

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Dion Tutuiri Church (Applicant)
AND Gunton Farms Limited (Respondent)
REPRESENTATIVES Jenny Guthrie and David Robinson, Counsel for Applicant
Christopher Eggleston, Counsel for Respondent
MEMBER OF AUTHORITY Helen Doyle
SUBMISSIONS RECEIVED 8 December 2005 from Counsel for Applicant
19 December 2005 from Counsel for Respondent
DATE OF DETERMINATION 30 January 2006

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 18 October 2005 I found that the applicant was not unjustifiably constructively dismissed by the respondent but that he was actually dismissed during his notice period. I awarded the applicant the sum of \$1500.00 compensation and reserved the issue of costs.

[2] In my determination I noted that the applicant was legally aided. I observed that he was not successful with his main claim of constructive dismissal. I encouraged the parties to reach agreement on costs and timetabled the lodging of submission in the event that agreement was not reached.

[3] Agreement could not be reached and I received submissions from both the applicant and the respondent.

[4] Both the applicant and the respondent seek an award of costs for the reasons set out in the submissions from their respective counsel.

[5] Ms Guthrie submitted on behalf of her client that an award of costs in the sum of \$3,500.00 would be appropriate.

[6] Mr Eggleston submitted on behalf of the respondent that it enjoyed the greater level of success overall and therefore the respondent should receive costs notwithstanding the applicant's partial success. Mr Eggleston submitted that a recovery of 66% of the respondent's costs and an allowance for the applicant's partial success meant that the respondent should be awarded costs in the sum of \$6,238.60. He recognised, given the applicant was legally aided; his submissions were largely academic as any award would be limited to the contribution to legal aid the applicant made.

Determination:

[7] The first issue for consideration is whether, in exercising my discretion as to whether costs are to be awarded and in what amount, this is a case where I should depart from the general rule that costs are to follow the event.

[8] Notwithstanding Mr Eggleston's careful submissions I am not satisfied that this is a case for depriving the applicant of any costs entirely and making an award in favour of the respondent. To do so would be to ignore the fact that the applicant was successful in his claim that he was unjustifiably dismissed during his notice period.

I do however take into account in terms of a cost award in favour of the applicant that he was unsuccessful with his claim of constructive dismissal. The evidence about this claim occupied much of the hearing.

[9] The other matter that I am mindful of in this case in relation to the time the evidence took is that this was a family dispute about what happened on a day to day basis on the farm. The director of the respondent is generally based in Auckland and the farm operated by the family members. The case was very important to both parties and there were some matters peripheral to the main issues which they wanted to give evidence about.

[10] I am guided by the usual costs principles and the recent judgment of the Full Court of the Employment Court in *PBO Limited (formerly Rush Security Limited) v Eneida Leonor Christo Da Cruz* (unrep) 9 December 2005, AC2A/05.

[11] I start, as the Court did in *PBO Limited*, with a daily rate of \$2000.00 per day which I am of the view is appropriate in this case. I find that there are then good reasons to reduce the costs from the starting point of \$2000.00. The applicant was not successful with respect to his major claim. Had the only problem pursued been the dismissal during the notice period then the matter could have been investigated comfortably within two hours including the presentation of submissions. As a result of the way the case was run it was necessary to hear considerably more evidence from more witnesses. It also reduced the likelihood of resolution short of an investigation meeting.

[12] On that basis therefore I am of the view that it would be fair and reasonable to make an award in favour of the applicant of \$800.00 which is slightly less than half of the usual daily rate together with the filing fee of \$70.00.

[13] I order Gunton Farms Limited to pay to Dion Church the sum of \$800.00 together with \$70.00 filing fee being costs and disbursements.

Helen Doyle
Member of Employment Relations Authority