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Bell v Auckland City Council AA82A/10 [2010] NZERA 591 (26 July 2010)

Last Updated: 3 November 2010

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 82A/10 5275240

BETWEEN NICHOLAS BELL

Applicant

AND AUCKLAND CITY COUNCIL

Respondent

Member of Authority: Representatives:

Submissions received:

Robin Arthur

Allan Boyle, counsel for Applicant Katherine Burson, counsel for Respondent

19 March 2010 from Respondent 1 April 2010 from Applicant

Determination:

26 July 2010

COSTS DETERMINATION OF THE AUTHORITY

*Watson v New Zealand Electrical Traders Limited t/a Bray Switchgear*¹ citing *Health Waikato Limited v Elmsly*^[1] Neither case relied on resulted in an award of indemnity costs. Rather the *Watson* case demonstrates the application of the principles and approach confirmed in *PBO Ltd v Da Cruz*.^[2] The particular circumstances of the case are to be considered, including any factors which require an adjustment up or down of the notional daily rate. Taking account of 'without prejudice (except as to costs)' offers is one such factor. In *Watson* the Court considered the particular circumstances of that case required a costs award which more than doubled the notional daily rate but was less than the costs that the successful party actually incurred.

[5] In the present case I take the notional daily rate of \$3000 as the starting point for costs which should be awarded to the Council as the successful party. The following factors suggest that rate should be adjusted upward:

- a. Mr Bell did not accept the without prejudice offer (made more than two months before the Authority investigation meeting) in which the Council proposed he withdraw his claim in return for not being pursued for its costs up to that time; and
- b. Some preparation time was wasted because Mr Bell alleged some documents provided by the Council were forgeries but then accepted in the investigation meeting that writing in those documents was his and not forged; and
- c. Mr Bell was entirely unsuccessful in all claims made.

[6] Factors suggesting the rate should be reduced or remain the same are:

- a. The principle that costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct; and

- b. Mr Bell's evidence in the Authority investigation that he was of modest and limited means; and
- c. The principle that costs awards are to be modest and reflect what is reasonably required in preparing for an Authority investigation.

1 (unreported, EC, AC 64/06, 24 November 2006, Colgan CJ).

[7] Weighing those factors in the discretionary exercise of awarding costs, I consider the notional daily rate should be increased by \$1000. Accordingly Mr Bell is ordered to pay the Council \$4000 as a significant contribution to its costs incurred responding to his claim.

[8] An arrangement may need to be made for Mr Bell to pay those costs in instalments over several months. Leave is reserved to revert to the Authority for further orders if such arrangements are sought and cannot be agreed.

Robin Arthur
Member of the Employment Relations Authority

[\[1\] \[2004\] NZCA 35](#); [\[2004\] 1 ERNZ 172 \(CA\)](#) at [\[53\]](#).

[\[2\] \[2005\] NZEmpC 144](#); [\[2005\] 1 ERNZ 808](#).

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