

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

[2013] NZERA Christchurch 119  
5380502

BETWEEN                      ANDREW HOOD  
Applicant

AND                              CONNECTOR SYSTEMS  
HOLDINGS LIMITED  
Respondent

Member of Authority:        M B Loftus

Representatives:             Joe Tonner, Advocate for Applicant  
Stephen Langton, Counsel for Respondent

Submissions received:        11 June 2013 from Applicant  
13 June 2013 from Respondent

Determination:                24 June 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     On 15 May 2013 I issued a determination rejecting Mr Hood's claim he had been unjustifiably dismissed by the respondent, Connector Systems Holdings Limited. In addressing a counter claim from Connector Systems, I concluded that while Mr Hood most probably contravened his employment agreement the dismissal addressed his actions. A further penalty or an award of damages was not justified.

[2]     Costs were reserved and Connector Systems now seeks a contribution toward those it incurred.

[3]     Normally the Authority will use a daily tariff approach when addressing costs (*PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808). The normal starting point is \$3,500 a day and from there adjustment can occur depending on the circumstances.

[4] This was a day's hearing which, applying the above formula, would see a contribution in the order of \$3,500. That is what Connector Systems seeks for the investigation meeting, though it then adds a further \$1,006 being the cost of Council's travel to the investigation meeting (\$506) and his time in preparing the costs submission (\$500).

[5] Mr Hood's response is costs should lie where they fall. He bases this on a view his claim was unsuccessful due to a *technical finding of interpretation* which was contrary to his genuine, albeit incorrect, understanding of his terms of employment along with the fact Connector Systems was unsuccessful with its counterclaims.

[6] The argument as to why costs should lie where they fall fails to convince me. I cannot agree the outcome was the result of a technical interpretation of the employment agreement given the findings. Mr Hood claimed he was unjustifiably dismissed. Connector Systems accepts it dismissed and with that the onus of justifying its decision. It succeeded and as costs normally follow the event is entitled to claim a contribution toward those it incurred.

[7] While the breach and penalty claims were unsuccessful that is not significant for the following reasons. It is improper to adopt a scorecard approach where the issues are intrinsically intertwined as they were here (*Bourne v Real Journeys Ltd* [2012] NZEmpC). The primary focus was the dismissal claim. Connector System was completely successful in that respect. The evidence necessary for the penalty and damages claims had to be canvassed when considering the dismissal and the additional effort in respect of submissions was minimal and as can be seen by the content of paragraph 55 of the original decision it was a close fought issue.

[8] Given the lack of any further argument as to why I should not apply the normal tariff, I do so.

[9] Turning to the claim for Mr Langton's travel costs. While there is nothing to prevent a party from engaging out-of-town counsel the associated costs will not generally be recompensed (see *Wolfenden v The New Zealand Film and Television School Ltd* [1999] 2 ERNZ 21 (EmpC) at 36 and *Gini v Literacy Training Ltd* [2013] NZEmpC 25 at [35]). Given the lack of an explanation as to why Auckland council was required or an argument as to why I should depart from the normal approach I apply it. The cost of Mr Langton's travel is not recoverable.

[10] Finally there is the cost of preparing the cost submission. This is tendered on the grounds it was unreasonable for Mr Hood not to make an offer when he had been unsuccessful. I agree given the principle costs normally follow the event. By adopting the approach he did, Mr Hood left Connector Systems with no option other than to incur the cost of the submission. The contribution sought is not unreasonable and shall be granted.

[11] For the above reasons I order the applicant, Mr Andrew Hood, pay the respondent, Connector Systems Holdings Limited, the sum of \$4,000 (four thousand dollars) as a contribution toward the costs the company incurred.

Mike Loftus

Member of the Employment Relations Authority