

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Craig Isherwood  
**AND** Apex Car Rentals Ltd  
**REPRESENTATIVES** Craig Isherwood, applicant  
Dean Kilpatrick counsel for respondent  
**MEMBER OF AUTHORITY** Helen Doyle  
**SUBMISSIONS - RESPONDENT** 31 October 2006  
**- APPLICANT** 10 November 2006  
**DATE OF DETERMINATION** 24 November 2006

**COSTS DETERMINATION OF THE AUTHORITY**

[1] In my determination dated 12 October 2006, I dismissed the applicant's application for a compliance order and the respondent's claim for penalties for a breach of good faith and attempt to mislead the Authority. I reserved the issue of costs.

[2] Submissions as to costs were received from Mr Kilpatrick on behalf of the respondent on 31 October 2006. Mr Isherwood's submissions as to costs were received on 10 November 2006. Mr Isherwood in his costs submission says that the respondent was out of time for lodging its submission as to costs. The timetable stipulated in the determination required the respondent to provide submissions as to costs by 26 October 2006. Mr Isherwood submits that the respondent's costs should not be considered and that as he is the only party to meet the timeframe set by the Authority in its determination only his response can be considered.

[3] I agree with Mr Isherwood that it is important that timeframes be adhered to. In this case though Mr Kilpatrick's submission with respect to costs was not lodged significantly out of time and there can be no prejudice in my view to Mr Isherwood as he was still able to lodge his submission as to costs within time. I intend to consider both submissions.

[4] Mr Kilpatrick, on behalf of the respondent, referred in his submission to the judgment of the Full Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808 and noted from that judgment that the nature of the investigation meeting is a relevant consideration in the exercise of the discretion to award costs.

[5] Mr Kilpatrick said in his submissions that the respondent had incurred costs in the sum of \$1,704.38. The respondent seeks a full contribution by Mr Isherwood to its legal costs on the basis that:

- The applicant was represented by counsel when an agreement was reached between the parties and recorded in a record of settlement.

- The respondent complied with the terms of settlement. The amount to be paid to Mr Isherwood was set out in a letter dated 31 January 2006 which was sent to Mr Isherwood's lawyer with the three copies of the settlement agreement for Mr Isherwood's signature.
- In the circumstances, notwithstanding that Mr Isherwood said he did not receive a copy of the letter, he should have confirmed with his representative his view that the respondent had not complied with the settlement terms and reviewed his lawyer's file before lodging his statement of problem. Had he done that, Mr Kilpatrick submits, Mr Isherwood would not have proceeded with his claim.

[6] Mr Isherwood says that the respondent should pay him costs in the sum of \$7,538.46 for the work that he was required to undertake.

### ***Determination***

[7] It was agreed with the parties that the Authority could determine this matter on the papers lodged and two telephone conferences. The only attendances required therefore after the lodging of the statement of problem and statement in reply were the telephone conferences.

[8] An award of costs should compensate a successful party who has been put to expense. Although Mr Isherwood has sought costs, the general rule is that lay persons representing themselves cannot claim costs for their time. I find that it was the respondent and not Mr Isherwood who was the successful party in this case.

[9] In reaching that finding, I have considered the counterclaim which was unsuccessful. It was a claim which was in response to Mr Isherwood's complaint that the respondent had not complied with the terms of settlement. The unsuccessful counterclaim has not changed my view in this case that the respondent is entitled to costs, although I shall return to consider it later in the determination in terms of what, if any, award of costs should be made.

[10] I do not consider that there should be an award of the full amount of costs incurred by the respondent. Costs are not to be used as a punishment or an expression of disapproval. I have considered the respondent's counterclaim. There is no evidence that the counterclaim required any additional preparation by Mr Isherwood except by way of a statement that he had not been received or been advised of the contents of the letter of 31 January 2006. I do find, though, that the counterclaim would have contributed towards the respondent's total costs in terms of preparation of its statement in reply. I have taken it into account in that respect.

[11] I am of the view that there should be a modest award to the respondent which reflects the procedure adopted in this case for investigating and determining the matter. I am of the view that \$300 would be a fair and reasonable award in the circumstances.

[12] I order Craig Isherwood to pay to Apex Car Rentals Limited the sum of \$300 being costs and disbursements.

Helen Doyle  
Member of Employment Relations Authority