

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2012] NZERA Christchurch 61  
5346288

BETWEEN

BLAIR HARRIS  
Applicant

A N D

FONTERRA CO-OPERATIVE  
GROUP LIMITED  
Respondent

Member of Authority: Helen Doyle

Representatives: Andrew McKenzie, Counsel for Applicant  
John Rooney, Advocate for Respondent

Submissions: Applicant: 14 February 2010  
Respondent: 30 January and 19 March 2012

Date of Determination: 10 April 2012

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] The applicant was unsuccessful in his personal grievance application and the respondent now seeks costs. The applicant accepts that a cost award should be made in the respondent's favour, although takes issue with the amount sought for costs and the travel disbursements claimed.

[2] The issues for the Authority to consider are:

- Was there an agreement between Fonterra and the Dairy Workers' Union about the daily cost tariff?
- If the Authority cannot be satisfied of the agreement, then what award of costs should be made to the respondent and should the travel costs be reimbursed?

### **Was there an agreement about the daily cost tariff?**

[3] Mr McKenzie in his submission that \$2000 would be the appropriate daily tariff for a one day investigation meeting refers to an agreement/understanding between the National Secretary of the Dairy Workers Union, James Ritchie and the respondent's former Employment Relations Manager Sally Beard that costs for unsuccessful parties in a standard personal grievance case would be agreed at \$2000 per day. The Authority received a further submission from Mr Rooney in response to that submission. Mr Rooney submits that the current General Manager of Employee Relations has no knowledge of any informal agreement or understanding about the cost tariff and no record of that exists historically for agreeing costs. Mr Rooney set out in his submissions three previous costs decisions from the Authority in cases where Fonterra was a party and awards above \$2,000 were made for costs.

[4] I am not satisfied that there is sufficient evidence of an informal agreement or understanding before the Authority so as to limit the respondent to an award of costs in this matter to \$2,000.

### **What costs should be awarded?**

[5] The respondent's actual costs in this matter were \$29,995 together with disbursements of \$1,668.43.

[6] The respondent seeks a contribution towards costs in the sum of \$3,942.12 being \$3,000 for the one day investigation meeting and reimbursement of \$696.47 for airfares and \$245.65 for one night's accommodation.

[7] I find that the claim for costs in the sum of \$3,000 is fair and allow that in full. There has been a considerable passage of time since the judgment of *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808. The Authority has recently, for example, reviewed its daily tariff and it is now \$3,500.

[8] The applicant objects to the travel costs on the basis that senior counsel could have been engaged in Christchurch and that the costs of instructing Mr Rooney should not be visited on the applicant.

[9] Mr Rooney takes issue with that and disputes that it is a luxury to engage counsel from Auckland. He submits it would be unreasonable to expect the

respondent to instruct separate counsel in each location that it operates within New Zealand. He submits that the fact that Fonterra engage one firm in respect of employment cases facilitates the efficient conduct of proceedings in the Authority.

[10] I accept that the engagement of Mr Rooney to undertaken its cases is beneficial to Fonterra and the Authority because he has a good knowledge and understanding about the operation of the company. The issue is whether the costs of Mr Rooney travel outside of Auckland should be visited on the applicant. I would have no hesitation in awarding costs if it was unlikely senior counsel could have been instructed in a particular centre or travel would have in any event been necessary. In this matter however senior counsel could have been engaged in Christchurch and by agreement the investigation took place in Christchurch rather than Timaru. I am not satisfied that Mr Rooney's travel expenses should be visited on the applicant in this case.

### **Determination**

[11] I order Blair Harris to pay to Fonterra Co-Operative Group Limited the sum of \$3,000 being costs.

Helen Doyle  
Member of the Employment Relations Authority