

BETWEEN:

CUONG Q. TRAN

Applicant

and

PAFCO INSURANCE COMPANY LIMITED

Insurer

DECISION ON EXPENSES

Before: John Wilson

Heard: August 26, 2001, at the Offices of the Financial
Services Commission of Ontario in Toronto.
Written submissions were received on August 26, 2001.

Appearances: Michael Krylov for Mr. Tran
Jennifer Griffiths for Pafco Insurance Company Limited

Issues:

The Applicant, Cuong Q. Tran, was injured in a motor vehicle accident on October 3, 1996. In a decision dated February 14, 2000, I dealt with his claims for statutory accident benefits under the *Schedule*¹, while reserving on the issue of expenses.

The issues in this further hearing are:

¹The *Statutory Accident Benefits Schedule — Accidents after December 31, 1993 and before November 1, 1996*, Ontario Regulation 776/93, as amended by Ontario Regulations 635/94, 781/94, 463/96 and 304/98.

1. Is Mr. Tran entitled to his expenses incurred in respect of this arbitration hearing?
2. Is Pafco entitled to its expenses in respect of this hearing?

Result:

1. Mr. Tran is not entitled to his expenses.
2. Pafco is entitled to its expenses.

EVIDENCE AND ANALYSIS:

Mr. Tran brought his claim to arbitration for income replacement and other benefits from Pafco.

Mr. Tran was patently unsuccessful in his claim. The only issue that could be even remotely characterized as a “success” in his claim was the finding that he was not obliged to pay the Insurer’s assessment pursuant to section 282(10) of the *Insurance Act*.

In context of that claim I commented:

Mr. Tran certainly delayed the resolution of this matter through his conduct. His ongoing non-disclosure during the arbitration process might possibly be characterized as an abuse of process, but such conduct during the arbitration process is more appropriately dealt with under a claim for expenses.

I also ordered a repayment of certain benefits based on a finding of “wilful misrepresentation.”

Both Mr. Tran and Pafco have requested their expenses in this matter. Mr. Krylov, on behalf of Mr. Tran requested a written hearing on expenses. In accordance with the agreed procedure, and the Commission’s *Dispute Resolution Code* (“the *Code*”), Pafco filed its bill of costs. It also filed timely written submissions on expenses. In spite of repeated requests, Mr. Tran did not file any material or submissions on the issue of expenses.

Given my findings on Mr. Tran's conduct, both in putting forward his claim and his conduct at the hearing, I find that Mr. Tran is disentitled to any expenses in this matter. To do otherwise would be to award behaviour that was uncooperative, disrespectful of orders and undertakings, and frankly dishonest.

As noted, Pafco was successful in this matter, while Mr. Tran delayed, obfuscated and created unnecessary roadblocks to the prompt resolution of this matter. I find that his conduct, taken as a whole was an abuse of the process of this tribunal. I find, as well that Mr Tran clearly fits within the parameters of Regulation 664, as being responsible for conduct that "tended to prolong, obstruct or hinder the proceedings."

I find that Pafco is entitled to its expenses in this matter, and so order. Pafco has filed a bill of costs totalling \$14,960.76. This is comprised of \$8,765.28 in fees and \$6,195.48 in disbursements. It has been long decided that, in general, arbitrators do not do a line -by-line examination of a bill of costs. In this matter, where one party has refused to make any submissions as to the expenses claimed, a detailed review is even less appropriate.

This matter was rendered unduly complex by the web of claims and conflicting information put forward by the Applicant. I note, as well, the lack of cooperation by Mr. Tran, the difficulty in obtaining productions, requiring motions to obtain documents, and ultimately, an adjournment of the hearing to allow time to obtain documents withheld by Mr. Tran.

Although the hours claimed might seem excessive for a normal three-day hearing, the history of this matter justifies the time expended by Insurer's counsel. The time charges and disbursements claimed also appear to be in the range used by the Commission. This is clearly not billed on a solicitor/client scale.

I find the bill of costs submitted by Ms. Griffiths to be reasonable, and direct and that it be paid in full.

October 2, 2001

Date

John Wilson
Arbitrator

FSCO A97-002186

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Insurer

ARBITRATION ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. Mr. Tran shall pay to Pafco \$14,960.76 as its expenses in this matter.

John Wilson
Arbitrator

October 2, 2001

Date