

IN THE WARDEN'S COURT OF QUEENSLAND
HELD AT BRISBANE

IN THE MATTER OF: APPLICATION FOR COSTS IN
RESPECT OF A DETERMINATION OF
COMPENSATION IN RESPECT OF
MINING LEASE APPLICATIONS 90122
AND 90123 IN THE MOUNT ISA
DISTRICT

BEFORE: F W WINDRIDGE, MINING WARDEN

APPLICANT MINER: STRATEGIC MINERALS
CORPORATION N L and PACIFIC
NICKEL LIMITED (FORMERLY
ARBOYNE N L)

RESPONDENT LANDOWNER: DONALD STUART MACLEAN

CATCHWORDS: MINING – COMPENSATION – COSTS –
GENERAL PRINCIPLES

Mineral Resources Act 1989 s. 281, s. 282(7)

DETERMINATION:

It is necessary to outline some background history to the application.

Strategic Minerals Corporation N L and Pacific Nickel Limited (formerly Arboyne NL), hereinafter referred to as the miners or the applicant miners, are the applicants for mining leases number 90122 and 90123. The lease application areas adjoin each other. MLA 90122 is 350.90 hectares in area. MLA 901234 is 124.70 hectares in area. Both leases were recommended for grant on 14 March 1997. The recommended term is 25 years.

The lease application areas are located on Lot 2414 on PH 1637, Parish of Peterfield, County of Woolgar, being located on Middle Park Holding. A grazing operation is conducted on Middle Park by Donald Stuart Maclean.

On 30th July 1998, this Court handed down determinations in respect of the quantum of compensation to be paid for each lease, and the times, terms and conditions when those payments were to be made.

It is in respect of that determination that the application for costs has been made.

The hearing of the compensation matter was scheduled for 10.00 am in the Warden's Court at Richmond on 25th and 26th of February 1998. However, the respondent landowner failed to appear. It was subsequently arranged that submissions in writing would be accepted. The Court heard submissions on costs in Mount Isa on 8 September 1998 when the legal representative for the miner appeared. The landowner relied on written submissions lodged previously.

Apart from the general provisions of the *Mineral Resources Act 1989 (MRA)* relating to costs, section 282(7) provides that this Court “may make such orders as to costs between the parties to

the determination as it thinks fit". There is little assistance to be gained from other decided cases in this jurisdiction. One general guiding principle is that one must start with no preconceptions as to the exercise of the discretion to award costs, save that it must be exercised 'judicially'. That means for reasons that can be considered and justified. There are however some other general principles which may be relevant to this case.

In *Hughes v. Western Australian Cricket Association (Inc) & Ors* (1986) ATPR 40-748 ("Hughes") Toohey J said at 40-748:

"1. Ordinarily, costs follow the event and a successful litigant received his costs in the absence of special circumstances justifying some other order. *Ritter v. Godfrey* (1920) 2 K. B. 47.

2. Where a litigant has succeeded only upon a portion of his claim, the circumstances may make it reasonable that he bear the expense of litigating that portion upon which he has failed. *Foster v. Farquhar* (1893) 1 Q.B. 564.

A successful party who has failed on certain issues may not only be deprived of the costs of those issues but may be ordered as well to pay the other party's costs of them. In this sense, 'issue' does not mean a precise issue in the technical pleading sense but any disputed question of fact or law. *Cretazzo v. Lombardi* (1975) 13 S.A.S.R. 4 at p.12."

3. From *Courtney Creche Pty Ltd v Okko's Fine Art and Custom Framing Pty Ltd*, 22 June 1995 (unreported Supreme Court of New South Wales) at 24:

"There is always a reluctance to make an order for costs against a successful party and ordinarily the Court will only do so if there are special factors present, *Donald Campbell and Co Ltd v Pollack* (1927) AC 732; *Deen v The Different Drummer Pty Ltd* (1977) ACLD 526. Although most of the cases deal with successful defendants, the rule is basically the same for both plaintiffs and defendants, *Ritter v Godfrey* (1920) 2 KB 47, 52 approved in *Campbell's Case* at 814. Again, the authorities show that, normally, the successful party should get its costs even if it succeeds on some issues only, unless some issue was dominant or separable. The first question will often be whether the plaintiff can be said to be successful or substantially successful. Thus a plaintiff who receives only nominal damages when it had sought substantial damages is not categorized 'successful'; *Alltrans Express Ltd v CVA Holdings Ltd* (1984) 1 All ER 685, 690-692."

Some unusual circumstances which surround these proceedings include the fact that the landowner and his legal advisers never appeared before the Court, the Court and the solicitor for the miner travelled to Richmond for the hearing, being the centre nearest to the landowner's place of residence, but the landowner failed to appear. I also take cognisance of the fact that the submission filed on behalf of the landowner was in relation to other matters, and not directed to the matters that the Court must consider as set out in s.281 (*MRA*). Ultimately, whilst the Court did not accept the invitation of the miner to vary existing agreements between the parties, the total award of \$33,000 was more consistent with the miners proposal of an increase of \$1000 per year for the 25 year term of the leases. Neither party called expert or valuation evidence.

Whilst it might be said that the landowner was successful because ultimately he did receive an award for compensation, it was always the case that such an order would be made. I consider that by his non-appearance and the direction of his submissions, the Court received no assistance and

could find little benefit from his actions. Under the circumstances, I consider it is fair and reasonable to order that each party will be responsible for their own costs.

Dated at Brisbane this 19th day of March 1999.

F W WINDRIDGE
MINING WARDEN