

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2015] NZERA Christchurch 150  
5425154

BETWEEN                      CARL LINES  
   Applicant  
  
A N D                              SOUTHLINK LOGISTICS  
   LIMITED  
   Respondent

Member of Authority:        M B Loftus  
  
Representatives:              Steven Zindel, Counsel for Applicant  
   Kym Parsons, for Respondent  
  
Submissions Received:        18 September 2015 from Applicant  
   5 October 2015 from Respondent  
  
Date of Determination:        12 October 2015

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     On 17 April 2015 I issued a determination<sup>1</sup> concluding Mr Lines had a personal grievance in that he was unjustifiably dismissed by the respondent, Southlink Logistics Limited (Southlink). Costs were reserved.

[2]     Mr Lines was legally aided and given his success now seeks reimbursement of the \$2,382.65 he was required to repay the Legal Services Commissioner.

[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.

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<sup>1</sup> [2015] NZERA Christchurch 49

[4] The investigation took a full day and was, as Mr Zindel observed, hard fought. Application of the tariff would, however, see a contribution exceeding the amount sought. That said the Legal Aid Commissioner was only charged a small portion of the total bill with the bulk of Mr Lines costs being written off for various reasons. It is therefore argued he be completely reimbursed and allowed to enjoy the benefit of his award in full.

[5] The respondent, in its reply, challenges four factual assertions made on behalf of Mr Lines before submitting that *[It] has honoured the obligations as determined by the Employment Relations Authority and considers the repayment of the legal aid fee ... to be an obligation of the applicant.*

[6] I do not comment on the factual disputes as none need be addressed to determine the question of costs. In particular, and for the respondent's benefit, I note this includes the issue of whether or not it was properly advised Mr Lines was legally aided. That is a matter for other bodies to resolve and does not alter the fact he incurred the costs he incurred.

[7] There is then the claim Southlink has honoured its obligations by paying the amount ordered in the substantive decision and costs should *be an obligation of the applicant.*

[8] This submission misses two vital points. The first is costs normally follow the event and the second that costs were reserved. The issue cannot therefore be avoided simply by saying we have paid the amounts ordered. There was always the possibility a contribution toward the costs incurred by Mr Lines would be added.

[9] The real issue here is whether or not I should reimburse costs in full. It is normally accepted a costs award is a contribution and not full indemnification except in exceptional circumstances and where totally inappropriate behaviour, such as the type discussed in *Bradbury v Westpac Banking Corporation* [2009] 3 NZLR 400, occurred. There is no suggestion Southlink behaved in such a way here.

[10] That said the bulk of costs awards involve situations where the successful applicant is billed in full and there may be rare situations in which the facts support a consideration of such an award notwithstanding *Bradbury*. This is, in my view, such a situation.

[11] Here the claim is truncated by virtue of various issues beyond Mr Lines control which meant the Legal Services Commissioner was not billed in full. Indeed the imposition he suffered was less than the normal daily rate which can only be considered reasonable given the experience of Mr Lines' counsel.

[12] I am of the view Mr Lines should not be disadvantaged by circumstances out of his control. This is especially so when the resulting imposition on Southlink is less than would have occurred in normal circumstances which would have seen it face an order of around \$3,500.

[13] Finally I note no party should be penalised in a costs setting for lodging what can only be seen as an extremely reasonable claim.

[14] Given the circumstances I consider this an instance in which the claim should be met in full and order the respondent, Southlink Logistics Limited, pay the applicant, Carl Lines, \$2,382.65 (two thousand, three hundred and eighty two dollars and sixty five cents) toward the costs incurred in attaining the outcome he did.

M B Loftus  
Member of the Employment Relations Authority