

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Jamie Craib (Applicant)
AND Windsor Doors Limited (Respondent)
REPRESENTATIVES Brian Spong for Applicant
Mordechai Henis for Respondent
MEMBER OF AUTHORITY Vicki Campbell
SUBMISSIONS RECEIVED 3 January 2007 from Applicant
7 March 2007 from Respondent
DATE OF DETERMINATION 12 March 2007

DETERMINATION OF THE AUTHORITY AS TO COSTS

[1] In a determination dated 16 November 2006 I found Mr Jamie Craib was unjustifiably dismissed from his position with Windsor Doors Limited.

[2] In my determination I reserved the question of costs and invited the parties to resolve the matter of costs between them. They have been unable to do so and I am now in receipt of memorandum from both representatives.

[3] The following principles are appropriate where the Authority is exercising its discretion in relation to costs (*PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, [2005] 1 ERNZ 808):

- There is a discretion as to whether costs should be awarded and what amount;
- The discretion is to be exercised in accordance with principle;
- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;
- Equity and good conscience is to be considered on a case by case basis;
- Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;
- That costs generally follow the event;
- That without prejudice offers can be taken into account;
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;
- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[4] I have considered the submissions made by the parties and I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of Mr Craib.

[5] The applicant has incurred costs of \$4,950 for a hearing which lasted half a day. He seeks a contribution to those costs. The matter was not a complex matter and the costs incurred are reasonable given the preparation required and the length of the hearing.

[6] There is nothing in this case to derogate from the principle that costs follow the event and that the successful applicant should receive a contribution to reasonably incurred costs.

[7] Windsor Doors Limited is required to pay to Mr Craib the sum of \$1,500 as a reasonable contribution to costs.

[8] An order is made accordingly.

Vicki Campbell
Member of Employment Relations Authority