

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 230
5340544

BETWEEN JOHN DUNCAN VERNON
 GRANT
 Applicant

A N D HEBBERDS BUS SERVICES
 2009 LIMITED
 Respondent

Member of Authority: David Appleton

Representatives: Gavin Amey, Advocate for Applicant
 Maurice Heberd, Advocate for Respondent

Submissions Received: 31 July 2012 from Applicant
 No submissions received from Respondent

Date of Determination: 24 October 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] By way of a determination dated 22 May 2012 the Authority determined that Mr Grant had been unjustifiably dismissed and unjustifiably suspended from his employment without pay, entitling him to be reimbursed for the wages he would have earned during the period of suspension.

[2] The respondent was ordered to pay Mr Grant a little over \$14,000 by way of remedies. Costs were reserved. The advocate for Mr Grant filed a memorandum seeking costs at the *national average daily tariff* together with further costs in the sum of \$2,408.00. He also seeks disbursements in the sum of \$387.56.

[3] The respondent did not file a memorandum in reply.

[4] The investigation meeting was conducted by member King who has since left the Authority. This cost determination is therefore based on the contents of the investigation file and Mr Amey's memorandum.

[5] The normal principles of *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808 apply to this matter and, accordingly, costs should follow the event and Mr Grant, having been successful, is therefore entitled to a contribution to those costs.

[6] Mr Amey does not specify what *national average daily tariff* he seeks, and cites the tariff as being between \$2,500 and \$3,500. Mr Amey advises that his hourly rate is \$80. I understand that the investigation meeting took one full day, although it did not commence until 10.30am. Applying the rate of \$80 per hour, the cost of Mr Amey attending the investigation meeting would be in the region of \$500.

[7] Mr Amey states that the additional sum he seeks of \$2,408.00 is comprised of the time he spent retrieving, searching for and collating documentation for the investigation meeting which totalled 30.1 hours. I note from the file that there is a reasonable amount of documentation and I accept it is likely that it would have reasonably taken him around 30 hours to prepare, as claimed for.

[8] It would clearly not be just to award costs at the daily tariff rate of \$3,500 which has been standard in the Authority for the previous six months, in addition to the uplift sought of \$2,408.00. It would appear that the total amount of costs incurred by Mr Grant amount to around \$3,000. Mr Amey does not indicate that he charges GST and so I will assume that GST was not added to the total costs sum.

[9] Mr Amey has submitted that the respondent was three and a half months late in providing copies of information that had been directed to be provided by the Authority. This is not quite accurate. The Authority directed the respondent to provide copies of documents which were to be requested by Mr Amey separately in writing. Mr Amey did so three weeks after the directions were disseminated, and neither the Authority nor Mr Amey stipulated a time frame for the provision of the documents. Insofar as Mr Amey is suggesting that there was an unwarranted delay in providing the documents, there is no evidence that this contributed to costs.

[10] Mr Amey also seeks disbursements which include driving time, fuel costs, paper and postage costs, the filing fee of \$71.56 and lunch. The driving time appears to be charged at the hourly rate and I do not believe that it is appropriate to treat this

as a disbursement. I am not, therefore, prepared to award costs separately in respect of that element.

[11] However, I accept that, in this particular case, it is appropriate for fuel costs to be reimbursed together with paper and postage costs and the filing fee. It is not clear why lunch has been included as, presumably, Mr Amey would have eaten lunch whether he was attending an investigation meeting in Nelson or not. That element is therefore disallowed.

Determination

[12] In summary, I order the respondent to pay the following sums to Mr Grant by way of costs:

- (a) Costs in the sum of \$3,000.00;
- (b) Reimbursement of disbursements in the sum of \$171.56.

David Appleton
Member of the Employment Relations Authority