

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 109A/09
5145076

BETWEEN

ROBERT HEPERI
Applicant

AND

HEINZ WATTIE'S LIMITED
Respondent

Member of Authority: P R Stapp
Submissions by 16 October 2009
Determination: 22 October 2009

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] There is an outstanding matter in regard to costs between the parties. Costs were reserved by the Authority in a determination dated 14 August 2009. The Authority previously declined Mr Heperi's request for costs to be dealt with at a challenge in the Employment Court. The reasons were provided for that decision at the time to dispose of the reserved issue since the respondent has applied for costs before the challenge is heard.

[2] Mr Heperi has opposed the application.

Issues

[3] Should there be any costs against Mr Heperi, and if so, how much?

The facts

[4] There was an investigation meeting held on the employment relationship problem filed by Mr Heperi and it lasted a day on 19 May 2009 and it was held in Napier. The respondent was successful in defending the substantive matter.

Determination

[5] The usual principles on costs apply. Costs follow the event as a matter of principle. The principles are well known and have been set out in *PBO Ltd (Formerly Rush Security Limited) v Da Cruz* [2005] ERNZ 808.

[6] This is a matter for the tariff approach to costs because the employment relationship problem filed by the applicant was dealt with in an investigation and not a trial. The respondent properly replied to the substantive issues with detailed evidence on a number of claims, made submissions and provided more submissions and information in respect of the issues that were raised. There was nothing unusual about that. The respondent has provided details on the breakdown of its costs. I accept the costs do not include travel costs. There are details of additional costs for a witness, who the respondent arranged to be present, and who Mr Heperi requested was necessary.

[7] The details of the costs include the respondent's preparation for the investigation meeting (\$5,880 plus GST), attendance of the respondent's representative (\$1,592.50 plus GST) and witness costs (\$1,361.46 plus GST). No invoices and any receipts were provided with the claim.

[8] I am satisfied costs have been incurred by the respondent having regard to the above details submitted by Ms Gibson. In the absence of any receipts and invoices and because an investigation procedure was followed in the Authority the notional daily rate should apply. The appropriate daily rate is \$3,000. This is modest having regard to the actual costs submitted and costs applied in the Authority. I accept that the applicant should pay the respondent this amount to contribute towards the respondent's preparation that was necessary to defend the matter, the reasonable attendance of the respondent's legal representative at the investigation meeting and the costs associated with the attendance of the witness, who the applicant requested to be present.

Order of the Authority

[9] I order Robert Heperi to pay Heinz Wattie's Limited \$3,000 contribution to costs reasonably incurred in Mr Heperi's employment relationship problem.

P R Stapp
Member of the Authority