

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 67A/08  
5075304

BETWEEN

RAY HILL  
Applicant

AND

TASMAN INSULATION NEW  
ZEALAND LIMITED  
Respondent

Member of Authority: Helen Doyle

Submissions received: 5 August 2008 from Applicant  
22 July 2008 from Respondent

Determination: 11 August 2008

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] In my determination dated 15 May 2008 I dismissed the applicant's claim that he was not paid the correct redundancy entitlement and I reserved the issue of costs.

[2] The parties attempted to resolve the issue of costs but were not successful in doing so.

[3] The Authority received an application for costs from Mr Kiely on behalf of the respondent on 22 July 2008 and from Mr Brown on behalf of the applicant on 5 August 2008.

**The respondent's submissions in support of the application for costs**

[4] Mr Kiely referred to the principles in the judgment of the Full Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808 that were held to be appropriate to the Authority and consistent with its functions and powers.

[5] Mr Kiely also referred to the unreported Employment Court judgment in *The Chief Executive of the Department of Corrections v. Tawhiwhirangi* (unreported, WC4A/08) to support that \$3,000 per day is most likely an appropriate starting rather than upper point for the Authority's powers.

[6] Mr Kiely said that the investigation meeting occupied a full day on 21 February 2008 and that written submissions were then provided requiring another half day in time and attendance. Mr Kiely wrote to Mr Brown and suggested a contribution towards the respondent's costs of \$3,500. Mr Brown in responding to that proposal offered the sum of \$1,500, but that was not accepted.

[7] Mr Kiely submits that an award towards costs in the sum of \$3,500 was appropriate and fair and it is that amount that the respondent seeks in terms of an award.

#### **The applicant's submissions in response to the application for costs**

[8] Mr Brown also refers to the principles in *PBO*. He submits that the investigation meeting only took half a day and distinguishes *Tawhiwhirangi* on the basis that that was a complicated case. Mr Brown also refers to a costs judgment of the Full Court in *South Tranz Ltd v. Strait Freight Ltd* (unreported, CC3/08) which provided that costs should be modest and the rate of \$2,000 per day is a reasonable starting point. In *South Tranz* for an investigation meeting that occupied a day and a half there was an allowance to the defendant of \$3,000 costs in the Authority to be offset against an award for costs and disbursements in the Court.

[9] Mr Brown submits that \$1,000 is a fair and reasonable contribution towards costs.

#### **Determination**

[10] It is well established that the party who is not successful pays a contribution towards the costs of the successful party. There is no good reason in this case to depart from that principle.

[11] It is clear from the submissions that the parties are not in agreement as to the duration of the investigation meeting. I have therefore checked the times that I have entered into my Minute book for the commencement and finish of the meeting. I have

entered a start for the investigation meeting on 21 February 2008 of 10.30am and a finish time of 1.10pm.

[12] There was a subsequent telephone conversation with a Mr Johns, the Authority and counsel. The time I have entered into my Minute book for that conference was 15 minutes.

[13] The time taken for the investigation meeting and subsequent telephone conference was 3 hours rather than the full day.

[14] When assessing an appropriate award of costs I have taken into account that this was not a factually complex matter. It was a matter, however, that was important to both parties and there were several interesting legal issues, although they were not particularly difficult because of the facts and the clear wording in respect of Mr Hill's redundancy entitlement.

[15] *Tawhiwhirangi* was also referred to in the judgment of the Chief Judge of the Employment Court in *Sefo v Sealord Shellfish Limited* (unrep, CC 4B/08) in terms of the daily tariff now being approved in a range up to \$3000 per day.

[16] I am of the view that \$2,500 is the appropriate starting point in the circumstances for costs. I reduce that sum to take into account that the investigation meeting was not a full day and although in some circumstances that of itself would not justify a reduction, in the particular circumstance of this case I find that it does. In reducing that sum I have taken into account the fact that time was required for submissions to be completed by Mr Kiely for the respondent.

[17] In all the circumstances I am of the view that an appropriate award for costs in this matter is \$2,000.

[18] I order Raymond Hill to pay Tasman Insulation New Zealand Limited the sum of \$2,000 being costs.

Helen Doyle  
Member of the Employment Relations Authority