

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2015] NZERA Christchurch 43
5529856

BETWEEN K T VENTURES LIMITED
Applicant

A N D IAN JOHNSON
Respondent

Member of Authority: M B Loftus

Representatives: Kevin Richardson, on behalf of Applicant
Anna Oberndorfer, Advocate for Respondent

Submissions Received: 13 March 2015 from Respondent
7 April 2015 from Applicant

Date of Determination: 8 April 2015

COSTS DETERMINATION OF THE AUTHORITY

[1] On 8 December 2015 I issued a determination rejecting K T Ventures application Mr Johnson be prevented from working in breach of a restraint provision contained in an employment agreement the two had previously entered into. The application was considered on an urgent interim basis and the claim was withdrawn before a substantive hearing occurred. Costs were reserved.

[2] As the successful party Mr Johnson now seeks something *in the region of* \$6,000 as a contribution toward the cost he incurred defending the application.

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

[4] The hearing of an interim application is normally relatively short and this was no exception. The hearing took a couple of hours so applying the above formula Mr Johnson could, in the normal course of events, expect around \$1,200.

[5] Mr Johnson seeks considerably more. Having referred to *PBO Ltd v Da Cruz* he justifies the claim for an increase as follows:

- a. Actual costs were in excess of \$10,000 which, it is argued, was reasonable;
- b. K T Ventures was tardy in responding to requests for information and the content of its affidavits suggested there would be no attempt to resolve the issues by negotiation;
- c. Urgency was unnecessary yet such an application required two advocates attend to the matter and an order directing the parties to mediation meant both that and the Authority hearing had to be prepared for within a short timeframe.

[6] The prime response is *The proceedings have been discontinued and the file has already been closed by the Authority*. It is also argued the claim is excessive; urgency was necessary but did not increase the costs of preparation in any event and the application has been made outside the allowed timeframe. In closing it is noted that should costs be awarded there is no basis for anything exceeding the daily tariff.

[7] I will address the discontinuance argument first. It is incorrect as a hearing occurred and costs were reserved. Similarly the argument regarding timeframes fails as none were stipulated in the original determination.

[8] The simple fact is costs follow the event and Mr Johnson was successful though, that said, I see merit in the submission they be limited to the daily tariff as the arguments for an increase fail to convince me.

[9] First there is the assertion the costs were reasonable. I note mediation costs are included in the billed amounts. They are not recoverable and there is no indication as to whether some entries such as *research* applied to mediation, the Authority hearing or, in some instances, both. There is then the fact it is clear from the documents filed on Mr Johnson's behalf that a significant portion of the work

related to a line of argument that had little hope of success (refer paragraph 33 of the substantive decision).

[10] The argument K T Ventures was tardy in providing information thus increasing Mr Johnson's costs was unsupported and the issue of possible negotiation was addressed by the parties attending mediation.

[11] There is then the argument urgency was unnecessary. That may have been true had this been a damages application but it was not. It was an attempt to enforce a restraint provision. Such matters will normally be addressed with alacrity as valid restraints could be easily undermined by irrecoverable damage during any period of breach.

[12] Having considered both submissions I consider it appropriate to apply the normal tariff. I therefore order K T Ventures pay Mr Johnson the sum of \$1,200 (one thousand, two hundred dollars), as contribution toward the cost of defending the claim.

M B Loftus
Member of the Employment Relations Authority