

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2013-404-000780
CIV-2013-404-004203
CIV-2013-404-004204
[2014] NZHC 1072**

UNDER the Arbitration Act 1996

IN THE MATTER of an arbitration before the Rt Hon Sir
T M Gault, Hon R L Fisher QC and
T C Weston QC

BETWEEN SHELL (PETROLEUM MINING)
COMPANY LIMITED
First Plaintiff

TODD PETROLEUM MINING
COMPANY LIMITED
Second Plaintiff

AND VECTOR GAS CONTRACTS LIMITED
First Defendant

VECTOR GAS LIMITED
Second Defendant

Hearing: (on the papers)

Counsel: H N McIntosh and M F Mabbett for Plaintiffs (KMCs)
B A Scott and A Kraack for Defendants (Vector)

Judgment: 20 May 2014

COSTS JUDGMENT OF VENNING J

This judgment was delivered by me on 20 May 2014 at 5.00 pm, pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date.....

Solicitors: Russell McVeagh, Wellington
Chapman Tripp, Wellington

[1] The judgment of 31 January 2014 refers. The Registrar has today referred the costs memoranda of parties to me. I apologise to the parties for the delay within the Registry in relation to this matter.

[2] As the successful party Vector seeks costs on the substantive appeal and also the costs appeal (the costs appeal was adjourned pending the outcome of the substantive appeal).

[3] There is a large amount of agreement between the parties. First, the KMCs accept that it is appropriate to class the proceedings as category 3 proceedings. Next, the KMCs agree that Vector's disbursements are reasonable. Finally, the KMCs also agree the costs appeal should be discontinued and the costs should follow that discontinuance.

[4] The primary areas of disagreement are Vector's submission it should be entitled to costs calculated on a 3C basis for the substantive appeal. The KMCs challenge that approach.

[5] Next, the KMCs submit that Vector should not be entitled to claim for two separate sets of submissions.

[6] I accept the force of the KMCs' argument that blanket banding of all steps as time band C is inappropriate. I consider there to be a difference between the memoranda of counsel, appearances and even the commencement of responses to the three appeals which, in my judgment, should have required no more than a reasonable amount of time and are appropriately categorised as time band B on the one hand and the preparation of the written submissions on the other hand, which justify time band C. Having heard the case and considered the written submissions in some detail I am satisfied that a comparatively large amount of time would have been required to prepare the submissions so that time band C is appropriate for those.

[7] Further, I accept Vector's argument that the allowance for two sets of submissions is appropriate. There were three appeals heard together, but in reality

there were two substantive appeals. Those two substantive appeals were from two separate substantive awards. They involved discrete and separate issues. The submissions made that clear.

[8] I am satisfied time band B is appropriate for the costs appeals.

[9] For those reasons Vector is entitled to costs in the sum of \$61,616.00 calculated as follows:

Costs claimed from appeals			
<i>Substantive Appeal – CIV-2013-404-0780; 4203; 4204 – Category 3</i>			
<i>HCR item reference</i>	<i>Description of item claimed</i>	<i>Band</i>	<i>Amount</i>
11	Memorandum of counsel (27 February 2013)	B	\$1,176.00
11	Memorandum of counsel (26 September 2013)	B	\$1,176.00
13	Appearance at case management conference (15 March 2013)	B	\$882.00
53	Commencement of responses to three appeals (CIV-2013-404-780; 4203; 4204)	B	\$4,410.00
56	Preparation of two sets of written submissions	C	\$35,280.00
57	Appearance at hearing for principal counsel		\$8,820.00
58	Appearance at hearing for second counsel		\$4,410.00
Sub-total:			\$56,154.00
<i>Cost Appeal – CIV-2013-404-2316; 4206 – (2B basis)</i>			
<i>HCR item reference</i>	<i>Description of item claimed</i>	<i>Band</i>	<i>Amount</i>
11	Memorandum of counsel (27 September 2013)	B	\$796.00
53	Commencement of responses to two appeals (CIV-2013-404-2316; 4206)	B	\$1,990.00
Sub-total:			\$2,786.00
Total:			\$58,940.00

Disbursements	
Filing fee for three Notices of Opposition	\$330.00
Accommodation for two counsel – 3 nights	\$1,380.00
Flights from Auckland to Wellington for two counsel	\$966.00
TOTAL DISBURSEMENTS:	\$2,676.00
TOTAL COSTS AND DISBURSEMENTS:	\$61,616.00

[10] Order accordingly.

Venning J