

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2017] NZERA Christchurch 137
5635537

BETWEEN PETER JONES
 Applicant

A N D PENROSE ENTERPRISES
 LIMITED
 Respondent

Member of Authority: Peter van Keulen

Representatives: Philippa Tucker, Counsel for Applicant
 Ray Parmenter, Counsel for Respondent

Submissions Received: 25 July 2017 from Applicant
 19 July 2017 from Respondent

Date of Determination: 8 August 2017

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] In a determination dated 7 July 2017¹ I determined that the applicant, Peter Jones, was not an employee and therefore I did not have jurisdiction to hear his claim.

[2] In my determination, I reserved costs in the hope that the parties would be able to reach agreement. The parties have not reached an agreement and the respondent, Penrose Enterprises Limited (Penrose) now seeks costs. Penrose says, simply, that it defended Mr Jones's claim and is entitled to costs based upon the daily tariff. It also requests an award for disbursements as it is an Auckland based company, albeit with a Christchurch car yard that Mr Jones worked at, and therefore it was always going to be necessary for at least one witness to travel from Auckland.

[3] Mr Jones says:

¹ [2017] NZERA Christchurch 120

- a. That Penrose failed to engage in meaningful discussion about clarifying and resolving Mr Jones's claim when it was raised leaving him with no option but to lodge a statement of problem in the Authority;
- b. Mr Jones did not cause any delays in the progression of his claim;
- c. Mr Jones's impecuniosity, arising out of the end of his role with Penrose and the need to use savings for living costs, is a relevant consideration;
- d. Penrose should not be awarded any amount for disbursements as it could have dealt with evidence through Christchurch based witnesses.

[4] Mr Jones says that given these circumstances, in equity and good conscience, I should at least reduce the daily tariff, if not order that costs lie where they fall.

Discussion

[5] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Employment Relations Act 2000. The principles and approach adopted by the Authority in respect of this power are well settled and outlined in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*². The principles and the approach to be adopted by the Authority have been reaffirmed recently by the Full Court in *Davide Fagotti v. Acme & Co Ltd*³.

[6] I have considered these principles and the parties' submissions.

[7] First, I am satisfied that Penrose is entitled to an award of costs. Penrose successfully defended the claim by Mr Jones and there is nothing in its conduct of the case, despite what Mr Jones says about not engaging in early discussion of his claim, which means that I should depart the basic principle that costs should follow the event.

[8] Second, I will apply the daily tariff, as there is no reason to depart from this principle in this case. As the statement of problem was lodged after 1 August 2016, the applicable rate is \$4,500.00 for the first day and \$3,500.00 for every subsequent

² [2005] 1 ERNZ 808

³ [2015] NZEmpC 135

day. The investigation meeting took one full day and therefore the starting position is an award of \$4,500.00.

[9] Third, in terms of assessing whether I should reduce or increase the daily tariff the only potentially relevant factors are the conduct of the parties and the impecuniosity of Mr Jones. Penrose did not conduct this matter in a manner that means I should reduce the daily tariff. Likewise, Mr Jones did not progress his claim in a way that warrants a reduction in the daily tariff.

[10] Turning to Mr Jones's impecuniosity, there was evidence submitted in my investigation meeting regarding the financial hardship Mr Jones and his family suffered as a consequence of reduced income after the termination of Mr Jones's position with Penrose. I acknowledge this and I am persuaded that a reduction in the daily tariff is warranted. I will reduce the tariff to \$3,500.00.

[11] I will not award disbursements in this matter for counsel's attendance from Auckland based upon the principles in *Banks v Hockey Manawatu Inc*⁴. I will award disbursements for the attendance of Mr Radisich, the shareholder and director of Penrose who attended from Auckland to give evidence at the investigation meeting. I calculate his travel costs to be \$890.50.

Determination

[12] Mr Jones is to pay Penrose Enterprises Limited \$3,500.00 as a contribution to its costs in this matter and disbursements of \$890.50 for Mr Radisich's costs in attending the investigation meeting.

Peter van Keulen
Member of the Employment Relations Authority

⁴ [2016] NZEmpC 97