

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 205
5342797

BETWEEN	ALLAN HUMPHRIES Applicant	RAYMON
A N D	EARTHWORKS LIMITED Respondent	AORAKI

Member of Authority: Alastair Dumbleton
Submissions Received 21 May and 25 June 2012
Date of Determination: 24 September 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] In its determination of 8 May 2012 – [2012] NZERA Christchurch 86 - the Authority held that Mr Allan Humphries had a personal grievance and awarded him remedies of reimbursement of lost wages and compensation for hurt feelings and humiliation. The question of costs was reserved for written application to be made within 14 days of the date of determination and for any reply to be made within a further 14 days.

[2] After Mr Humphries had applied for costs a reply to his application was received from Earthworks Aoraki Ltd, Mr Humphries' former employer, on 25 June 2012. Although it was out of time no objection has been taken by Mr Humphries to the reply being considered by the Authority.

[3] A reasonable contribution towards Mr Humphries' legal fees is sought, the parties not having been able to agree on an appropriate amount. Total legal fees were \$10,504 including GST and disbursements. Of that sum, \$8,147 was incurred post-mediation.

[4] The investigation meeting took about a day and the determination required a relatively straightforward consideration of mixed fact and law.

[5] The decision applied principles of law that the Authority rather than the parties had raised as relevant, but this is consistent with the powers of the Authority which at s 160(3) of the Employment Relations Act 2000 is expressed not to be bound to treat a matter as being a matter of the type described by the parties but may, in investigating the matter, concentrate on resolving the employment relationship problem, however described.

[6] The fact remains that Mr Humphries had to resort to bringing an application to the Authority to have his employment relationship resolved, the parties being unable to settle the matter on their own terms themselves. Mr Humphries was successful and incurred the expense of legal fees in achieving that outcome.

[7] Earthworks Aoraki Ltd accepts that Mr Humphries is entitled to a reasonable contribution towards his legal costs and submits that an order in the range \$3,000-5,000 would be reasonable.

[8] The daily tariff often applied by the Authority is currently \$3,500. I consider that in all the circumstances an award of \$4,250 is appropriate.

Determination

[9] In the exercise of its discretion, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, the Authority orders Earthworks Aoraki Ltd to pay to Mr Allan Humphries \$4,250 in costs and \$71.56 in reimbursement of the application fee.

A Dumbleton
Member of the Employment Relations Authority