

- [2] In my determination dated 8 November 2007 I found that the termination of Mr Bolton's employment was substantively and procedurally justified but that – consistent with his contractual provisions – he was entitled to one month's notice of termination. It followed that he was also entitled to a recalculation of his holiday pay.
- [3] I also expressed a preliminary view that, subject to the parties' submissions, a contribution to Mr Bolton's fair and reasonable costs would be toward the lower end of a spectrum of \$1,500 to \$3,000, particularly as the investigation only required half a day.

Applicant's Costs Claim

- [4] It is submitted that Mr Bolton's costs amount to \$1519. A copy of counsel, Ms France's, timesheet was attached. That amount is sought.
- [5] It is also submitted that Mr Bolton's legal costs will increase as the respondent has not complied with the Authority's determination and the applicant is now forced to take further action to recover his entitlement.

Respondent's Costs Claim

- [6] On behalf of the Company its director, Mr Gavin Munro, says the applicant is not entitled to costs as the Authority found that Mr Bolton's termination was substantively justified.
- [7] Mr Munro also says that Mr Bolton has not submitted evidence of any bill being issued or of payment of legal fees and that no attempt was made, consistent with the Authority's recommendation (par 33), that the parties attempt to reach agreement on costs. Because the applicant has made no attempt to contact the respondent Mr Munro says it is untrue that the applicant is forced to take action to recover his entitlement.

Discussion and Findings

- [8] Mr Bolton succeeded with part of his claim to the extent that it was found he was entitled to one month's notice of termination and a recalculation of his holiday pay entitlement.
- [9] As costs follow the event, he is entitled to claim a contribution to his fair and reasonable costs: see *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.
- [10] I note that Mr Killalea has included in his timesheet various mediation costs totalling \$510. As clause 15 of Schedule 2 of the Act makes clear, the Authority "*may order any party to a matter to pay to any other party such costs and expenses ... as the Authority thinks reasonable*".
- [11] Parties are typically encouraged to carry their own mediation costs and it is not standard practice for the Authority to grant costs for mediation. Given that approach and, in this instance, Mr Bolton's limited success, I am not prepared to grant any contribution toward his mediation costs.
- [12] Of the remaining \$1,009 of costs, and having regard to *Da Cruz* (above) and the parties' submissions, I am satisfied that a fair and reasonable contribution to Mr Bolton's costs is \$500.

Determination

- [13] Nuwiseeb Limited is directed to pay to Mr Aubrey Bolton the sum of \$500 (five hundred dollars) as a fair and reasonable contribution to his legal costs.

Denis Asher

Member of the Employment Relations Authority