

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 154A/08  
5076560

BETWEEN                      NICHOLAS BETTANY  
Applicant

AND                              MASONRY DESIGN  
SOLUTIONS LTD  
Respondent

Member of Authority:      Yvonne Oldfield

Representatives:            Douglas Cowan for Applicant  
Paul Wicks for Respondent

Submissions received:      6 May 2008 from Applicant  
20 May 2008 from Respondent

Determination:              13 June 2008

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In a determination dated 24 April 2008 I found that Mr Bettany had been unjustifiably dismissed by the respondent. After setting contributory conduct at 50% I awarded remedies of \$2,681.25 lost wages and \$2,500.00 compensation for associated hurt and humiliation. I reserved the issue of costs and instructed that if a determination on that issue was required the parties had a period of 28 days from the date of the determination in which to lodge submissions on it.

[2]     Both have now done so. Mr Bettany seeks a two thirds contribution to his actual costs which were \$8,356.25 (with invoices supplied to the Authority.) It is argued for Mr Bettany that this was a reasonable level of costs. It was noted that the investigation meetings occupied a day and a half and it was argued that the respondent's counterclaim (which was said to lack sufficient evidence) protracted the meeting time unnecessarily.

[3] The sum sought by way of contribution is \$5,570.83.

[4] For the respondent Mr Wicks asserts that inspection of the invoices reveals that the figure given for the total costs incurred by the applicant includes costs associated with mediation; costs which are not recoverable in the Authority. After adjusting for that the respondent says that the actual costs against which any award of costs ought to be assessed are \$5,473.80. The respondent also noted that the applicant or his representative caused the meeting time to be extended by:

- i. Mr Bettany's late return after the lunch adjournment;
- ii. Counsel for the applicant requiring an extra break in the meeting to take a call on another matter , and
- iii. The applicant's failure to supply evidence on mitigation as required by the timetable.

[5] Finally the respondent notes the finding that there was a high level of contributory conduct. Taking all these factors into account the respondent says that costs should lie where they fall.

[6] All the individual elements of the respondent's submissions have substance. (In particular I note that my own inspection of the invoices relating to the applicant's costs confirms that these invoices include work done for mediation.) However I do not accept that they have sufficient combined weight to require me to depart from the general rule that costs follow the event. Taking the respondent's submissions into consideration I find that a moderate award of costs, within the normal range, is in order.

[7] **On that basis the respondent is ordered to pay the applicant, as a contribution to his costs, the sum of \$2,000.00.**

Yvonne Oldfield

Member of the Employment Relations Authority