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Douglas v B A Logging Limited [2011] NZERA 32; [2011] NZERA Christchurch 4 (12 January 2011)

Last Updated: 10 February 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2011] NZERA Christchurch 4 5307763

BETWEEN TODD MATHEW DOUGLAS

Applicant

AND B A LOGGING LIMITED

Respondent

Member of Authority: M B Loftus

Representatives: Ms Kylie Graham, Counsel for Applicant

No appearance for Respondent

Submissions received: 2 December 2010 from the Applicant

Nil from the Respondent

Determination: 12 January 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 17 November 2010 I upheld Mr Douglas' claim that he had been unjustifiably dismissed. Costs were reserved with Mr Douglas being advised that if he wished to seek a contribution toward his costs he should do so within 28 days of the determination. B A Logging Ltd then had 14 days in which to respond.

[2] Ms Graham filed the application on 2 December. B A Logging has not responded, though that is not surprising given its history in dealing with this matter.

[3] Mr Douglas was legally aided and his costs were incurred at the prescribed rate. They totalled \$1722 (including GST) plus disbursements of \$140. A contribution of \$1,500 is sought.

[4] In support of the claim he notes that there was a pre investigation telephone conference and an investigation meeting. He comments that while the investigation meeting was short, only an hour or so, that was a result of the respondent's absence.

The factual matrix was relatively complicated and canvassed a number of events over a period of time. The amount of preparation involved was therefore inconsistent with a one hour meeting as Counsel had to assume the matter would be defended and that would have resulted in a considerably longer meeting.

[5] Often the Authority will assess costs on a daily tariff basis: see *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] NZEmpC 144; [2005] ERNZ 808. In assessing that tariff a common starting point is \$3,000 per day: see *Chief Executive of the Department of Corrections v Tawhiwhirangi (No 2)* [2008] ERNZ 73. From that point adjustment may be made either up or down depending on the circumstances.

[6] In this instance and given the absence of submission from the respondent, there is no justification for applying a reduced tariff. It may, however, be argued that Mr Douglas is seeking an increased tariff given his claim equates to reimbursement for

half a day when the meeting only took an hour or so.

[7] I do not consider that to be the case. As said above, the abbreviated meeting was occasioned by the respondent's absence and I accept that preparation had to occur on the basis the matter would have been defended. I have no doubt that had that occurred the meeting would have filled the day given the multiplicity of events canvassed. In the circumstances I consider a claim that equates to reimbursement for a half day meeting to be very reasonable.

Conclusion

[8] B A Logging Limited is to pay Mr Douglas the sum of \$1,500 (fifteen hundred dollars) as a contribution toward costs.

Mike Loftus

Member of the Employment Relations Authority

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