IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

CA 95A/10
5288079

	BETWEEN	ROBYN COUSINS First Applicant
		KAREN HARRIS Second Applicant
	A N D	MAITLAND BOOTH Respondent

Member of Authority:	Philip Cheyne
Representatives:	Nicholas Eketone-Te Kaniwa, Counsel for Applicants Jon Beck, Counsel for Respondent
Submissions Received:	30 April 2010 from Applicants 12 May 2010 from Respondent
Determination:	28 June 2010

COSTS DETERMINATION OF THE AUTHORITY

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[1] In a determination dated 20 April 2010, I upheld claims by Ms Cousins and Ms Harris for arrears of wages and holiday pay. Costs were reserved for each side to lodge submissions which are now before me. This determination resolves the issue of costs.

[2] I am told that the applicants' legal costs are $5,015 which includes time relating to mediation. There is criticism of the respondent's failure to agree to a mediation prior to the proceedings and it is argued that the defence to the applicants' claim was without merit. It is submitted that the applicants incurred needless legal costs and much anxiety. Finally, I am asked to award indemnity costs against the respondent for these reasons.

[3] For the respondent, I am referred to *PBO Ltd v. Da Cruz* [2005] ERNZ 808 for relevant principles, including that awards should be modest and usually assessed on a daily tariff approach and that costs should not be used as a punishment or expression of disapproval. I am also referred to *South Tranz Ltd v. Straight Freight Ltd* (unreported, Colgan CJ, Shaw and Couch JJ, CC3/08, 8 April 2008) to support the contention that $2,000 per day is a reasonable starting point. In that case, the Employment Court awarded costs of $3,000 for the day and a half investigation meeting in the Authority.

[4] More recently, however, the Employment Court has taken the position that a daily tariff of $3,000 is an appropriate starting point for costs awards in the Authority rather than the upper end of the scale: see *Terson Industries Ltd v. Aaron Loder* (unreported, Shaw J, WC10/09, 30 April 2009) which also refers to *Johnson v. Gilligan Business School Ltd* (unreported, AC14/09, 3 April 2009) and *Chief Executive of the Department of Corrections v. Tawhiwhirangi (No 2)* [2008] ERNZ 73.

[5] In light of these cases, I will take $3,000 per day as an appropriate starting point.

[6] I accept the submission for the respondent that there was no conduct that increased the costs of this litigation unnecessarily. While the respondent's defence eventually failed, he was entitled to advance his view that no employment agreement was ever contemplated or agreed to as a result of the arrangements between these parties. Nor do I accept that the respondent acted improperly in his attitude to participating in mediation prior to these proceedings and the Authority's direction. I agree with the respondent's submission that, as is usual, costs involved in mediation are not relevant for present purposes. Parties are usually expected to endeavour to resolve litigation without that being brought to account if their attempts prove unsuccessful. The final point I should make is that I do not accept that the stress and anxiety involved in proceedings such as these is relevant to the question of costs.

[7] The matter took about half a day of hearing time. It did not require any special preparation or research other than is usual in recovery of arrears type cases. The applicants were wholly successful and are entitled to a contribution to their costs on a daily tariff basis.

[8] All this leads me to conclude that the respondent should pay the applicants $1,500 as a contribution to their costs.

Philip Cheyne
Member of the Employment Relations Authority