

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 248A/09  
5090250

BETWEEN                      PHILIP DODANIS  
   Applicant

AND                              WAIKATO DISTRICT  
   HEALTH BOARD  
   Respondent

Member of Authority:      Vicki Campbell  
  
Representatives:              Simon Scott for Applicant  
   Anthony Russell for Respondent  
  
Submissions Received:      7 September 2009 from Applicant  
   26 August 2009 from Respondent  
  
Determination:                14 September 2009



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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]        In a determination dated 29 July 2009 (AA248/09), I found that Mr Dodanis had been justifiably dismissed.

[2]        In my determination I reserved the question of costs and invited the parties to resolve the matter between them. They have been unable to do so and I am now in receipt of memorandum from both parties. 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 Waikato District Health Board ("WDHB").

[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] The employment of Mr Dodanis came to an end on 16 January 2007. His application for personal grievance was lodged in the Authority 18 months later on 30 July 2008. The original pleadings were inadequate because the statement of problem did not adequately identify on what basis Mr Dodanis claimed he had a personal grievance.

[5] On 21 August 2008 I directed Mr Dodanis to lodge an amended statement of problem by no later than 4 September 2008. For what ever reason, Mr Dodanis did not meet this timetable, lodging his amended statement of problem over one month late, on 28 October 2008.

[6] The investigation into Mr Dodanis' claims took two days. Through its counsel, Mr Russell, WDHB advises it has incurred costs of \$19,000.00. It refers the Authority to two calderbank letters dated 30 July 2007 and 11 March 2009. Both letters communicated an offer of settlement of \$5,500. Both offers were rejected by Mr Dodanis. Mr Russell seeks a contribution of \$6,000 plus disbursements. For Mr Dodanis, Mr Scott objects to the level of costs sought.

[7] This is an equity and good conscience jurisdiction and costs awards in the Authority are generally modest. The exercise of my discretion calls for a determination of what is a fair and reasonable contribution as between the parties.

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[8] The investigation proceeded over two days. I have taken into account the offers of settlement and award costs on a tariff basis by awarding Waikato District Health Board the sum of \$6,000 plus disbursements of \$162.13.

**I order Philip Dodanis to pay to Waikato District Health Board the sum of \$6,000 plus disbursements of \$162.13 as costs.**

*Vicki Campbell*

Vicki Campbell  
Member of Employment Relations Authority



SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND