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Dickinson v Go-Bus Transport Limited (Wellington) [2011] NZERA 587; [2011] NZERA Wellington 138 (25 August 2011)

Last Updated: 12 September 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2011] NZERA Wellington 138
5296283

BETWEEN RALPH DICKINSON

Applicant

AND GO-BUS TRANSPORT

LIMITED

Respondent

Member of Authority: G J Wood

Representatives: Scott Jefferson for the Applicant

Andrea Twaddle for the Respondent

Submissions Received by: 22 August 2011

Determination: 25 August 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] Mr Dickinson's claims against Go-Bus Transport Limited for its alleged failure to provide him with a safe working environment, and an unjustified dismissal, were dismissed.

[2] Go-Bus now seeks costs of \$13,500 plus GST, to be paid over six months. Go-Bus' actual costs were \$15,432.50 plus GST and disbursements. Although accepting my indication that there appeared to be nothing complicated or legally technical about this matter, Go-Bus submitted that there are a number of ways in which the applicant's case was run that led to additional costs. In particular, it was submitted that the claim was without merit, it was too broad, there was a failure to provide evidence on mitigation, a failure to meet the timetable and the calling of an irrelevant witness.

[3] Go-Bus accepted that if Mr Dickinson was impecunious in any way then the proper way to deal with that impecuniosity was to extend the period for payment of any award.

[4] In reply, it was submitted on behalf of Mr Dickinson that Go-Bus' submissions were based on the approach to costs in the Employment Court rather than the Authority, that Mr Dickinson was entitled to bring his claim and that the investigation meeting took less than half a day. It was also submitted that there was nothing about the nature of Mr Dickinson's case or how it was run to justify any departure from the usual tariff-based approach to costs in the Authority.

[5] Go-Bus' claim was based on a proportion of its actual costs. However, I note that such an approach is not the normal approach of the Authority. In *PBO Ltd v. Da Cruz* [2005] NZEmpC 144; [2005] 1 ERNZ 808, the Employment Court accepted that a tariff approach could be adopted by the Authority, provided it was flexible enough to take into account the particular circumstances of any case. The usual tariff for a case such as this is in the range of \$2,000 to \$3,000.

[6] I accept that Mr Dickinson did not progress issues as quickly as he might have and that there were breaches in the

timetable. These are matters, together with the amount of preparation that was required, that mean that my assessment for costs will be on the basis of a one day investigation meeting, rather than the half day suggested. I indicated at the investigation meeting that costs would be dealt with in the normal way and that these would likely be in the vicinity of \$2,000 to \$3,000. I am satisfied that that this is an appropriate amount to award in a straightforward case such as this.

[7] I therefore conclude, given the facts of the case and that there is no claim of impecuniosity raised by Mr Dickinson, that costs should therefore fall at the higher end of the scale. Thus \$3,000 in costs is an appropriate sum for Go-Bus to be recompensed as a contribution to its costs.

[8] I therefore order the applicant, Mr Ralph Dickinson, to pay to the respondent, Go-Bus Transport Limited, the sum of \$3,000 in costs.

G J Wood
Member of the Employment Relations Authority

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