



Reference: *Nadeau Poultry Farm Limited v. Groupe Westco Inc. et al.*, 2010 Comp. Trib. 9  
File No.: CT-2008-004  
Registry Document No.: 0677

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Order pursuant to section 75 of the *Competition Act*;

AND IN THE MATTER of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Interim Order pursuant to section 104 of the *Competition Act*.

B E T W E E N:

**Nadeau Ferme Avicole Limitée/  
Nadeau Poultry Farm Limited**  
(applicant)

and

**Groupe Westco Inc. and Groupe Dynaco,  
Coopérative Agroalimentaire, and Volailles  
Acadia S.E.C. and Volailles Acadia Inc./  
Acadia Poultry Inc.**  
(respondents)



Decided on the basis of the written record

Before: Blanchard J. (presiding), H. Lanctôt and P. A. Gervais

Date of Reasons for Order and Order: June 3, 2010

Reasons and Order signed by: Mr. Justice E. Blanchard, Mr. H. Lanctôt and Mr. P. A. Gervais

**FINAL REASONS FOR ORDER AND ORDER DEALING WITH COSTS**

## I. INTRODUCTION

[1] On January 21, 2010, the Tribunal issued its Reasons for Order and Order Dealing with Questions about Costs Issues (the “Costs Decision”). The Tribunal provided reasons which outlined the costs principles which were applicable in the present matter and the Respondents, Groupe Westco Inc. (“Westco”), Groupe Dynaco, Coopérative Agroalimentaire (“Dynaco”) and Volailles Acadia S.E.C. and Volailles Acadia Inc./Acadia Poultry Inc. (collectively, “Acadia”) were ordered to “each prepare a further draft bill of costs in accordance with these reasons”. Each of the Respondents has submitted a revised bill of costs and submissions relating thereto.

[2] Acadia and Dynaco have respectively claimed \$53,763.38 and \$51,885.75 in fees and disbursements in their revised bills of costs. Nadeau Poultry Farm Limited (the “Applicant” or “Nadeau”) is of the view that the revised bills of costs submitted by Dynaco and Acadia accord with the Costs Decision and does not object or respond thereto.

[3] In its original bill of costs, Westco sought an award of costs in the amount of \$848,668.96, including disbursements. Upon applying the Tribunal’s directions in the Costs Decision, Westco reduced its claim to \$456,148.86 in its revised bill of costs. The Applicant submits that several entries in Westco’s revised bill of costs are not consistent with the Costs Decision and submits that Westco’s maximum costs entitlement should be \$370,413.63. Each of the contested issues is dealt with below.

## II. FEES

[4] Nadeau submits that Westco’s claim under Tariff B of the *Federal Courts Rules*, SOR/98-106 (the “Rules”), exceeds the amount permitted pursuant to the Costs Decision. It essentially makes three arguments which will be dealt with in turn.

### a. Number of counsel for preparatory work

[5] In its original bill of costs, Westco claimed fees for one counsel under certain items of Tariff B which deal with preparatory work. Based on the Costs Decision, Westco increased its claim from one to two counsel under these Tariff items. Nadeau submits that Westco should not be entitled to increase the number of counsel for which fees can be claimed when such claims were not made in its original bill of costs.

[6] The Costs Decision offered the following with respect to the number of counsel for which Westco can claim fees:

[25] Westco submits that the nature of the proceedings, and the volume and complexity of the legal, regulatory, economic and factual evidence justify an award of full costs for two counsel during the preparatory phase of the proceedings and three counsel during the hearing preparation and the hearing.

[26] Westco had a team of five counsel throughout the hearing and Nadeau had a team of four counsel. We are satisfied that the nature of the preparatory work

performed in this case reasonably necessitated two counsel. We are therefore of the view that Westco's lump sum should be guided by the mid-range of Column III for two counsel during the preparatory phase of the proceedings including hearing preparation and fees based on 2 ½ counsel for the actual hearing.

[7] In our view, the language of the Costs Decision is clear that Westco is entitled to claim fees for two counsel for items which deal with the preparatory phase of the hearing. Accordingly, Westco's claim for fees for two counsel for Tariff B items dealing with preparatory work will be allowed.

b. Tariff item 13b

[8] Nadeau submits that Westco incorrectly claims fees for two and a half counsel under Tariff item 13(b) "preparation for trial or hearing per day in Court after the first day". Paragraph 26 of the Costs Decision indicates that "Westco's lump sum should be guided by the mid-range of Column III for two counsel during the preparatory phase of the proceedings including hearing preparation and fees based on 2 ½ counsel for the actual hearing" (our emphasis). In our view, the language of the Costs Decision is clear that the Tribunal's intention was that fees for only two counsel could be claimed under Tariff item 13(b). Westco's Tariff B claim will therefore be adjusted accordingly.

c. Tariff item 14

[9] Westco has claimed fees for two and a half counsel under Tariff item 14 which deals with the attendance of counsel at the hearing. Tariff item 14 states that under Column III, 2-3 units may be claimed for first counsel, per hour in Court, and to second counsel, where the Court directs, 50% of the amount awarded to first counsel. Nadeau submits that Westco has failed to reduce the fees for the subsequent one and a half counsel by the required 50%. The Costs Decision indicated that Westco's lump sum should be guided by "fees based on 2 ½ counsel for the actual hearing". In our view, the interpretation proposed by the Applicant regarding Westco's claim under Tariff item 14 is inconsistent with the wording of the Costs Decision. Westco's claim for two and a half counsel under Tariff item 14 will thus be allowed.

[10] Based on the above findings, Westco's total Tariff B claim should be reduced from \$146,575.00 to \$143,357.50 (excluding GST).

### **III. DISBURSEMENTS**

a. Travel and Accommodation Costs

i. Travel and Accommodation Costs for Counsel

[11] In its revised bill of costs, Westco claims accommodation and travel disbursements for Mr. Eric Lefebvre, Mr. Alexandre Bourbonnais and Mr. Denis Gascon all of whom currently

reside in Montreal. Nadeau submits that Westco should claim travel and accommodation disbursements for Ms. Martha Healey rather than Mr. Gascon given the nature of Ms. Healey's involvement in the proceedings. This would reduce Westco's claim for travel and accommodations given the fact that Ms. Healey resides in Ottawa, where the hearing of the application took place.

[12] In our view, since the Tribunal has not specified the counsel for which fees can be claimed, Westco is entitled to make that decision. Accordingly, travel and accommodation costs claimed in respect of Mr. Lefebvre, Mr. Bourbonnais and Mr. Gascon will be allowed.

[13] However, in light of Westco's decision to claim fees for the abovementioned counsel, costs in respect of Ms. Healey's travel for meetings with experts in Montreal will be disallowed. Thus, \$351.35 should be removed from Westco's revised bill of costs in respect of travel.

ii. Accommodation Expenses of Mr. Thomas Soucy

[14] Westco has claimed \$1,078 in accommodation costs for Mr. Soucy's attendance at the hearing. Nadeau submits that the amount claimed represents more than the permitted two nights when Mr. Soucy was testifying. Westco submits that Nadeau fails to recognize that the time Mr. Soucy was required to spend in Ottawa for the purpose of testifying was significantly longer than the time Mr. Soucy spent on the stand *per se*.

[15] A similar argument was made by Westco in its initial submissions on costs and the Tribunal indicated, at paragraph 60 of the Costs Decision, that "[e]xpenses relating to Mr. Soucy's attendance at trial will be limited to the time he was testifying." In our view, the Costs Decision is clear that accommodation costs for Mr. Soucy should be limited to the time he was testifying. Mr. Soucy testified for two days. We will therefore allow accommodation costs for three nights. According to the invoices submitted by Westco in its original bill of costs, the accommodation cost per night for Mr. Soucy was \$155.00. Accommodation costs in respect of Mr. Soucy will therefore be limited to \$465.00.

iii. Accommodation Expenses of Ms. Sanderson

[16] Nadeau disputes Westco's claim of \$2,168.17 in accommodation costs associated with Ms. Margaret Sanderson's attendance at the hearing on the basis that such claim has not been substantiated. In our view, the invoices submitted by Westco in its original bill of costs support its claim for \$2,168.17 in accommodation costs for Ms. Sanderson. This claim is also reasonable and will thus be allowed.

[17] For the above reasons, Westco is entitled to recover \$ 11,290.20 in disbursements relating to accommodations and \$4,285.38 in disbursements relating to travel.

b. Photocopies

[18] In its original bill of costs, Westco claimed \$52,839.75 in photocopying charges at \$0.25 per page. This claim was disputed by Nadeau and addressed by the Tribunal at paragraph 62 of the Costs Decision:

[62] The Tribunal recognizes that a significant volume of copies was required in the proceeding. However, in our view, Westco has led no evidence to establish the actual costs of the photocopy. In its submission, counsel for Westco indicates that “\$0.25 is the actual out-of-pocket expense borne by Westco for the costs of the photocopies”. What is relevant is not the cost charged to the client but rather the actual cost of a photocopy. We will allow only the actual costs incurred for photocopies, payable on filing of proof of actual costs of essential photocopies.

[19] In its revised bill of costs, Westco claims \$48,788.70 in photocopying costs for 211,359 copies. To substantiate its claim, Westco filed an affidavit sworn by Claude Girard, Assistant Director of Office Services and Facilities at Ogilvy Renault LLP. Mr. Girard offered the following at paragraphs 5 and 6 of his affidavit:

The actual costs incurred by Ogilvy Renault LLP in connection with photocopy services provided to its clients include: (1) costs of paper, photocopier rental and ink for black and white and colour photocopies; (2) costs of three-ring binders; (3) costs of index tabs; (4) costs of front and back plastic covers of bound documents; (5) costs of spiral binding; (6) additional labour costs for binding; and (7) additional labour costs for photocopying.

Having regard to the above, the actual average cost incurred by Ogilvy Renault LLP for the essential photocopies made in connection with the present file are therefore equal to approximately \$0.22 per page.

[20] Nadeau submits that the evidence of Mr. Girard does not satisfy the requirements of the Costs Decision. It states that Westco has not proved that the 211,359 pages claimed were essential and that Mr. Girard provides no proof of the actual out-of-pocket costs incurred by Ogilvy Renault LLP. Nadeau further submits that “additional labour costs” are not properly chargeable as part of photocopying costs. Nadeau states that \$15,000 is a fair and reasonable amount in light of Westco’s failure to substantiate its claim.

[21] In *AlliedSignal Inc. v. DuPont Canada Inc.*, (1998), 81 C.P.R. (3d) 129, Taxing Officer Reinhardt of the Federal Court stated at paragraph 95 that “the elements considered in the actual costs of “photocopies” is limited to the costs of operating the machine (such as paper, toner, other maintenance costs, etc.) and not the hourly rate of pay of the operator (normally an overhead charge deemed not to be recoverable)”. We are also of the view that “additional labour costs” are not properly chargeable as part of photocopying costs. A charge of 22 cents per page is thus excessive given the non-recoverable items that were included in Westco’s calculation of that amount. Since there was no breakdown as to the exact cost of each of the enumerated items,

we will exercise our discretion and reduce the amount claimed for photocopies to \$25,000.00. In our view, this amount is reasonable in the circumstances.

c. QST

[22] Westco has included a claim in the amount of \$4,933.29 for QST, where applicable. General and provincial sales tax on fees and disbursements are allowable pursuant to paragraph 1(3)(b) of Tariff B of the Rules which states that “[a] bill of costs shall include disbursements, including (b) any service, sales, use or consumption taxes paid or payable on counsel fees or disbursements allowed under this Tariff.” Nadeau disputes the amount claimed under this heading on the basis that (a) disbursements amounts already include any applicable provincial sales tax; (b) no provincial sales tax was charged by CRA International; and (c) the charges were incurred in Ontario.

[23] Upon reviewing the invoices submitted by Westco and the supplementary affidavit of Ms. Denise Pope, dated August 17, 2009 wherein she indicated that disbursements did not include additional taxes, we are of the view that Westco’s claim for QST should be allowed. In light of the above findings of the Tribunal, the QST will however be reduced and calculated based on the following numbers:

Selected Travel Charges:	\$ 3,636.96
Selected Accommodations Charges:	\$ 8,460.09
Copy Charges	\$25,000.00
Messenger Charges	\$ 1,146.16
Sub-Total	\$38,243.21
GST	\$ 1,912.16
Total	\$40,155.37
<b>QST (7.5%)</b>	<b>\$ 3,011.65</b>

#### IV. CONCLUSION

[24] Based on these reasons, Westco’s total entitlement is as follows:

**Fees**

Fees:	\$143,357.50
GST on fees (5%):	\$ 7,167.88

**Total on fees: \$150,525.38**

**Disbursements**

Travel:	\$ 4,285.38
Accommodations:	\$ 11,290.20

Photocopies	\$ 25,000.00
Expert fees	\$ 205,250.00
Messenger	\$ 1,146.16
Long distance	\$ 1,175.64
Meals	\$ 438.07
Transcripts	\$ 9,966.50
 Total Disbursements (before tax)	 \$258,551.95
 Applicable QST (7.5%)	 \$ 3,011.65 (on applicable disbursements)
Applicable GST (5%)	\$ 12,927.60
 <b>Total Disbursements</b>	 <b>\$274,491.20</b>
 <b>Grand Total</b>	 <b>\$425,016.58</b>

[25] As previously mentioned, Nadeau is of the view that the revised bills of costs submitted by Acadia and Dynaco comply with the Costs Decision. Upon reviewing such bills, we are satisfied that they are consistent with the Costs Decision and will thus be allowed. Accordingly, costs for Acadia and Dynaco will respectively be fixed at \$53,763.38 and \$51,885.75, all inclusive.

[26] In its Costs Decision, the Tribunal provided guidance on the costs principles which were applicable to the present case and determined that a lump-sum should be awarded to the Respondents based on Tariff B of the Rules. The Respondents were ordered to provide a revised bill of costs in accordance with these principles.

[27] The objective of the assessment of costs in the present matter was not rigid adherence to the Tariff but rather to ensure that the awards provide an appropriate contribution towards the Respondents' solicitor-client costs.

[28] Recognizing that an award of costs is not an exercise in exact science and having regard to the applicable principles set out in the Tribunal's Costs Decision and the submissions of the parties we consider that the above-noted costs awards are reasonable.

**FOR THESE REASONS, THE TRIBUNAL ORDERS THAT:**

[29] The Applicant shall pay to the Respondent Dynaco costs fixed in the amount of \$51,885.75 all inclusive.

[30] The Applicant shall pay to the Respondent Acadia costs fixed in the amount of \$53,763.38 all inclusive.

[31] The Applicant shall pay to the Respondent Westco costs fixed in the amount of \$425,016.58 all inclusive.

DATED at Ottawa, this 3<sup>rd</sup> day of June, 2010

SIGNED on behalf of the Tribunal by the panel members

(s) Edmond P. Blanchard

(s) Henri Lanctôt

(s) P. André Gervais



**COUNSEL:**

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For the respondents

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