

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2013] NZERA Christchurch 3  
5356580

BETWEEN                      ANDREW MURPHY  
Applicant

A N D                              GEOTECH LIMITED  
Respondent

Member of Authority:      David Appleton

Representatives:            Shannon Hollis, Counsel for Applicant  
Andrew Riches, Counsel for Respondent

Submissions Received      26 September 2012 from the Applicant  
14 December 2012 from the Respondent

Date of Determination:    7 January 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1] Mr Murphy was successful in his claim for unjustified dismissal and disadvantage and now seeks a contribution towards his legal costs in the sum of \$2,500. The respondent resists paying any contribution on the basis that the Authority found that the dismissal was substantially (but not procedurally) fair and that Mr Murphy would have been justifiably dismissed if a fair process had been followed. Alternatively, it seeks a reduction in the contribution sought of 25%.

[2] Costs are awarded in the Authority in accordance with the provisions of *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ENZ 808. The principles governing the setting of costs awards in the Authority as promulgated in *Da Cruz* include:

- a. There is a discretion as to whether costs will be awarded and in what amount.

- b. The discretion is to be exercised in accordance with principle and not arbitrarily.
- c. The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority.
- d. Equity and good conscience is to be considered on a case by case basis.
- e. Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- f. It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable.
- g. That costs generally follow the event.
- h. That awards will be modest.
- i. That frequently costs are judged against a notional daily rate.
- j. The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[3] Ms Hollis for Mr Murphy explains in her memorandum of counsel that her charge out rate was \$180 an hour plus GST and disbursements, and that she seeks on Mr Murphy's behalf the sum of \$700 for costs incurred up to the date of lodgement of the statement of problem (excluding time spent in mediation) together with \$1,800 in respect of work carried out after that date, including attendance at the investigation meeting.

[4] Counsel for the respondent argues that both parties had a degree of success and that the respondent did not defend the action unnecessarily. Whilst I do not disagree with this analysis, it does not prevent Mr Murphy from receiving a contribution to his costs under *Da Cruz* principles in my view. It is very often the case that both parties legitimately believe they each have something to fight for, and that neither party is entirely successful. However, Mr Murphy was awarded

compensation with a 25% reduction and, in that sense, can be said to have been successful in his personal grievance.

[5] As for the amount of costs to be awarded, I believe that Ms Hollis' costs are eminently reasonable. The investigation meeting lasted nearly a full day and so could have attracted close to the usual daily tariff of \$3,500. As Ms Hollis seeks only \$2,500, I decline to reduce that sum as requested, in the alternative, by Mr. Riches.

**Order**

[6] I order the respondent to pay to Mr Murphy the sum of \$2,500 as a contribution towards his legal costs.

David Appleton  
Member of the Employment Relations Authority