

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2014] NZERA Wellington 60
5418181 & 5418179

BETWEEN IAN DAVID CARDNO
First Applicant

AND JOHN JOSEPH WOLYNCEWICZ
Second Applicant

AND NCF INTERNATIONAL LIMITED
Respondent

Member of Authority: Trish MacKinnon

Representatives: Denise K Evans, for the Applicants
No response from the Respondent

Determination: 3 June 2014

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination of 28 January 2014 I found Mr Cardno and Mr Wolyncewicz had been unjustifiably dismissed by NCF International Limited (NCF) on 5 April 2013.

[2] Both were entitled to payments of remuneration and holiday pay for time worked; payment of three months lost remuneration, less a specified amount for remuneration earned in that time for Mr Cardno; and compensation for hurt and humiliation. Additionally, Mr Wolyncewicz was entitled to a reimbursement of itemised costs he had incurred in the course of his employment.

[3] Messrs Cardno and Wolyncewicz seek a contribution to costs they incurred in pursuing their personal grievances. In a short memorandum with accompanying schedules, Ms Evans itemised on behalf of each applicant costs “*as per ERA guidelines*” in the sum of \$7,000 and reimbursement of the Authority’s filing fee.

[4] In accordance with advice that the respondent's former legal representatives were no longer acting in the matter, the Authority served a copy of Ms Evans' memorandum and schedules on the new representative. When that person informed us she was no longer acting for NCF, a copy was sent to the law firm named as the new representatives. After that firm had also informed us they no longer had instructions to act and had not been informed of the details of NCF's new counsel, a copy of the documents was served on NCF at its registered address.

[5] An accompanying letter provided information about the time frame for responding to the costs application. The Authority used courier post and established that the delivery had been effected and a signature obtained. It has received no response to that letter. I am satisfied that all reasonable attempts have been made to inform the respondent of the costs application and of its right to make submissions on the matter.

[6] The applications of Mr Cardno and Mr Wolyncewicz were made separately and allocated different file numbers. The respondent was the same for both applicants.

[7] In the interests of disposing of the matters in the most effective manner, an investigation meeting was held over two days in which both applications were investigated concurrently. As the respondent's evidence was received by way of video link from China, through the services of an interpreter, dealing with both applications in this manner was efficient for both parties.

[8] The relevant principles in relation to costs awards for Authority investigations have been set out by the Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*¹. These include the discretionary nature of costs awards, a discretion which should be exercised in accordance with principle rather than arbitrarily. Costs generally follow the event, which normally results in the successful party being entitled to a reasonable contribution to its actual costs from the unsuccessful party.

[9] Costs for each case are considered in the light of the particular circumstances. They are frequently judged against a notional daily tariff. Where a party's conduct has increased costs unnecessarily that may be taken into account in the award made.

¹2005] 1 ERNZ 808

[10] In the current instance I find it reasonable that costs should be awarded to both Mr Cardno and Mr Wolyncewicz. Both were successful in their unjustifiable dismissal claims against the respondent. While they were not awarded all monetary sums they sought, that should not impact on the contribution to costs that they are entitled to receive.

[11] Ms Evans has sought \$7,000 costs in respect of each applicant. At the current nominal daily tariff of the Authority that represents a four day investigation meeting. It would be unfair to the respondent to impose costs for a four day investigation when only two days were spent. I find it fairer to award costs on the basis of a one-day investigation for each applicant.

[12] Accordingly, pursuant to clause 15, Schedule 2 of the Employment Relations Act 2000, NCF International Limited is ordered to pay \$3,500 costs to Ian David Cardno and \$3,500 costs to John Joseph Wolyncewicz. It is also ordered to reimburse, respectively, Mr Cardno and Mr Wolyncewicz the Authority filing fee of \$71.56.

Trish MacKinnon
Member of the Employment Relations Authority