

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 147/09  
5075452

BETWEEN                      HARRY BUTCHER  
   Applicant  
  
AND                              OCS LIMITED  
   Respondent

Member of Authority:      Paul Montgomery  
  
Representatives:            Tim Oldfield, Counsel for Applicant  
   Paul McBride, Counsel for Respondent  
  
Determination:              4 September 2009

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     The respondent successfully repelled Mr Butcher's claims in the Authority and sought costs. The applicant issued a *de novo* challenge to the Authority's determination and Mr Oldfield submitted the issues of costs in the Authority be delayed until the Employment Court had heard the matter. In the alternative, Mr Oldfield accepted, in the absence of a successful challenge by Mr Butcher, a reasonable contribution to costs is appropriate but *the costs claimed by the respondent are excessive*.

[2]     Mr McBride submits the respondent's actual solicitor/client costs were \$9,000 plus GST, fees in respect of a substantive matter totalled \$8,750 plus GST while disbursements including counsel and witnesses' travel expenses, amounted to \$1,680.68 inclusive of GST. Counsel makes the point he sought a realistic proposal from the applicant's representative in respect of costs but received no reply to that request.

[3]     The Authority delayed determining the costs until the Court had decided the challenge brought by Mr Butcher. The Court upheld the Authority's determination and the costs issue in respect to the Authority's investigation now needs to be determined.

[4] Mr McBride submits that both the applicant and his Union knew Mr Butcher was smoking on duty in spite of a specific direction from the respondent not to do so and both knew Mr Butcher faced dismissal should he breach that direction. Further, counsel submits the respondent was put to unnecessary expenses by the failure of the applicant party to follow the Authority's directions.

[5] Counsel for the respondent submits the delay in respect to Mr Butcher's evidence is understandable given his brief sojourn in hospital, but not in respect to other witnesses' evidence.

[6] This, submits Mr McBride, created urgency for the company to compile its evidence in response to meet the fixture date and incurred otherwise unnecessary expenses for the respondent.

[7] Mr Oldfield set out the principles enunciated by the Employment Court in *PBO (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808. He accepts evidence was lodged three days later than directed and questions the prejudice and additional costs suffered by the respondent party.

[8] Mr McBride seeks a contribution to his client's costs in the sum of \$5,000 plus GST.

[9] Mr Oldfield drew the Authority's attention to two Authority determinations and one Employment Court decision, *Entwisle v. Dunedin City Council* [2002] 2 ERNZ 23 in support of his submission that GST does not form part of a costs award.

[10] In short, Mr Oldfield submits, in the light of *Da Cruz* costs should be awarded in the sum of \$1,500 to \$2,000.

[11] Having considered solely the matter before the Authority and also the submissions of counsel for each party, I believe a just award in this particular matter should exceed the figure suggested by Mr Oldfield. The investigation meeting took one day and while accepting there was a preliminary matter raised on the eve of the investigation in respect to the admissibility of some third party documents by the respondent, I accept the respondent was put to additional costs by the late lodging of the applicant's statements of evidence.

[12] In the circumstances outlined above, I believe it just to award the respondent the sum of \$3,750.00 as a contribution to what I find are its reasonably incurred costs.

Paul Montgomery  
Member of the Employment Relations Authority