

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 442
5294098

BETWEEN MALCOLM MORRICK
 Applicant

AND JMV AGRI LIMITED
 Respondent

Member of Authority: K J Anderson

Representatives: W Lawson and C Duncan, Counsel for Applicant
 R Marsden, Advocate for Respondent

Submissions received: 20 September 2012 from Applicant
 2 October 2012 from Respondent

Determination: 7 December 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 28th August 2012¹ the Authority found that the dismissal of Mr Morricks was unjustified. The parties were invited to resolve the issue of costs but have not been able to obtain resolution. I note that the respondent informs that: *“The Applicant did not seek to negotiate costs directly at all.”* Given the tenor of the submissions received from both parties, it is unlikely that any agreement about the matter of costs would have been reached, but the Authority expects the parties to at least attempt to obtain a resolution.

[2] The applicant submits that he has incurred costs of \$13,356.10 (including GST) and invoices confirming this have been provided. However, as has been correctly pointed out by the respondent, only approximately half of the costs incurred have a direct nexus with the proceedings in the Authority. The submissions for Mr Morricks acknowledge the tariff based approach of the Authority and the principles set

¹ [2012] NZERA Auckland 292

out in *PBO Limited (formerly Rush Security Limited) v Da Cruz*.² And given that the investigation meeting occupied the best part of a day, Mr Morrnick says that the “starting point” for any award of costs should be the current daily rate for costs in the Authority of \$3,500. It is then submitted that the actions (or alleged lack of) in regard to the involvement of the respondent, after Mr Morrnick filed proceedings, warrant an increase in the daily costs tariff to arrive at an award of “between \$4,500 and \$5,500.”

[3] The submissions for the respondent largely deny any fault in regard to matters being progressed in the Authority and refer to Mr Morrnick failing to pursue his claims in a timely manner, and failing to clearly identify the nature of his claims. The respondent informs that it incurred costs of \$14,352.25 but the details of the costs involved have not been provided. Presumably the costs were incurred prior to the investigation meeting, as Mr Marsden, a director of JMV Agri Limited, was the advocate at the investigation meeting. Mr Marsden submits that given the costs that respondent has incurred and the fact that Mr Morrnick was unsuccessful with some of his claims, he should not be awarded any costs at all. Indeed, Mr Marsden says that because, in his view, Mr Morrnick failed with 75% of his claims, the respondent should be awarded that percentage of \$3,500: the sum of \$2,625.

Determination

[4] Given the outcome of the substantive proceedings, I do not accept that any increase in the usual daily tariff is warranted. Nor do I accept that there was any prejudice incurred by Mr Morrnick in regard to the various delays that occurred with progressing matters within the Authority. Indeed, my observations are that both parties contributed to that state of affairs. And while I do not accept the respondent’s assertion that Mr Morrnick failed in regard to 75% of his claims, I do accept that a significant amount of time was occupied during the investigation meeting with evidence and argument pertaining to Mr Morrnick’s claim of being disadvantaged in his employment by an unjustifiable action (or actions) by his employer. It was subsequently determined by the Authority that this grievance was not raised within the 90 days required under s.114 of the Employment Relations Act (the Act).

² [2005] ERNZ 808

[5] Taking into account the overall circumstances, I conclude that given the outcome of the proceedings, there should be a reduction in the daily tariff. Exercising the discretion of the Authority pursuant clause 15 of Schedule 2 of the Act, JMV Agri Limited is ordered to pay to Mr Morrisk the sum of \$2,800.00.

K J Anderson
Member of the Employment Relations Authority