr. Davies also arranged for his account no longer to accept e-transfers automatically;

- G. Mr. Rana made further e-transfer attempts to Mr. Davies' bank account on April 2, 2021 and April 30, 2021, but they were not deposited. On both occasions, the Teamsters reiterated to Mr. Rana that this method of payment was not

acceptable. It appears that he never responded to any of the Teamsters' messages about the method of payment;

- H. On June 28, 2021, with no payment received in an acceptable form, the Teamsters requested a formal assessment of costs. It sought either an award of costs in the amount of \$2,500, payable forthwith, or in the alternative, an award of costs in the amount of \$10,468.74 plus interest, payable forthwith, based on a Bill of Costs it provided;
- I. In his responding submissions on costs, Mr. Rana acknowledged the agreement as to the amount of costs and the payment schedule but denied that there was any agreement as to the manner of payment. He also argued that Mr. Davies had no right to refuse payments to his bank account by e-transfer;
- J. In reply, the Teamsters submitted that the only dispute on costs was whether Mr. Rana had satisfied the costs agreement, which it argued he had not;
- K. The Assessment Officer considered the parties' respective submissions, as well as the exchanges of emails that showed the details of the agreement, and observed that it was open to the Teamsters to request assessment of costs in view of the failure of the parties to perfect their agreement on costs. The Assessment Officer suggested that, in assessing costs, he was empowered to consider an agreement between the parties, but he seems to have found that the evidence of an agreement

that remained extant was lacking. In the absence of such an agreement, the Assessment Officer proceeded with an assessment of costs in accordance with Tariff B of the *Rules*.

[5] Mr. Rana argues that the Federal Court erred by not acknowledging and considering a signed letter agreement dated November 5, 2020 that allegedly settled the question of costs. He also argues that the Federal Court should have drawn a negative inference from the Teamsters' failure to provide this letter agreement to the Assessment Officer. These arguments must fail for at least two reasons. First, I can see no reason to criticize the Teamsters for not submitting the letter agreement. Mr. Rana could have submitted it if he thought it was important. His failure to do so suggests that he felt it was no more important than the Teamsters did. Second, since the issue before us concerns whether the Assessment Officer made an error of principle, a document that was not put before him for consideration is not relevant.

[6] Mr. Rana also argues that the Assessment Officer erred in finding that the costs agreement had not been perfected. As support, he cites again the November 5, 2020, letter agreement but, not having put that document before the Assessment Officer, he cannot rely on it as a source of error. Again, this document is therefore not relevant. I note also that the Teamsters claims that it never saw this letter with Mr. Rana's signature until it was submitted to the Federal Court as part of the review of the Assessment. Further, though Mr. Rana's signature on the letter agreement bears the date of November 5, 2020, his contemporaneous emails to the Teamsters suggest that he did not sign it on that date – he indicated at the time that he needed time to pay and requested a payment schedule, which schedule was not settled until December 9, 2020.

Moreover, the evidence indicates that Mr. Rana did not return a signed copy of the letter agreement to the Teamsters, and did not provide it to the Assessment Officer. These are further suggestions that the letter was not signed until after the Assessment.

[7] In my view, the letter agreement is not the best evidence of an agreement between the parties. Better contemporaneous evidence comes from the email exchanges between the parties as described above. Contrary to Mr. Rana's submissions, these exchanges included an agreement that payments would be made by cheque. The Assessment Officer considered the parties' submissions in this regard (including the agreement on the amount and the payment schedule, and the dispute as to whether there was agreement on the payment method) and concluded that the agreement had not been perfected "with [Mr. Rana] providing payments in a method accepted by the [Teamsters]." By this, I understand the Assessment Officer to have found that, to that extent that an agreement on costs had been reached between the parties, it was effectively repudiated by Mr. Rana due to his failure to make timely payments in a proper manner. I see no error in principle in the Assessment Officer's approach, or in his conclusion that it was therefore open to the Teamsters to request an assessment of costs. The fact that Mr. Rana's decision to change the payment method (that he himself had suggested) was made unilaterally, his intransigence in the face of objections by the Teamsters, and his apparent refusal even to discuss the issue, all support the appearance of repudiation.

[8] Mr. Rana argues that the Assessment has given rise to an unfair windfall for the Teamsters. The Teamsters may not see it that way. They might prefer a bird in the hand (being timely payments in the agreed manner totaling \$2,500) rather than two in the bush (being an

Assessment in a larger amount that may or may not be paid in the foreseeable future). I note that none of the originally agreed amount of \$2,500 has yet been paid two and a half years after the agreement in question. To the extent that Mr. Rana is now subject to any unexpected burden because of the amount of the Assessment, it is a burden of his own making.

[9] Mr. Rana also takes issue with the fact that the Bill of Costs that was marked up by the Assessment Officer as part of the Assessment bears a date later than the Bill of Costs that was originally submitted by the Teamsters as part of its request for an assessment. I do not understand what mischief Mr. Rana would like the Court to infer from this. Having consulted the Court file relating to the Assessment, it appears to me that the Bills of Costs that were submitted to the Court on those two dates were identical. At the hearing of this appeal, Mr. Rana declined to expand on his submissions on this issue.

[10] I would dismiss this appeal. Since the Teamsters does not seek costs in respect of this appeal, I would award none.

"George R. Locke"

J.A.

"I agree.
Richard Boivin J.A."

"I agree.
K. A. Siobhan Monaghan J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-70-22

STYLE OF CAUSE: TARIQ RANA v. TEAMSTERS
LOCAL UNION NO. 938

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 31, 2023

REASONS FOR JUDGMENT BY: LOCKE J.A.

CONCURRED IN BY: BOIVIN J.A.
MONAGHAN J.A.

DATED: JUNE 2, 2023

APPEARANCES:

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(On his own behalf)

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