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O'Hagan v Waitomo Adventures Limited [2011] NZERA 154 (23 March 2011); [2011] NZERA Auckland 111

Last Updated: 3 June 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011]NZERA Auckland 111 5274874

BETWEEN BRENT O'HAGAN

Applicant

AND WAITOMO ADVENTURES

LIMITED

Respondent

Member of Authority: Dzintra King

Submissions received: 25 January 2011 from Applicant and Respondent

4 February 2011 from Applicant

Determination: 23 March 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Brent O'Hagan, was unsuccessful in his personal grievance claim. He was successful in wages related claims. The parties have been unable to agree costs.

[2] The applicant says that costs should lie where they fall.

[3] The respondent seeks the actual costs incurred being \$30,628.91.

[4] This was a two day hearing, the majority of which was devoted to the personal grievance claim, with a significant part of the remaining time being taken up with the respondent's counter claim.

[5] The criteria for awards of costs are set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [\[2005\] NZEmpC 144](#); [\[2005\] 1 ERNZ 808](#).

[6] Costs normally follow the event. In a case where both parties have had successes it may be just to let costs lie where they fall. However, in this case the respondent was proportionately more successful than the applicant; and when considering the time spent on various matters, both at the hearing itself and in the preparation, I am of the view that the applicant should make a contribution to the respondent's reasonably incurred costs. That contribution will be reduced because the applicant also had a degree of success.

[7] The costs claimed by the respondent are high. There is no basis in this case for the award of indemnity costs.

[8] Mr O'Hagan submits that an award of costs would cause him financial hardship. On the information that has been provided I consider that Mr O'Hagan could meet a moderate costs award.

[9] A tariff of \$3,000 per day would normally be applied. Mr O'Hagan is to pay the respondent the sum of \$3,500.

Dzintra King

Member of the Employment Relations Authority

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