

TAXATION

HMA v [REDACTED] RM

HELD AT GLASGOW , 8 DECEMBER 1994

This taxation arose out of a dispute between the Scottish Legal Aid Board ("the Board") and Mr Alan D Turnbull, Advocate, in relation to fees claimed by Mr Turnbull as leading Junior in the above case.

The Scottish Legal Aid Board was represented at the diet of taxation by [REDACTED]
[REDACTED] Mr Turnbull attended personally along with his Clerk, Mr B W MacKinnon.

- 1 Prior to the taxation diet Mr Turnbull provided me with copies of the fee notes submitted to the Board, together with copy note also submitted to the Board detailing Counsel's reasons for charges made for (a) Preparation (b) Daily Trial Rate and (c) Waiting Days.
- 2 [REDACTED] referred me to the Act of Sederunt Criminal Legal Aid (Scotland) Fees Regulations 1989 Regulation 10 and Schedule 2. Regulation 10 provides:-
"Fees allowable to Counsel
10(i) Counsel shall be allowed such fee as appears to the Auditor to represent reasonable remuneration, calculated in accordance with Schedule 2, for work actually and reasonable done due regard being had to economy"
Schedule 2 - Fees of Counsel provides:-
 - 1 Subject to the following provisions of this Schedule, fees shall be calculated in accordance with the Table of Fees in this Schedule.
 - 2 Where the Table of Fees in this Schedule does not prescribe a fee for any item of work the auditor shall allow such fee as appears to him appropriate to provide reasonable remuneration for work with regard to all the circumstances, including the general levels of fees in the said Table of Fees.
 - 3 The auditor shall have power to increase any fee set out

in the Table of Fees in this Schedule where he is satisfied that, because of the particular complexity or difficulty of the work or any other particular circumstances, such an increase is necessary to provide reasonable remuneration for the work.

- 4 The auditor shall have power to reduce any fee set out in the Table of Fees in this Schedule where he is satisfied that, because of any particular circumstances, a reduced fee is sufficient to provide reasonable remuneration for the work.

The Diet of Taxation was necessary because Counsel (leading Junior) had not been prepared to accept the Board's offer of an increase of the prescribed Trial fee per day in Glasgow from £335.00 (the mid-point between the scale fee for Senior and Junior Counsel) to £425, which together with payment of £1,000 already made was to include all necessary preparation.

The Board's offer of £100 per waiting day during the course of the Trial was also unacceptable to Counsel. Counsel sought a preparation fee of £6,000; Trial fee per day of £600 and waiting days at £223 each. All other items on Counsel's fee notes were to be settled in full.

Before increasing a prescribed fee I require to be satisfied that in terms of Schedule 2 paragraph 3 because of the particular complexity or difficulty of the work or any other circumstances of the case such an increase is necessary to provide reasonable remuneration for the work done.

In support of his submission that these factors were present in this case Counsel requested me to take into account *inter alia* the following:-

- (a) That the trial which lasted 82 days and ran from January 1994 to June 1994 was an extremely complex and difficult fraud trial.
- (b) That the indictment, which ran to 188 pages including schedules thereto was complex and related to matters covering a period of almost seven years, listed 235 Crown witnesses, 2,325 productions, mainly files, invoices and computer print-outs.

(The productions contained in 19 boxes and comprising some 80,000 sheets were available at the taxation.)

- (c) That preparation of the case had required many consultations and attendances at the offices of Messrs Doonan McCaig, Solicitors, Glasgow on a regular basis during the period mid-June 1993 to the end of December 1993. These attendances had been in the evening and that 100 hours claimed as time spent pre-trial in preparation was reasonably underestimated having due regard to economy.

Whilst a detailed examination of each and every production was not necessary he did however require a working knowledge of what work carried out by the Companies involved.

- (d) That all charges against Mr McKay were dropped.
- (e) That the occurrence of "Waiting days" at various times throughout the Trial was outwith the control of Counsel. He was not able to take on other cases therefore not able to fee earn.

██████████ on behalf of the Board submitted:-

- (a) That there was no dispute re. consultations. The claim for these fees was accepted as submitted. However, these fees cannot be disregarded when looking at the overall fees involved. There is no reference to a preparation fee in the table.
- (b) That the prescribed Trial fee per day includes an element for preparation and that the offer of £425 plus the payment of £1,000 allows for all preparation.
- (c) That the 100 hours preparation time claimed is not disputed but the hourly rate of £60 is. Taken over a daily charge of six hours this provides a daily rate of £360.00 which is in excess of daily Trial fee for Junior Counsel.
- (d) That £600 Trial fee per day claimed is a 100% uplift in the prescribed Trial fee per day for Junior Counsel.
- (e) That the enhanced Trial fee per day offered over the entire 82 days affords Counsel the security of employment at the enhanced rate over this period.

I have considered all points raised by ██████████ and Mr Turnbull at the diet of Taxation including previous decisions by other auditors. In

addition to considering the terms of the Table of Fees, where no preparation fee is prescribed, I also require to consider what may be regarded as reasonable remuneration in all the circumstances.

Preparation Fees

Whilst I accept that preparation fees are considered to be included in the daily Trial fee in the Table I consider that in a case such as this, lasting some five months and containing an exceptional bulk of paper productions, (approx 80,000 sheets) the prescribed daily Trial fee is inadequate. Having the pre-trial preparation of some 100 hours separately identified by Counsel has made my task slightly easier. I am satisfied that the time stated is reasonable having regard to the complexity of the case and the bulk of paper productions. I am of the opinion that the preparation fee claimed by Mr Turnbull is too high. Considering a "Court day" lasts six hours Mr Turnbull's 100 hours preparation converts to 17 days. I consider £4,250.00 is appropriate to provide reasonable remuneration in all the circumstances. I have arrived at this figure by taking the Board's rate for preparation, basic Trial rate Junior alone Glasgow £298.50 less one-third £99.50 = £199 and adding an element for exceptional preparation as earlier mentioned, at a rate of 25% giving £248.75 which I have rounded to £250 for the 17 days.

Daily Trial Fee

I have already stated that the daily Trial fee is considered to include preparation fees. However, I am of the opinion that in this case the daily Trial fee offered is inadequate. Again, I am of the opinion that the daily fee claimed by Mr Turnbull is too high. Taking account of Counsel's seniority I consider £500 is the appropriate daily Trial fee to provide reasonable remuneration in all the circumstances.

Waiting days

Whilst I fully appreciate the Board's argument on this matter regarding attendance at court on the day and whether work actually and reasonably done I am of the opinion that I must consider the reasons for the court not sitting on these days. These range from illness of jurors to illness of the presiding sheriff and standing the amount of time spent hearing evidence, allowing the jury and accused an opportunity to rest.

In all the circumstances I am of the opinion that the Board's offer of £100 per day is proper and reasonable in this case.

In view of the sums involved I have apportioned the Audit Fee which is payable on the Accounts as presented so as to find the Board liable for the fee on the Account as taxed and Mr Turnbull liable for the fee applicable to the sum being taxed off.

T. McCafferty

T McCAFFERTY
Auditor of Court
Sheriffdom of Glasgow and Strathkelvin
20 January 1995

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Q:

[REDACTED]

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[REDACTED]

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