

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

5154535
CA57A/10

BETWEEN JAMES LEONARD COULSON
 Applicant

A N D EZI ROOF NZ LIMITED
 Respondent

Member of Authority: Paul Montgomery

Representatives: Neville Higgison, Counsel for Applicant
 Gary Knight, Counsel for Respondent

Submissions Received: 22 March 2010 from Applicant
 None from Respondent

Determination: 9 April 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In resolving the substantive matter between the parties, the Authority identified Ezi Roof as the applicant's employer, found for the applicant in terms of his unjustified dismissal and invited counsel to attempt to resolve the matter of costs between themselves. That has not been achieved and Mr Knight has advised he is no longer instructed to act for the respondent in this matter.

[2] In his submission, Mr Higgison seeks to rely on the well established principles in relation to costs as set out in cases such as *Okeby v. Computer Associates (NZ) Ltd* [1994] 1 ERNZ 613 and *Reid v. New Zealand Fire Service Commission* [1995] 2 ERNZ 38. In that context, counsel urges that costs should follow the event given the applicant's success and that the respondent was obstructive in that it refused to participate in mediation and also in the Authority's teleconference.

[3] Counsel says the applicant's costs and disbursements were \$1,500. This includes all attendances with the applicant, preparation of the detailed statement of claim and preparation for and attendance at the investigation meeting. Mr Higgison

says that had it not been for the attitude displayed by the respondent, the applicant's costs would have been considerably less.

[4] Counsel also refers to the Authority's order that counsel discuss and agree the quantum of unpaid wages for the week immediately preceding the dismissal, that is between 22 September 2008 and his dismissal on 29 September 2008. Given the withdrawal of instructions by the respondent, the Authority now orders the respondent to pay Mr Coulson the sum of \$424.46 gross for that week.

Determination

[5] The investigation meeting took approximately half a day and each party presented two witnesses. Counsel for the applicant provided statements of evidence for Mr Coulson and Mrs Coulson. Both were straightforward and relatively brief but certainly adequate for the purposes.

[6] This is a case where I find costs will follow the event. In the circumstances, I think it just to follow the principles set out in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808 and apply a tariff approach. Given a nominal daily tariff of \$3,000 and the relatively brevity of the investigation meeting, and in the light of the respondent's behaviour over the total passage of this matter to the Authority, I have no hesitation in awarding Mr Coulson the sum of \$1,500 to meet what I find are extremely reasonable costs and his lodgment fee.

Paul Montgomery
Member of the Employment Relations Authority