

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 14
5341169

BETWEEN NEIL ADAMS
 Applicant

A N D HIREQUIP LIMITED
 Respondent

Member of Authority: James Crichton

Representatives: Roger Bowden, Counsel for Applicant
 Ralph Webster, Advocate for Respondent

Submissions Received: 20 November 2012 from Applicant
 19 November 2012 from Respondent

Date of Determination: 15 January 2013

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In the substantive determination which issued on 14 September 2012 referenced as [2012] NZERA Auckland 324, the Authority determined that Mr Adams had been justifiably dismissed and reserved the question of costs.

The application for costs

[2] Hirequip, as the successful party, seeks indemnity costs against Mr Adams in the amount of \$5,175 together with disbursements of \$444.50.

The response

[3] Mr Adams resists the contention that full indemnity costs be awarded, arguing that the matter was a standard personal grievance, dealt with in approximately half a day's hearing time and that there was nothing in the way in which the case was argued which would entitle the successful party to have full indemnity costs awarded.

Furthermore, it is suggested that Mr Adams would suffer undue hardship as a consequence of any significant costs award.

The law

[4] The leading case on costs fixing in the Authority is the decision of the Full Bench of the Employment Court, *PBO Ltd v. Da Cruz* [2005] 1 ERNZ at 808. In that decision, Judge Shaw identifies the principles that the Authority ought to have regard to in fixing costs and specifically approves the tariff-based approach frequently used by the Authority in costs setting.

[5] Amongst other things, Her Honour refers to costs in the Authority being typically modest, costs following the event, and the award of costs being discretionary.

[6] There seems to be a suggestion in the submissions filed for Hirequip that it is entitled to penalty interest given the fact that the Authority's substantive determination issued on 14 September and Hirequip had received nothing from Mr Adams since that date. But that submission of course begs the question that where costs have yet to be fixed, there is nothing for Mr Adams to pay. Clearly, the process the parties must adopt is to engage with each other after the issue of the substantive determination (that is why the Authority reserves costs) and seek to agree costs between themselves. Where that process is not successful, the reservation allows parties to revert to the Authority to have costs fixed. That is what has happened in the present case as presumably the parties have not agreed on the payment of costs. Certainly there can be no question of interest given that Mr Adams has yet to be told what he is to pay.

Determination

[7] The appropriate way to fix costs in a matter that is as straightforward as this one, is, as counsel for Mr Adams suggests, by the application of the Authority's daily rate procedures. The daily tariff approach identifies a starting point of \$3,500 for a day long fixture. This was a fixture dealt with in approximately half a day and there is nothing in the way the case was argued or in the merits of the matter which encourages the Authority to depart from the daily tariff approach.

[8] The only other matter that needs to be addressed is the question of the disbursements claimed. Mr Webster for Hirequip identifies disbursements of \$444.50. Those disbursements are reasonable and ought to be added to the costs recovered from Mr Adams.

[9] Accordingly, given a half day's hearing, the Authority awards costs of \$1,750 together with the actual disbursements claimed by Hirequip of \$444.50. Mr Adams is to pay to Hirequip the sum of \$2,194.50 as a contribution to the costs incurred by Hirequip. There is nothing in this case which would justify a costs award of the magnitude claimed by Hirequip; cases where the full costs are awarded to the successful party are rare indeed.

James Crichton
Member of the Employment Relations Authority