

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2021] NZERA 277
3106732

BETWEEN DAVID LLOYD
 Applicant

AND CAPITAL PAVING (NZ)
 LIMITED
 Respondent

Member of Authority Michele Ryan

Representatives No appearance by the Applicant
 Michael Gould, counsel for the Respondent

Investigation Meeting 22 June 2021

Date of Determination: 29 June 2021

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In a statement of problem lodged with the Authority on his behalf, Mr David Lloyd alleged that he had been unjustifiably dismissed by the respondent, Capital Paving (NZ) Ltd (“CPL”), and was owed wage and holiday arrears.

[2] CPL denied it dismissed Mr Lloyd. It said he worked for it for just over two days, then left work and did not return. The issue as to wage arrears was later subsequently resolved.

[3] A date for the Authority’s investigation meeting was set and a Notice of Investigation was sent to each of the parties confirming the fixture. Amongst other things, the Notice advised if the applicant did not attend the investigation meeting the matter may be dismissed and costs awarded against the Applicant.

[4] By email 18 March 2021, Mr Lloyd’s then representative informed the Authority that he was unable to obtain instructions from Mr Lloyd, and therefore could

not continue to represent him. He confirmed however that Mr Lloyd was aware of the date and location of the investigation meeting, as well as the schedule for the exchange of evidence.¹

[5] Between that date and 26 May 2021 the Authority sent three separate emails to Mr Lloyd, noting that his evidence had not been lodged with the Authority. He was asked to contact the Authority, and informed that in the absence of a response from him the investigation would proceed.

[6] The director of CPL and its counsel were both in attendance at 9.30 a.m. on 22 June 2021 for the beginning of the investigation meeting. Mr Lloyd was not present but the Authority contacted him by phone at 9.40 a.m. He said he was in the Southland. He did not provide any additional explanation for his absence from the meeting. No good cause shown as to why the meeting should not proceed and Mr Lloyd was advised of this.²

[7] Mr Lloyd's case against CPL must fail where he failed to attend the investigation meeting scheduled to investigate his claims, and has not established a case for which CPL would be required to answer. Mr Lloyd's claim is dismissed.

Costs

[8] The Authority has a discretion to award costs, and it is usual for the losing party to make a reasonable contribution towards the successful party's legal costs.³

[9] Having reviewed invoices associated with CPL's defence to Mr Lloyd's claims I am satisfied CPL has incurred reasonable costs to which Mr Lloyd should contribute.

[10] In assessing the quantum of an order for costs, the Authority's generally applies its tariff, currently set at \$4,500 for a full first day of an investigation, against the length of time needed to investigate the claim. That sum may then be increased or reduced depending on other factors relevant to the progress of the claim.

[11] In this case, the Authority's meeting was understandably brief given Mr Lloyd's absence, and therefore his inability to establish his claim. However, I recognise that

¹ The email appears to have been copied to Mr Lloyd's contact email address.

² Clause 12 of Schedule 2 of the Act entitles the Authority to proceed in the absence of any party if that party has failed to attend or to be represented without any *good cause shown*.

³ See *PBO Limited (formerly Rush Security Ltd v Da Cruz* [2005] NZEmpC 135; *Fagotti v Acme & Co Limited* [2015] NZEmpC 135.

CPL, through its solicitor, has been put to unnecessary expense including the preparation of a statement in reply and attendance at several telephone conferences with the Authority. CPL's director and its counsel were further required to prepare for, travel to, and attend the investigation meeting. I am satisfied CPL has incurred unnecessary and additional costs.

[12] For all the above reasons it is appropriate that Mr Lloyd contribute \$1,500 towards the costs of Capital Paving (NZ) Limited. This is a reasonable contribution to costs in the circumstances of this matter.

Certificate of Determination

[13] Pursuant to Regulation 26 of the Employment Relations Authority 2000, Capital Paving (NZ) Limited is to be provided with a sealed certificate of determination, recording that Mr David Lloyd is ordered to pay Capital Paving (NZ) Limited costs in the sum of \$1,500 within 21 days of the date of this determination.

Michele Ryan
Member of the Employment Relations Authority