

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 37/09
5125984

BETWEEN BRIAN DUNN
 Applicant

AND BUCKLEY SYSTEMS
 LIMITED
 Respondent

Member of Authority: R A Monaghan

Representatives: B Dunn in person
 S de Kock, advocate for Respondent

Memoranda received: 13 January and 2 February 2009 from respondent

Determination: 9 February 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 12 December 2008 I found that Brian Dunn was dismissed justifiably. Costs were reserved and the respondent has filed an application in the matter. Mr Dunn has not replied.

[2] The respondent seeks \$2,500 to recompense it for expenses incurred in seeking legal advice and loss of labour resulting from the attendance to give evidence at the investigation of three of its staff members. It also seeks costs in respect of the attendance of its advocate, Ms de Kock, who is also its general manager - operations.

[3] In general awards of costs in legal proceedings may be made in respect of the costs of representation in the proceeding, as well as disbursements and witness' expenses. Here the respondent was the successful party and is entitled to a contribution to costs it has incurred in the above respects.

[4] The costs of representation usually attach to the fee charged by the person who represented the party at the investigation, as well as to any of the representative's fees incurred in the provision of advice, the preparation of documents and evidence associated with the investigation, and submissions or work undertaken prior to the issue of the determination. Here Ms de Kock acted as advocate at the investigation, and I return to costs arising out of that.

[5] Otherwise I was provided with invoices in respect of professional services rendered by a solicitor in October 2008, as well as professional services rendered by a specialist advocate in the period August – December 2008. None of the invoices referred to Mr Dunn's personal grievance or to the proceeding in the Authority. All of them were very generalised. However the total allocated to the matter before the Authority appeared to be \$1,764, which I accept was incurred for the purpose of advice and guidance and is very modest.

[6] As Ms de Kock was the representative at the investigation meeting, the respondent is entitled to recover some of the cost of her executive time spent so acting.

[7] There is no ability to recover in costs the wages paid to employees who attend an investigation as witnesses. This comment extends to Ms de Kock's attendance to the extent that she was a witness. While the respondent is entitled to a contribution in respect of her executive time it is not entitled to recover the cost of her salary. I assess the cost of Ms de Kock's executive time at \$250. I make no award in respect of the employee witnesses.

[8] For the above reasons I assess the total claimable in costs as \$2,014.

[9] Mr Dunn is ordered to contribute to that amount in the sum of \$1,000.

R A Monaghan

Member of the Employment Relations Authority