



1 I will start with the defendant's claim.

2 I am satisfied that there was no contract as between the  
3 plaintiff and the defendant for the defendant to effect  
4 the repairs on an agreed upon basis for payment.

5 Accordingly, in my view, it is left on a quantum meruit  
6 basis which means that the defendant is entitled to  
7 reasonable remuneration for the work done for the plaintiff,

8 I have some difficulty with the labour costs. I don't  
9 think that quantum meruit - at least the principles of  
10 that legal concept - would permit me to accept the flat  
11 rate system. It just seems to me to be patently wrong  
12 for Mr. Mattin to have to pay for fifty-five hours work  
13 when something substantially less than that was actually  
14 done. Mr. Sutherland thought he did forty hours work but  
15 that was, at best, a wild estimate on his part.

16 The truck was only in the defendant's shop, at the most,  
17 for three days and at the most was worked on for three  
18 full days by only Mr. Sutherland. I think that it's  
19 unlikely that he spent more than thirty hours and I allow  
20 labour at that number of hours at the shop rate of \$38.30  
21 for a total of \$1,149.00. All of the other items I allow,  
22 as submitted by Mr. Berg, that is, the parts with the 25%  
23 add-on which I find to be reasonable remuneration at \$3,926.11,  
24 tax at \$235.57, frame and suspension at \$80.00, sublet work  
25 at \$998.00, towing at \$99.00 and the betterment with respect  
26 to the bullboard of \$475.00, making, according to my  
27 calculation, - subject to correction by counsel - of \$6,962.68

1 from which is to be deducted \$1000.00 paid, leaving the  
2 defendant's entitlement at \$5,962.68.

3 Turning to the plaintiff's claim for damages, to  
4 wrongful seizure of the truck; as I said in argument, I do  
5 not see this to be a claim for exemplary damages. I do not  
6 see the defendant's conduct to have been highhanded in  
7 effecting the seizure. Mr. Berg honestly believed, in good  
8 faith, that he had the right to seize, that is, the defendant  
9 had the right to seize. It wasn't so much the exercise of  
10 that statutory right that is being challenged that gives  
11 rise to the concession that seizure was wrongful as the fact  
12 that the money demanded on the seizure was substantially more  
13 than what was owing. I don't think blame for that can really  
14 be laid at anybody's doorstep. The amount claimed contemplated  
15 completion of the work at a later time, that is, the painting  
16 and so on, on the repairs to the truck. And I think, at  
17 most, it was an error or oversight which does not attract  
18 exemplary damages. Otherwise I do not see the defendant's  
19 conduct to be highhanded in effecting the seizure.  
20 Therefore the claim for exemplary or punitive damages is  
21 dismissed.

22 As far as the down-time claim is concerned, that is  
23 problematical. Again, all I can do is do the best possible  
24 with the variety of figures - the great number of variables  
25 that have been presented.

26 I think that in all probability the gross revenue per load  
27 during the five days of down-time would have been

1 approximately \$255.00. The fuel costs per load would have  
2 been \$42.00 - perhaps more but I will use the \$42.00 figure.  
3 And from that I also deduct 20% of the gross for other  
4 operating costs - repairs, down-time contingencies arising  
5 from other causes, and to a certain extent actual  
6 depreciation of wear and tear. That leaves total deductions  
7 from the \$255.00 of \$92.50, leaving a net loss per load of  
8 \$162.50. I find that the down-time was five days.  
9 I find that the plaintiff would likely have run three loads  
10 per day making a total loss of fifteen loads. Multiplying  
11 the \$162.50 figure by fifteen, I find the down-time loss  
12 to be proved at \$2,437.50 - again subject to correction by  
13 counsel of my mathematics.

14 The plaintiff is entitled to recover expenses of  
15 \$273.70, being airfare from Fort St. John to Prince George  
16 and return to Fort Nelson and busfare of \$26.10 and taxi  
17 fare of \$10.00. Plaintiff's damages therefore total  
18 \$2,711.20.

19 The defendant is entitled to judgment for the difference  
20 between \$5,962.68 and \$2,711.20 which I will leave to  
21 counsel to calculate. And because there was no clear terms  
22 as to payment as between the plaintiff and the defendant  
23 for the repair work, the defendant is not entitled to  
24 contractual interest at 2% per month. The defendant is  
25 entitled to interest under the Court Order Interest Act at  
26 10% per annum from January 15, 1983 and that of course would  
27 be the difference between the two figures that is on the

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net judgment to the defendants.

MR. BYL: Costs may be complicated; the defendant was substantially successful on the counterclaim - well, was successful on the counterclaim. I would ask that I be awarded my costs as though I were a plaintiff.

MR. ZACHERNUK: Both sides were successful, Your Honour, to an extent. Perhaps costs should be calculated and offset.

THE COURT: The plaintiff will have cost on the action and the defendant will have cost on the counterclaim. There will be two sets of costs to be taxed and then there will be an offset. Does that deal with everything? Does counsel have comments on the calculations?

MR. BYL: I was charting them as Your Honour went along. They look right.

MR. ZACHERNUK: I noted them and if there is any dispute, I can speak to Mr. Byl.

THE COURT: You can come back before me if my arithmetic needs correction.

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