

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Jacob Rex Muollo (Applicant)  
**AND** Punt Painting and Waterblasting Limited (Respondent)  
**REPRESENTATIVES** Alastair Webber, Counsel for Applicant  
Richard Searle, Advocate for Respondent  
**MEMBER OF AUTHORITY** Helen Doyle  
**SUBMISSIONS RECEIVED** 21 June 2006  
13 July 2006  
**DATE OF DETERMINATION** 14 July 2006

**COSTS DETERMINATION OF THE AUTHORITY**

[1] In my determination dated 13 June 2006 I found in favour of the applicant that he had a personal grievance and I made certain orders in terms of remedies. I reserved the issue of costs.

[2] The respondent attempted to resolve the matter of costs with the applicant but offers of \$2,000 plus GST and \$2,500.00 plus GST were rejected by the applicant.

[3] I now have submissions from both representatives to consider in terms of what award would be reasonable.

[4] Counsel for the applicant submits that the legal costs incurred by the applicant are in excess of \$8,000.00 and that the Authority should award an amount for costs greater than that normally awarded for a one day hearing. He submits the reason given for dismissal, that the applicant was redundant, was contrived and that there were significant costs incurred by the applicant to disprove that argument. He also submits that there were no settlement offers prior to the investigation meeting.

[5] There is also a submission that the return cost of air tickets to Australia for the applicant should be allowed as a disbursement following an adjournment at the respondent's request when one of the owners of the respondent's business died.

[6] Counsel for the respondent submits that the offers made to settle costs were reasonable, the respondent has limited ability to pay, the adjournment was unavoidable and the applicant had planned to be in New Zealand for a wedding at that time in any event. Counsel submits that any award should be modest.

[7] The Authority exercises its discretion with respect to an award of costs by taking a principled approach. The types of principles that are consistent with the Authority's functions and powers are

set out and approved in the judgment of the full Court in *PBO Limited (formerly Rush Security Limited v Da Cruz* (unreported) 9 December 2005, AC2A/05.

[8] This matter took slightly less than a day to investigate. It was a very important case to both parties and although not complex it was readily apparent that the significant dispute was the reason for dismissal. The Authority undertook some further investigation after the meeting. That aside there was nothing unusual in the case that would justify an award above the higher end of the range referred to in *PBO Limited* for the majority of costs awards in the Employment Relations Authority in the range \$2,000 to \$2,499. The majority of awards in the Authority are modest.

[9] I take into account the respondent's submission that it has limited ability to pay.

[10] I have considered the issue of reimbursement of the airfare purchased when the adjournment was granted. I am not prepared to accept this disbursement. The applicant should only be reimbursed for necessary expenditure. The applicant returned to New Zealand for a family wedding as well as the proposed investigation meeting. The adjournment was inevitable because of the unfortunate circumstances. Although the applicant chose to return earlier he could presumably have remained and returned on his original tickets without incurring additional costs.

[11] In all the circumstances I am of the view that an appropriate award for costs would be \$2,500.00.

[12] I order Punt Painting and Waterblasting Limited to pay to Jacob Muollo the sum of \$2,500.00 being costs.

Helen Doyle  
Member of Employment Relations Authority