

Neutral Citation no [2004] NICty 4

Ref: County 109

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: 19/03/04

SHARON McARDLE

PLAINTIFF

AND

**PHILIP GEORGE ADAMS, STEPHEN REID, TRANSLINK AND MOTOR
INSURERS BUREAU**

DEFENDANTS

JUDGMENT

By

**His Honour Judge Hart QC
Recorder of Belfast**

19 March 2004

Appearances:

Mr Deazley of Higgins Hollywood Deazley, solicitors for the plaintiff.
Mr Brown of Tughans, solicitors for the plaintiff.

[1] In this application there were originally two issues as to costs. The first was a claim by the plaintiff for the costs for solicitor and counsel on 26 August 2003 when the case was not reached. The defendants now concede that the plaintiff is entitled to the appropriate fee for that adjournment, and the dispute is as to the amount to be allowed.

[2] Although the matter is no longer in dispute, it is perhaps appropriate to remind practitioners that where a case has to be adjourned because it is not reached

that is regarded as one of the risks of litigation and the extra costs incurred are “costs in the cause”. Consequently, the loser must pay the winner the latter’s extra costs occasioned by such an event. See the late Master Anderson’s *Legal Costs in Northern Ireland* at page 21.

[3] However, the second question in the present case is what amount is to be allowed in such circumstances. The plaintiff’s solicitor claims the appropriate figure is 1/3 of the scale fee for solicitor, the defendants argue that the proper figure for the solicitor is the same as that allowable for counsel, namely 1/3 of counsel’s scale fee.

[4] Paragraph 5 of Table 1 of Part 1 of Appendix 2 provides

“For each day or part of a day on which a trial or hearing is continued after the first day both counsel and a solicitor in attendance are each entitled to an additional sum equivalent to one third of counsel’s scale fee”.

[5] Whilst this provision relates to the situation where the hearing commences and has to be continued on another day, whereas in the present case the hearing did not commence, I can see no reason for distinguishing between the situations. Mr Deazley argued that where the case was not reached, the plaintiff’s solicitor incurred additional costs in setting the case up again for a further day, but I am not persuaded that this is correct. The case should have been prepared for hearing on the first day and therefore, other than perhaps the necessity of obtaining and serving witness summons for a subsequent hearing,

there should not be any necessity for any further work by the solicitor attributable to the case being adjourned because it had not been reached any more than there would be if the case commenced but could not be concluded on the first day and had to be resumed on a subsequent day.

[6] In this case there were two court appearances before the case was ultimately dealt with on 11 November 2003 when the plaintiff was awarded damages of £2,500 plus full costs. On 9 October 2003 the case was adjourned on the morning of the hearing with costs against the defendants. The defendants' solicitors contended in correspondence that their obligation was to pay 1/3 of counsel's fee on the amount awarded for both solicitor and counsel for the hearing of 9 October 2003. Although the judge awarded the costs of the day against the defendants, the amount was not quantified and in those circumstances I see no reason why the costs for the abortive hearing on 6 October should be calculated differently from those relating to 26 August.

[8] There will therefore be an order that the plaintiff's costs include the sum of £73.33 payable to both solicitor and counsel in respect of the hearing of 26 August, and the sum of £73.33 payable to both solicitor and counsel for the plaintiff in respect of the hearing of 9 October 2003.

[9] As the defendant initially contended that the plaintiff was not entitled to recover costs for 26 August the plaintiff has succeeded to that extent. However, the plaintiff has not succeeded in establishing that the plaintiff's solicitor was entitled to 1/3 of the scale for solicitor on both adjournments and

in all the circumstances I consider the proper order to make in relation to this application is that there be no order to costs.