

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

Determination Number:

WA 55A/08

File Number: 5099623

BETWEEN

Aaron Loder

Applicant

AND

Terson Industries Limited t/a

Doortech

Respondent

Member of Authority: Denis Asher

Representatives: Jills Angus Burney for Mr Loder  
Don Frampton for the Company

Submissions received: By 19 May 2008

Determination: 20 May 2008

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**COSTS DETERMINATION OF THE AUTHORITY**

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- [1] In my determination dated 2 May 2008 (WA 55/08) I found in favour of Mr Loder's claim that he was owed payment of a non-competition premium and accordingly ordered the Company to pay to the applicant the sum of \$5,000 gross.
- [2] In the same determination I expressed a preliminary view that, unless good reason was advanced to the contrary and subject to costs actually incurred, Mr Loder having succeeded, and costs typically following the event, the applicant was entitled to expect a

contribution to his union's fair and reasonable costs of representing him, of up to \$3,000 plus the filing fee of \$70, as well as up to a further \$1,500 for the cost of having to defend an application that was withdrawn by the Company on the day of the investigation.

[3] By agreement costs were reserved.

### **Respondent's Costs Claim**

[4] Mr Frampton's costs submission included, amongst other things, a review of recent Department of Labour statistics on costs awards as well as examples of recent costs decisions, and concluded with the view that costs awards in the Authority are modest and generally in the region of between \$1,000 and \$3,000. As the hearing was only a half day or less any award should therefore be \$1,000 or less.

[5] It was submitted that a costs award of \$1,500 due to the Company's late withdrawing of its counter-claim was excessive. Other examples of costs awarded by the Authority in similar circumstances were of the order of \$750. A figure of \$500 was therefore more appropriate.

### **Applicant's Costs Claim**

[6] Amongst other submissions, the applicant agrees with the respondent that costs are in the region of \$1,000 to \$3,000 a day.

[7] The amount of time prepared by Mr Loder's union on his behalf was between 45 and 60 hours in total, as well as the half day investigation attendance.

[8] Mr Frampton's conduct on the day unnecessarily protracted the Authority's investigation.

[9] The losing party's case wholly lacked merit and its stance, including the withdrawal on the day of the investigation of its counter-claim, was reprehensible: *Counties Manakau Health t/a South Auckland Health v Pack*, unreported, Goddard CJ, AC72A/00, 25 October 2000.

[10] Costs of \$3,000 and \$1,500 are accordingly sought.

### **Discussion and Findings**

[11] Mr Loder succeeded with his entire claim.

[12] The Company properly abandoned its counter-claim but only at the outset of the Authority's investigation and after the applicant had incurred unnecessarily costs in defending the same.

[13] The respondent's position was unduly convoluted, thus requiring more time to process and dispose of. However, while difficult if not obtuse, the respondent's conduct did not warrant a costs award out of the ordinary, particularly as the matter was properly investigated within half a day.

[14] The Authority's discretion with which to award costs is now well settled and typically follow the event: *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.

[15] Having regard to the parties costs submissions and the above I am satisfied that Mr Loder is fairly and reasonably entitled to a contribution to his costs of \$2,000 in respect of the substantive investigation and \$1,000 for the work undertaken in respect of the counter-claim abandoned by the Company.

### **Determination**

[16] The Company is to pay to Mr Loder the combined costs sum of \$3,000 (three thousand dollars) as a fair and reasonable contribution to his legal costs.

**Denis Asher**

**Member of the Employment Relations Authority**

