

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2014] NZERA Christchurch 78
5428641

BETWEEN MICHAEL GRAHAM
 BOSKETT-BARNES
 Applicant

A N D NEWMAN GRAPHICS LIMITED
 Respondent

Member of Authority: Helen Doyle

Representatives: Janette Walker, Advocate for Applicant
 Luke Radich, Counsel for Respondent

Submissions Received: Applicant's invoice on 17 April 2014
 Respondent's submission on 29 April 2014

Date of Determination: 13 May 2014

COSTS DETERMINATION OF THE AUTHORITY

A. The respondent is to pay to the applicant costs in the sum of \$2,000.

[1] In its determination dated 1 April 2014 the Authority found the applicant had a personal grievance that he had been unjustifiably dismissed and awarded remedies.

[2] The respondent had indicated at a reasonably early stage that it had incorrectly relied on a 90-day trial period and therefore the focus for the Authority would be on remedies. The Authority still had to reach conclusions about whether there was any substantive justification for the dismissal in order to assess remedies and whether there was any contribution.

[3] The applicant, after a period of time dealing with the matter himself, instructed Ms Walker.

[4] Ms Walker has provided the Authority with an invoice for costs in the sum of \$2,578. The invoice was not accompanied with submissions.

The respondent's submissions

[5] Mr Radich submits costs should not be awarded because Ms Walker was not a professional advocate or lawyer. He submits costs should lie where they fall and, further, that there was no basis for an award of full indemnity costs.

[6] Mr Radich referred to the leading Employment Court judgment on costs in *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808 and the principles therein.

[7] In support of his submission that costs should lie where they fall, Mr Radich relied on the following:

- that at an early stage of the proceedings the respondent accepted there was no valid 90-day trial period but the applicant refused to engage in settlement discussion wanting a determination from the Authority instead;
- that initially the applicant applied for remedies that were in excess of anything he could possibly have been awarded; and
- that the applicant refused to engage in settlement discussions and did not meet two deadlines for provision of evidence which necessitated the investigation meeting to be rescheduled.

Determination

[8] The Authority asked Ms Walker to advise about the issue raised by Mr Radich whether she was a professional advocate. Ms Walker advised in an email dated 1 May 2014, provided to Mr Radich, that she was an advocate primarily in rural dispute resolution but that she does mediation or advocacy work in employment, family, rural debt mediation and negotiations.

[9] I am satisfied that there was a proper basis for Ms Walker to charge for her services and that she was not simply a support person.

[10] The usual principle is that costs follow the event. Although Mr Radich attempts to persuade the Authority that should not apply in this case, I do not accept

there is any good reason to depart from the usual principle. This is not a case though that calls for indemnity costs.

[11] It is desirable that parties to an employment relationship problem enter into settlement discussions but they are not bound to do so. A party can obtain some protection from an award of costs by making an offer in the nature of a Calderbank offer. Sensibly the respondent did this but the amount awarded by the Authority was greater than that offered so that cannot be weighed in the exercise of my discretion as to costs. Many parties made application for remedies that could be seen as excessive. Mr Boskett-Barnes did revise and amend his claims before the investigation meeting to more realistic level.

[12] The respondent's approach in conceding that it had honestly but mistakenly relied on a 90-day trial period to end the employment relationship did reduce costs and should be taken into account in exercising my discretion.

[13] The failure of the applicant to meet the deadlines was unfortunate although I am not satisfied that would have had a significant impact on costs. I will only weigh that in a limited way.

[14] Costs in the Authority are usually modest and often awarded on the basis of a daily tariff which is now recognised as \$3,500. Ms Walker's costs are comparatively modest because her charge-out rate is \$50 per hour. For 41 hours spent on the matter she charged \$2,220.50 costs, disbursements in the sum of \$50 and with GST the total bill came to \$2578.

[15] The investigation meeting was about one and a half hours short of a full day.

[16] Claims for disbursements are limited to disbursements in the sense of payment of money to a third party as opposed to normal office overheads. I do not allow that \$50 claim.

[17] Taking all matters into account in the exercise of my discretion I am of the view in all the circumstances a fair and reasonable award for costs is the sum of \$2,000 and I so order.

Helen Doyle
Member of the Employment Relations Authority

