

from Work and Income has been produced. From this it appears that that the *Total Income Support* received by Mr Clarke is \$230.12 per week - less \$2.00 per week paid to Work and Income. The Authority is also referred to *Cameron v PBT Couriers Ltd*¹ where the Authority found that it was appropriate that there should be no award of costs in the circumstances.

[4] But the circumstances pertaining to Mr Cameron were somewhat different to those applying to Mr Clarke. Firstly, the Authority in *Cameron* found that it was a test case and that the respondent company obtained some benefit in regard to clarifying that Mr Cameron (and possibly others in the future) was a contractor rather than an employee. Also, the Authority was satisfied that Mr Cameron was impecunious and that he was paying his lawyer on “a very slow time payment system.” Apart from the information received from Work and Income, no evidence has been produced of Mr Clarke’s overall financial position or whether he has been able to pay his counsel, albeit I note that Mr Clarke has presumably been able to find the funds to file a challenge against the substantive determination (AA 402/10).

[5] Nonetheless, I accept that it is likely that Mr Clarke faces some financial difficulty and it is not appropriate for the Authority to impose hardship upon an unsuccessful party to proceedings.

[6] The investigation meeting occupied approximately half of a day and given the accepted tariff based approach of the Authority² to awarding costs and its discretion to raise or lower the tariff, depending upon the circumstances; normally an award of \$1,500 plus reasonable disbursements³ would be appropriate. However, in all the circumstances of this case, including the evidence of the very low income of Mr Clarke and the fact that he remains unemployed, I find that a reduced order for costs is appropriate.

[7] Mr Clarke is ordered to pay to AFFCO New Zealand Limited the sum of \$1,000 as a contribution to its reasonably incurred costs. In the event that Mr Clarke is unable to make such payment in one sum, the parties are invited to agree upon a “time

¹ CA 30/09, 17 March 2009, Member J Crichton.

² *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808.

³ It is submitted for Mr Clarke that it is not reasonable for AFFCO to include in their costs the use of “out-of-town” counsel. However, the Authority is aware that Mr Malone is the regular counsel for AFFCO and hence it is appropriate that the company would engage his services for this matter.

payment” schedule. In the event that such agreement is not possible, leave is granted for the parties to return to the Authority for an appropriate schedule to be set based on specific evidence of Mr Clarke’s overall financial position.

K J Anderson
Member of the Employment Relations Authority