

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 182/09  
5106327

BETWEEN                      BRUCE CAMERON, VICKI  
   CAMERON,            MATTHEW  
   BREWSTER        and        KATIE  
   BREWSTER  
   Applicants

AND                              PRIDEX INDUSTRIES (NZ)  
   LIMITED  
   Respondent

Member of Authority:     Paul Montgomery

Representatives:         David Goldwater, Counsel for Applicants  
   Clayton Williams, Counsel for Respondent

Determination:            21 October 2009

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In the substantive determination of the issues between the parties, the Authority found, with the exception of Mrs Cameron's and Mrs Brewster's short term employment, the applicants' claims lack merit.

[2]     The respondent seeks costs of \$28,813.60 and witness expenses of \$1,579.00 as set out in summaries of invoices and actual expenses attached to the closing submissions.

[3]     For the applicants, Mr Goldwater submits the correct approach to be followed is the tariff regime set out in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808. Counsel's view is that an award of costs should lie in the \$4,000 to \$5,000 range.

[4]     However, Mr Williams submitted a *Calderbank* offer of settlement to the applicants' counsel, those offers to each of the applicants were conditional upon three

actions to be taken by the applicants. While unsuccessful, Mr Williams submits this was a genuine effort to resolve the issues between the parties without incurring further costs and the respondent deserves credit for adopting this approach. This submission has merit.

[5] The offer was detailed in a letter dated 4 April 2008 from Mr Williams to Mr Goldwater, following an unsuccessful mediation on 12 February 2008. In his memorandum Mr Williams advises that the invoices for costs up to and including the mediation have been reduced by 50%. Two further invoices rendered after mediation but prior to the Authority's investigation meeting were reduced by 25%. Counsel says the total legal costs from the date of the *Calderbank* letter are \$19,740.96.

[6] Further, Mr Williams submits that having to deal with four different representatives at various stages of the proceedings added significantly to costs. Mr Goldwater disputes there were four, and having reviewed the paperwork on the file I am satisfied that former employees represented by Malley & Co were in fact applicants other than the four in question in this matter.

[7] As Mr Goldwater submits, an award of costs in respect of mediation would be contrary to an accepted principle established for reasons of public policy, and I see no reason to deviate from that principle in this case.

[8] In respect of witness costs, Mr Williams justifies the claim of \$633.00 in that they were incurred by Mr Channing-Pearce flying to Christchurch at short notice on 26 July 2007 to meet with the applicants' then solicitors only to have the meeting cancelled moments before it was due to begin.

[9] The statement of problem was lodged in the Authority on 14 November 2007. Mediation took place on 12 February 2008. While the Authority accepts Mr Channing-Pearce's trip was to resolve a range of issues between the parties including employment issues, the expense falls well outside the orbit of the Authority's investigation. Nor do I accept entirely the submission of Mr Goldwater in respect of Mr Channing-Pearce and Mr Prior attending the investigation meeting in their role as shareholder and director. Both attended the Authority's investigation meeting providing written and oral evidence at that meeting.

**Determination**

[10] The tariff approach is appropriate in this case however, with some adjustments.

[11] The Authority's investigation meeting took almost two full sitting days. Given the respondent's success in the major issues before the Authority, a contribution to its reasonably incurred costs is warranted.

[12] In the light of the detailed research required in preparing the statements of evidence of Mr Chaning-Pearce and Mr Prier, a daily tariff of \$3,000 is warranted in this case. In addition, I think it just to reimburse the respondent for expenses incurred in having Mr Chaning-Pearce and Mr Prier attend the Authority's investigation meeting.

**Orders**

[13] I order the applicants to pay the respondent the sum of \$6,000 as a contribution to its reasonably incurred costs.

[14] I order the applicants to pay the respondent the sum of \$964.00 being reimbursement of travel expenses necessarily incurred by the two witnesses in attending the Authority's investigation meeting.

Paul Montgomery  
Member of the Employment Relations Authority