

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 72
5341351

BETWEEN HAMISH DAVIDSON
 Applicant

AND MIKE RITTSO-THOMAS
 Respondent

Member of Authority: P R Stapp

Submissions received: 7, 25 and 29 May and 6 June 2012

Determination: 29 June 2012

COSTS DETERMINATION OF THE AUTHORITY

Costs have been reserved

[1] The applicant has applied for \$4,500 costs and \$71.56 filing fee. The respondent has requested a stay until a challenge in the Employment Court is concluded. The respondent has submitted, in the alternative, that costs should be awarded to the respondent or left to lie where they fall. The matter involved counter-claims from the respondent in the statement in reply and a separate application placed on the applicant's file.

A stay of determination on costs

[2] The usual course in such matters is that the Authority proceeds to deal with costs where they have been reserved and a challenge has been lodged in the Employment Court. It is better that the Court has all matters before it, and this includes costs. No substantive reasons have been advanced for any stay. I am supported in this conclusion by the respondent making submissions on costs anyway.

Issues

[3] Which party is entitled to any costs, and how much, or should costs lie where they fall?

The influences on costs

[4] The main influences on costs are:

- a. That the Authority's investigation was planned in advance with witness statements and documents being required. The parties had a timetable for this. There were no unusual or untoward problems impacting on the investigation, with the evidence being produced in a timely way.
- b. That the Authority's investigation meeting was one full day, and a part day involving two hours resumption of the hearing.
- c. That both parties had a measure of success on the matters in the employment relationship problem. They have tried to place some measurement around this. However Mr Davidson received the most tangible outcome, with monetary awards. In other respects references were included about matters arising in the employment relationship and the parties' behaviour towards each other.
- d. That the resumption gave the respondent time to arrange and call another witness. This was helpful and not unreasonable based on previous evidence heard by the Authority.
- e. That the parties' submissions were made in writing first and then orally at the resumed hearing.
- f. The applicant paid the filing fee.

Determination

[5] This matter has been clouded by some issues between the parties' representatives, but that has nothing to do with the determination of costs in this instance, because I have been able to determine the matter and ignore their issues. Indeed the issues between the representatives have no bearing and impact on the costs. Indeed the representatives' relationship has not impeded me in my investigation, and fortunately did not impact on the parties' issues. Also Mr Tayler has taken issue with one of the comments made by Mr Hunt in Mr Hunt's final written reply dated 29 May 2012 to the Authority, which incidentally Mr Hunt seemingly did not send to Mr Tayler. The reply was sent to Mr Tayler by the Authority's office for any comment. The comment challenged by Mr Tayler has no influence in this determination.

[6] The matter of costs is determined as a matter of principle. It is common ground that the starting point is the notional daily tariff of \$3,500. Since Mr Davidson had a measure of success in his claims, (although he was not entirely successful on all the claims) he is entitled to some contribution towards his costs as it was his claim that initiated the employment relationship problem first. Because he was not successful on all the claims that needed to be covered during the investigation I am not inclined to increase the notional daily tariff for recovery. Also, the respondent was able to defend a number of the matters and this is required to be taken into account.

[7] I have also noted that Mr Rittson-Thomas used Mr Davidson's application (of an employment relationship problem) to piggy back his counter claims without paying a filing fee and that the matters were heard concurrently. Given the overriding factual matters it was sensible and efficient to proceed that way, but Mr Davidson should not have to pay for that as a factor and or influence on the costs, since Mr Rittson-Thomas raised them. This particularly applied to the damages claim.

[8] In addition the way in which the parties approached the matter with their claims has contributed to the time taken to investigate them. Fortunately there was nothing unusual and the time taken was about the same as many investigations involving the same issues.

[9] I am not prepared to apply a higher tariff for the part day, partially because the respondent was able to defend part of the claims raised by the applicant, but also because the preparation for the written submissions had been done before the hearing resumed. The resumption benefitted both parties. If the applicant's representative had dealt with Mr Taylor's approach to the written submissions in a more pragmatic way then a resumption of the hearing might have been avoided. All said and done Mr Hunt's written submissions as he had presented them were always going to be read, considered and taken into account fully. The hearing was resumed by me to enable Mr Hunt to be heard because of the objections he made to Mr Taylor's approach to his written submissions, and this meant that Mr Hunt could have his say in person to ensure he was properly satisfied his submissions were given attention. Also, the resumption created the advantage for the respondent to reasonably call the further witness and to hear any replies from the parties as to that person's evidence. Therefore the time was reasonably necessary to complete the investigation meeting.

[10] Thus, I award Mr Davidson \$3,650 costs and the \$71.56 filing fee.

Orders of the Authority

[11] Mr Mike Rittson-Thomas is required to pay Mr Hamish Davidson \$3,650 costs and \$71.56 filing fee.

P R Stapp
Member of the Employment Relations Authority