

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 79/10
5158374

BETWEEN MICHAEL KIMBER
 Applicant

AND NEW ZEALAND FIRE
 SERVICE
 Respondent

Member of Authority: Alastair Dumbleton

Submissions Received 31 August and 2 September 2009

Determination: 17 February 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] Following an investigation, the Authority determined that Mr Michael Kimber did not have a personal grievance arising from his dismissal by the New Zealand Fire Service or from the actions of his employer leading up to that.

[2] In accordance with the determination, submissions have been made by the parties in relation to costs. The New Zealand Fire Service incurred total costs of \$17,432.30 for legal representation during the investigation and seeks an award made on the basis of 1½ days of hearing time at the rate of the “*ordinary tariff*” for costs.

[3] In reply, for Mr Kimber it is submitted that although the investigation meeting occurred over two days in total time it took less than one day. It is submitted that costs should be at the lowest level of the scale or tariff, where the top end is \$3,000 per day.

[4] The leading case on costs in the Authority, *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808, approved the application of a notional daily rate as one means of fixing costs.

[5] I agree with the submission that the total investigation meeting time was less than a day although spread over two days, and that \$3,000 is at about the top of the scale.

[6] There were no extreme or exceptional features of this investigation putting this case at the high end of the scale.

[7] Pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, I fix costs at \$2,250. This sum is to be paid by Mr Kimber to the New Zealand Fire Service as a reasonable contribution to much greater total costs incurred.

A Dumbleton
Member of the Employment Relations Authority