

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 195
5316235

BETWEEN

BEVAN JOHNSTON
Applicant

AND

ADECCO PERSONNEL
LIMITED
Respondent

Member of Authority: G J Wood

Representatives: Jills Angus Burney for the Applicant
Jo Douglas for the Respondent

Submissions Received: By 8 September 2011

File Received by Member: On 29 November 2011

Determination: 29 November 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In my substantive determination I concluded that Mr Johnston was justifiably warned for failure to comply with the respondent Adecco's minimum compliance standards, and subsequently justifiably dismissed for breaching a lawful and reasonable instruction to not discuss non-work related matters or make negative comments about Adecco, thus bringing it into disrepute.

[2] On behalf of Adecco Ms Douglas seeks a contribution of \$6,000 to Adecco's costs of \$11,787.27. In particular, Ms Douglas relies on delays caused through Mr Johnston providing new documents on the day, the number of witnesses required and the length of the investigation meeting.

[3] On behalf of Mr Johnston Ms Angus Burney submitted that costs should lie where they fall, or otherwise be no more than \$3,000. In this regard she claimed that Adecco was also responsible for delays, given that its representatives did not appear

on time due to flight delays, and that Mr Johnston has only seasonal employment and significant debts.

[4] I accept that there were delays, caused by both parties, which necessitated the matter going to a second day of investigation. However, only half of that day was required. There was nothing out of the ordinary in this case and therefore a tariff approach is appropriate. I accept from the evidence provided at the investigation meeting that Mr Johnston's current financial position is not strong. However, that is not to say that he can not make payments over time.

[5] On a tariff approach, on the time assessed above, a costs award of \$4,500 would normally ensue. I conclude, however, that a twenty percent discount should apply, due to Mr Johnston's difficult financial circumstances. I therefore determine that an appropriate contribution to Adecco's costs would be \$3,600.00.

[6] I therefore order the applicant, Mr Bevan Johnston, to pay to the respondent, Adecco Personnel Limited, the sum of \$3,600.00 in costs.

G J Wood
Member of the Employment Relations Authority