

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 152/09
5092468

BETWEEN BLAIR HOMAN
 Applicant

AND NEW ZEALAND FIRE
 SERVICE
 Respondent

Member of Authority: Paul Montgomery

Representatives: Anja Klinkert and Ina Stewart, Counsel for Applicant
 Paul McBride, Counsel for Respondent

Determination: 9 September 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] In its determination, the Authority dismissed the applicant's claims and directed the parties to attempt to resolve the matter of costs between themselves. They have been unable to achieve agreement and so it falls to the Authority to fix costs.

[2] For the applicant, counsel refers the Authority to the principles enunciated by the Employment Court in *PBO Ltd (formerly Rush Securities Ltd v. Da Cruz* [2005] 1 ERNZ 808 as providing appropriate guidance in this case. In the light of those principles and the costs claimed by the respondent, Ms Stewart submits the applicant was entitled to challenge the legality of his employer's actions, that the costs were increased by the respondent briefing out of town counsel and the respondent, being a large organisation, is *well able to bear the costs of these proceedings*, while her client is now in Australia seeking employment.

[3] Ms Stewart also refers the Authority to *Chew v. Aslam Consulting Ltd, Trinity Systems Ltd v. Howard* (Member Doyle), CA63/08. In that determination, the

Authority noted the Employment Relations Authority is a *low level tribunal*, and that *costs should reflect that*. The expenses claimed by the respondent were well in excess of those set out in the current matter. In *Chew* the Authority awarded the figure of \$5,000 in respect of the substantive investigation plus disbursements in the sum of \$511.88.

[4] There is no question Mr Homan was entitled to challenge his dismissal. However, given the factual matrix of this case, he needed to understand an outcome unfavourable to him was a distinct possibility, and in the event he was unsuccessful, would face the issue of costs.

[5] For the respondent, Mr McBride submits this was a case in which the applicant's allegations against the respondent were *wide ranging* and the respondent was obliged to deal with each of those allegations. The extent of the applicant's claims, says counsel, gave rise to substantial, additional costs for the respondent and the costs award ought to reflect those additional costs.

[6] In an attempt to resolve the issue of costs, counsel wrote to the applicant's counsel setting out its solicitor/client costs were *in the order of \$16,500 plus GST* and disbursements were \$1,051.83 inclusive of GST. Mr McBride invited *a realistic proposal* from Ms Stewart's client to address the Fire Service's costs however, no agreement was reached.

[7] Counsel for the respondent submits the employment of a solicitor familiar with the Fire Service's structure and systems substantially reduced the time deployed in preparing the respondent's case and outweighed the disbursements incurred. This submission has some merit in this particular case.

[8] The investigation took two days, much of which involved the questioning of the respondent's witnesses on the procedures they adopted in coming to their decision to dismiss Mr Homan.

[9] Having considered the submissions in the light of this particular case, and standing back to view the issues in the round, I find costs are to follow the event. The principles set out in *PBO Ltd v. Da Cruz* are appropriate in this case with disbursements being considered in their own right.

[10] The applicant is ordered to pay the respondent the sum of \$5,500 as a contribution to its reasonably incurred costs. The applicant is to pay the respondent the sum of \$750 as a contribution to the disbursements incurred by the respondent in defending this matter.

Paul Montgomery
Member of the Employment Relations Authority