

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 120A/09  
5148083

BETWEEN Jonathan Mawley  
Applicant

AND Mark Jorgensen t/a Barista the  
Espresso Bar  
Respondent

Member of Authority: Denis Asher

Representatives: Alan Millar for Mr Mawley  
Phillip Drummond for Mr Jorgensen

Submissions received: By 31 August 2009

Determination: 6 October 2009

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**COSTS DETERMINATION OF THE AUTHORITY**

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- [1] In my preliminary determination dated 28 August 2009 (WA 120/09) I found in favour of Mr Mawley's claim that his employer was Mr Jorgensen t/a Barista the Espresso Bar, and not Jorgensen Holdings Limited. That determination is now on challenge at the Employment Court.
- [2] Costs were reserved at the parties' request. The parties have, apparently, subsequently been unable to agree costs.

### **Mr Mawley's Claim**

- [3] Full solicitor/client costs are sought of \$1,500 plus GST.
- [4] That claim is made on the ground the respondent made only a token statement in reply, Mr Jorgensen failed to attend mediation on two occasions despite his agreement to do so, and because Mr Jorgensen belatedly challenged Mr Mawley's assertion he was his employer.
- [5] The Authority should discourage behaviour lacking in good faith by making an award of the full costs sought.

### **Mr Jorgensen's Response**

- [6] No costs submissions have been received on behalf of Mr Jorgensen.

### **Findings**

- [7] The Authority's discretion with which to award costs is now well settled and it typically follows the event: *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.
- [8] Less than a half-day investigation was undertaken.
- [9] I do not accept that any 'bad faith' by Mr Jorgensen is properly addressed by way of a costs award: that is a matter best left to either the Authority to measure when it addresses the substantive issue or by the Employment Court in respect of the challenge, etc.
- [10] Despite the absence of any itemising of the costs claim but having regard to the brevity of the investigation (and the amount of preparation required) I am satisfied that, in all the circumstances, a costs award of \$750 is appropriate.

**Determination**

[11] The Company is to pay Mr Mawley as a contribution to his fair and reasonable costs the sum of \$750.00 (seven hundred and fifty dollars).

**Denis Asher**

**Member of the Employment Relations Authority**