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Davey v Brendon Molan and anor [2011] NZERA 370; [2011] NZERA Wellington 91 (27 May 2011)

Last Updated: 22 June 2011

IN THE EMPLOYMENT RELATIONS WELLINGTON

AUTHORITY

[2011] NZERA Wellington 91 File Number: 5311378

BETWEEN Hamish Davey

Applicant

AND Brendon Molan and Grange

Transport Limited Respondents

Member of Authority: Denis Asher

Representatives: Mr Davey represented himself

Peter Brosnahan for the Respondents

Submissions received: 26 May 2011

Determination: 27 May 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] Mr Davey was unsuccessful in his claim he had been employed by one or other of the respondents, and that he had been unjustifiably disadvantaged (refer to [2011] NZERA Wellington 60).

[2] Costs were reserved. The respondents now seek costs.

The Respondents' Costs Submissions Summarised

[3] In suitably brief submissions received on 26 April 2011 counsel for the respondents, Mr Peter Brosnahan, sought costs on the ground that nothing exceptional is related to this claim so costs on the normal basis for a half day hearing were sought, namely \$1,500.

[4] The respondents had nothing further to say by way of a response to the applicant's submissions.

Mr Davey's Costs Submissions Summarised

[5] In an email dated 22 May Mr Davey said that he did not know what was required of him at this stage and that he had no legal representative to direct him; he also re-argued the substantive issues decided in the determination dated 18 April 2011 (above).

[6] Mr Davey said he had no means to pay any costs, which was the reason he was not legally represented.

Discussion and Findings

[7] The Authority's discretion with which to award costs is now well settled and typically follows the event: *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] NZEmpC 144; [2005] 1 ERNZ 808.

[8] During the investigation on 7 April 2011 I alerted Mr Davey (and his domestic partner) to the costs risks of an unsuccessful application.

[9] No evidence has been provided by the applicant in support of his claim he could not afford to pay costs.

[10] I agree with Mr Brosnahan's submissions that this is an unexceptional claim. I also accept the submission that \$1,500 is an appropriate contribution to reasonable costs arising out of what was a half day investigation: Mr Davey is to pay costs, if necessary by agreement as to a drip-feed arrangement, of \$1,500 to the respondents.

Determination

[11] Mr Davey is to pay, as a contribution to their reasonable costs, the sum of \$1,500 (one thousand, five hundred dollars) to the respondents.

Denis Asher

Member of the Employment Relations Authority

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