

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 352  
5369138

BETWEEN                      MICHAEL HAFNER  
   Applicant  
  
AND                                CLUB MOUNT MAUNGANUI  
   INCORPORATED  
   Respondent

Member of Authority:        K J Anderson  
  
Representatives:                W Hika, Counsel for Applicant  
   W Macphail, Counsel for Respondent  
  
Submissions received:        28 June 2013 from Respondent  
   Nil from Applicant  
  
Determination:                 9 August 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In a determination dated 29 May 2013,<sup>1</sup> the Authority found that Mr Hafner was unsuccessful with his claims against the respondent. Having been invited to do so by the Authority, the parties have not be able to reach an agreement regarding a contribution by Mr Hafner to the costs incurred by the respondent (the Club). Costs submissions have been received from the Club but there is nothing from Mr Hafner.

[2] The respondent has incurred total costs of \$5,050.80 (including GST) and seeks a contribution from Mr Hafner in the sum of \$5,000. While acknowledging the principal set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>2</sup> that costs awards should be modest, the submissions for the Club draw attention to a *Calderbank* offer (\$1,500) made to Mr Hafner on 26 April 2012, eleven months before the investigation meeting.

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<sup>1</sup> [2013] NZERA Auckland 216

<sup>2</sup> [2005] ERNZ 808

[3] It is well established that the Authority adopts a tariff approach to awarding costs. The current sum is \$3,500 for each day of an investigation meeting. This sum can be increased or reduced depending on the circumstances of each case. It is also well recognised that where a “without prejudice except as to costs” offer is made within a reasonable time before a hearing, and a party is unsuccessful with their action, or receives less than the sum offered to settle the matter; then the Authority can increase the usual rate that may be awarded.

[4] The substantive matter was not complex and the investigation meeting took no more than half a day. Therefore, an appropriate award of costs would be \$1,750. And, generally speaking, given the existence of an entirely valid *Calderbank* offer, this sum would be increased somewhat. However, while Mr Hafner has not presented any costs submissions, the Authority has before it a copy of a letter, sent by his lawyer to the Club in response to it seeking costs from Mr Hafner. The circumstances of Mr Hafner are that he is currently a student, receiving a student allowance of \$200 per week. Mr Hafner does not deny his liability to make a contribution to the costs incurred by the Club, but he says that he can only pay \$10 per week.

### **Determination**

[5] Taking into account Mr Hafner’s circumstances, I conclude that it is not appropriate to award more than the standard amount for a half day investigation meeting: \$1750. And even that amount would appear to be a stretch for Mr Hafner, albeit he has not provided any evidence of his overall financial circumstances.

[6] Given the successful outcome for the respondent regarding the determination of Mr Hafner’s claims, pursuant to clause 15 of Schedule 2 to the Employment Relations Act 2000, Mr Michael Hafner shall pay to Club Mount Maunganui Incorporated the sum of \$1,750.00 as a contribution to the costs incurred by the company.

Mr Hafner has not requested that the Authority consider a “time payment” arrangement and I make no order accordingly, but given the evidence available, this could be a matter that the parties may wish to give consideration to, via a written record of settlement signed off by a Ministry of Business, Innovation & Employment mediator.

**K J Anderson**  
**Member of the Employment Relations Authority**