

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 345A/08
5115871

BETWEEN Robert Peter Neil
 Applicant

AND Ivan and Sharon Lammas
 Respondent

Member of Authority: Janet Scott

Representatives Sam Hood for applicant
 Respondent not represented

Submissions received: 10 October 2008 from Applicant
 No Submissions from Respondents

Determination: 30 October 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] On 1 October 2008 the Authority upheld the applicant's claim that he had been unjustifiably dismissed from his employment with the respondents. Costs were reserved and the parties were directed to file submissions by 10 October 2008 to allow costs to be determined. The applicant's submissions are at hand. No submissions have been received from the respondents.

Principles

[2] In arriving at this determination on costs I have had regard to the features of the matter to which the costs award relates, to the submissions received and to relevant case law.

[3] In *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808, the Court considered that the costs principles applied by the Authority were not necessarily as comprehensive or as prescriptive as those set out in *Okeby*¹ and similar

¹ *Okeby v Computer Associates (NZ) Ltd* [1994] 1 ERNZ 613.

earlier judgments (judgment at para 44). The Court went on to refer to some “basic tenets” that had been held to by the Authority when considering costs. These were said to include:

- There is discretion as to whether costs would be awarded and what amount;
- The discretion is to be exercised in accordance with principle and not arbitrarily;
- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;
- Equity and good conscience is to be considered on a case by case basis;
- 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;
- It is open to the Authority to consider whether all or any of the parties’ costs were unnecessary or unreasonable;
- That costs generally follow the event;
- That without prejudice except as to costs offers can be taken into account.
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;
- 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.

[4] The Court held, at para 45, that these principles are appropriate to the Authority and consistent with its powers, and said:

“They do not limit its discretion and proper application of them should ensure that each case is considered in the light of its own circumstances. While these general principles are applicable also to the Court, the Authority is not bound by the Binnie² principles which extend the range of costs which the Court may award beyond what could reasonably be labelled ‘modest’.”

[5] The Court considered that there was nothing wrong in principle with the Authority’s tariff-based approach so long as it was not applied in a rigid manner without regard to the particular characteristics of the case.

² Binnie v Pacific Health Ltd [2002] 1 ERNZ,438 (CA)

[6] The applicant in this matter has incurred costs of \$3,929.78 (including GST) and disbursements totalling \$338.20. The applicant seeks costs in the sum of \$2000 plus disbursements of \$338.20.

[7] In setting costs in this matter I have had regard to the fact it was a relatively straightforward matter. However, it did call for the applicant's representative to attend for an Authority Investigation on two days. On the first day (4 September 2008) the Authority questioned the applicant. That took half a day. The matter was then adjourned to another date and the respondents advised that the Authority would hear from them on 29 September. The respondents did not attend either meeting and did not contact the Authority to advise they would not attend or to otherwise explain their absence. The hearing on the second day required the attendance of the applicant's representative but it was abandoned when the respondents did not appear. This required an attendance of approximately 1 hour for the applicant's representative.

[8] **Determination**

[9] Costs must follow the event. The applicant's claim is reasonable and having regard to the circumstances of the case and the principles described above I direct the respondent to pay to the applicant the sum of \$2,338.20 as a contribution towards the costs and disbursements incurred him in having his claim determined by the Authority.

Janet Scott

Member of the Employment Relations Authority