

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 283
5374405

BETWEEN BRIAN HANNAH
 Applicant

A N D GO-BUS TRANSPORT
 LIMITED
 Respondent

Member of Authority: James Crichton

Representatives: Rachel Rolston, Advocate for Applicant
 Simon Menzies, Counsel for Respondent

Submissions Received: 16 June 2013 from Applicant
 11 June 2013 from Respondent

Date of Determination: 4 July 2013

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In its determination issued on 13 May 2013 as [2013] NZERA 186, the Authority dismissed the applicant’s claim for unjustified dismissal and reserved costs.

The claim for costs

[2] As the successful applicant, the respondent (Go-Bus) seeks an award of costs of \$3,500. That amount of course represents the commonly applied daily tariff rate for a single day’s hearing in the Authority, which the present matter was.

[3] Counsel for Go-Bus very sensibly submits that the case was routine in terms of its “issues and resolution”, took two thirds of one hearing day to dispose of with written submissions to follow and thus there is nothing to suggest either an uptake or a diminution of the daily tariff rate applicable.

[4] Counsel notes that Go-Bus' costs were significantly greater than the claimed notional daily rate.

The response

[5] A very simple response has been received by the Authority on Mr Hannah's behalf which acknowledges that a costs award can be pursued against him, notes that he has limited financial means and no cash assets, has only casual part time work now but will seek budgeting advice to determine what he can afford to pay by way of a regular payment to meet any obligations imposed on him in respect of costs.

Determination

[6] It is a truism that costs follow the event. While the impost of a costs award on an unsuccessful employee may be seen to be greater than the converse, the reality is that there are always costs in litigation and it is one of the attendant risks of litigation that the unsuccessful party can expect to be asked to contribute to the costs of the successful one.

[7] The Authority agrees with counsel for Go-Bus that there is nothing in the present case which is in any sense out of the ordinary. The claim was raised, argued, and disposed of in the Authority without any particular difficulty created by either party so there is nothing before the Authority which would suggest that there should be any departure, either up or down, from the usual daily tariff approach, save for the contention that Mr Hannah is impecunious.

[8] That last mentioned factor is an aspect that the Authority will regularly take into account in its consideration of a costs award but it cannot be the dominant factor. Parties need to understand that if they proceed into a litigation forum there are attendant risks and a costs impost is an obvious example of that. However, the Authority is minded to make a small reduction in the award it would otherwise make, as a consequence of Mr Hannah's circumstances.

[9] Mr Hannah is to pay to Go-Bus the sum of \$3,000 as a contribution to the latter's costs in successfully defending the personal grievance claim that he brought against Go-Bus. Mr Hannah is to have time to pay.

James Crichton
Member of the Employment Relations Authority