

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 176
5393019

BETWEEN

PETER KRAMMER
Applicant

A N D

NELSON MARLBOROUGH
DISTRICT HEALTH BOARD
Respondent

Member of Authority: M B Loftus

Representatives: Jock Lawrie, Counsel for Applicant
Paul McBride, Counsel for Respondent

Submissions Received: 19 August 2013 from Applicant
22 August 2013 from Respondent

Date of Determination: 27 August 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] On 19 July 2013 I issued a determination rejecting NMDHB's application Mr Krammer comply with an agreement he repay a portion of a previously received redundancy payment upon subsequent reemployment.

[2] Costs were reserved and Mr Krammer, as the successful party, now seeks a contribution toward the costs he, or more correctly his union (NZNO), incurred on his behalf.

[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] Mr Krammer seeks a contribution of \$3,500 on the basis I apply the principles in 3 above to a hearing which was set down for a day.

[5] The response is costs should lie where they fall. It is argued this was essentially a dispute (s.129 of the Employment Relations Act 2000) and an award of costs would be inordinate.

[6] The approach is supported with reference to *New Zealand Tramways Union (Wellington Branch) v Wellington City Transport Ltd* [2002] 2 ERNZ 435 at [73] and *New Zealand Merchant Service Guild IUOW Inc. v Inter-Island Line* (unreported) EC Wellington, WC 21A/03, 18 December 2003 along, it is argued, with numerous others. For example in *NZMSG v Inter-Island Line* the Court said:

Parties ... should feel free to request assistance and ruling from the Employment Relations Authority and the Court where there are genuine disputes without fear of facing orders to pay the costs of the victor

[7] In the alternate, and should I conclude a contribution is warranted, it is argued the amount should be reduced as the investigation (a) took less than a day (it finished early afternoon) and (b) need not have taken that long had Mr Krammer not called three witnesses not referred to in the decision but instead relied on an agreed statement of facts previously prepared by the parties.

[8] The claim is, in my view, determinable on the basis of NMDHB's primary argument. In the opening paragraph of the substantive decision [paragraph 1] I said *This is a dispute over the interpretation and application of various provisions relating to the payment of, and the employer's ability to subsequently reclaim, redundancy payments.*

[9] As was said in the opening this was a dispute and concerning the applicability and enforceability of various provisions in both a collective employment agreement and an employer policy. The evidence would also lead me to conclude it was genuine.

[10] This is the very situation in which the precedents referred to by NMDHB exclude an award of costs and applying those principles I conclude costs should lie where they fall.

M B Loftus
Member of the Employment Relations Authority

