

CITATION: *Rupe v Beta Frozen Peas* [2002] NTMC 004

PARTIES: CLINTON DOUGLAS RUPE

v

BETA FROZEN PRODUCTS

TITLE OF COURT: WORK HEALTH COURT

JURISDICTION: WORK HEALTH

FILE NO(s): 9828002

DELIVERED ON: 11 February 2002

DELIVERED AT: DARWIN

HEARING DATE(s): TAXATION ON 10.12.2001

JUDGMENT OF: JUDICIAL REGISTRAR FONG LIM

CATCHWORDS:

TAXATION OF COSTS – COUNSELS FEES- TYPING COUNSEL’S
SUBMISSIONS

REPRESENTATION:

Counsel:

Worker: Chris Osborne

Employer: Penny Turner

Solicitors:

Worker: Hunt & Hunt

Employer: Cridlands

Judgment category classification: C

Judgment ID number: [2002] NTMC 004

Number of paragraphs: 13

IN THE WORK HEALTH COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 9828002

[2002] NTMC 004

BETWEEN:

CLINTON DOUGLAS RUPE
Worker

AND:

BETA FROZEN PRODUCTS
Employer

REASONS FOR JUDGMENT

(Delivered 11TH February 2002)

JUDICIAL REGISTRAR FONG LIM:

1. The Worker was unsuccessful in this court in his application for benefits and appealed to the Supreme Court. The Supreme Court found for the worker on appeal and Justice Riley ordered that the Respondent (the employer) pay the Appellant (the worker) cost of the trial in the first instance in so far as those costs relate to the challenge made by the worker to the Form 5 Notice issued. The Worker filed a Bill of Costs pursuant to the order of Justice Riley and the Employer applied to the Chief Magistrate to have the taxation of that Bill of Costs stayed until the determination of the counterclaim which his honour Justice Riley ruled had not been determined by the Chief Magistrate in the first instance. The application was refused by the Chief Magistrate and the taxation held on the 10th December 2001.
2. At the hearing in the first instance the Worker pleaded that the Form 5 served on him was invalid because, inter alia, the medical certificate attached to that Form was invalid. The Worker also claimed in his statement of claim that he continued to be incapacitated for work. The Employer

counterclaimed that the Worker's benefits ought to be cancelled because he was no longer incapacitated for work.

3. On Appeal the worker was successful on the ground that the medical certificate attached Form 5 was invalid although His Honour conceded that did not mean that the employer would not be successful in its counterclaim in relation to the worker's capacity to work.
4. The Worker's solicitor has claimed all of the costs of the hearing except for one day on the basis that the order of Justice Riley included any time spent relating to the worker's challenge of the Form 5. The matter is complicated by the fact that the Form 5 that was challenged included grounds that the worker was no longer incapacitated for work. In fact part of the counterclaim was simply a restatement of what was in the Form 5. The evidence called in rebuttal of the Form 5 by the worker in relation to capacity for work is also evidence which relates to the counterclaim. The worker's argument is that it is impossible for those costs to be separated and therefore are properly claimed by the Worker because he was successful in his appeal.
5. The Employer argued that the costs allowable pursuant to Justice Riley's order are only those which relate to the issue of the medical certificate and any costs in relation to other aspects of challenging the Form 5 (specifically those costs which are also costs regarding the capacity to work) have been left by Justice Riley to be determined subsequent to the determination of the counterclaim.
6. Justice Riley's order was in the following terms:
“...and given the limited success of the appellant on the issues raised below the respondent is to pay the appellant's costs of the trial at the first instance insofar as those costs relate to the challenge made by the worker to the Form 5 notice issued pursuant to s69 of the Work Health Act.”

7. The role of the taxing officer is not to read into meaning into an order for costs. If the order is not clear on the face of it then it is up to the parties to have the Judge or Magistrate clarify the order. Otherwise the taxing officer may choose to interpret the order in a way that was not intended by the Judge or Magistrate who made that order.
8. The words “given the limited success of the appellant on the issues raised below” which preface the order for costs indicate that his honour was intending to limit the order for costs in some way. The following words limit the order for costs to “relate to the challenge made by the worker to the Form 5”. It is clear that His Honour wanted the costs order to be limited to the challenge to the Form 5 however he did not go on to limit his order to relate only to the issue of the invalid medical certificate. Accordingly I can only tax the Bill of Costs on the basis that any costs which relate to the challenge of the Form 5 including those costs incurred by the worker rebutting the employer’s claim in the Form 5 that the worker no longer had a capacity to work. Costs relating solely to the counterclaim have been disallowed.
9. On that basis I have taxed the costs accordingly. I reserved my ruling at the taxation in relation to how much of the hearing costs I allow and whether it is reasonable for the solicitor to charge for the costs of their clerk typing up counsel’s submission because Counsel does not have staff to do it for him. I gave each party the opportunity to provide me with written submissions on both items. I only received submissions from the Employer.
10. In relation to the hearing costs I allow the costs of the solicitor’s attendance at hearing with the exception of one day. I come to that conclusion because even on the Employers’ submissions a lot of the hearing time was taken up with evidence and submissions regarding the incapacity of the worker to work. The incapacity issue is raised in both the Form 5 and the counterclaim and therefore as it is raised in both and cannot be separated then I must

allow it a part of the costs relating “to the challenge made by the worker to the Form 5”. Therefore items 269 –277 are allowed (taking into account one hearing day has been conceded ie 16% of the 6 days of hearing) and Item 222 & 223 are allowed less 16% for time spent on counterclaim ie taxed off \$384.00.

11. In relation to the costs of the solicitor’s clerk typing up counsel’s submission I am going to disallow any such claim. Counsel is briefed to advise and appear that includes preparing submissions to present to the court whether in written or oral form. Counsel’s fees are generously set by guidelines and practice and in my view included in those fees are the costs of the overheads of producing written advice or written submissions. If counsel chooses not to employ someone to do his typing that is his choice and if he reaches an agreement that his submissions are typed up by the solicitors clerk that is a matter between him and the solicitor. In my view it is not reasonable or necessary for the worker to claim typing time when if another counsel had been used that time would have been included in his overheads (and in his brief fee as set). It is not evident to me that this Counsel is charging so much less than the expected rate for a barrister of his experience and therefore there has been no allowance in his fee for the fact that he does not pay anyone to type his work.

12. I therefore tax and allow the Bill of costs as follows:

Preparation

Brought in at \$19240.00

Taxed off \$3427.00

Care and conduct 25% \$3953.25 \$19766.25

Attendance at hearing

Brought in at \$7840.00

none taxed off because one day conceded \$7840.00

Taxation

Brought in at 873.00

Short charges for attendances

allowed 15 units 10.12.2001

37 units solicitors time 884.00

39 units clerks time 312.00

Taxed off 43.00

plus GST 10% 203.00 \$2229.00

Disbursements

Taxing fee 338.00

Willohby's 367.68

Counsels fees brought in at 36250.00

– taxed off costs relating to appeal

letter – 250.00,

call to Owen Downs \$20.00,

Conferences 3.5hours –790.00

one day of hearing – 1820.00 2910.00 34045.68

13. Therefore costs are allowed at \$29835.25 and disbursements are allowed at \$34751.36

Dated this 11th day of February 2002.

Tanya Fong Lim
JUDICIAL REGISTRAR