

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Terrance Wayne O'Kelly-Barnes (Applicant)

AND Tillermans (2003) Limited t/a
Vinnies Pizza Pasta Restaurant Bar (Respondent)

REPRESENTATIVES Craig Smith, Counsel for the Applicant
Rex Chapman and Simon Barr, Counsel for the Respondent

MEMBER OF AUTHORITY Helen Doyle

SUBMISSIONS RECEIVED Applicant 1 February 2007
Respondent 23 February 2007

DATE OF DETERMINATION 19 March 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 11 January 2007 I found in favour of the applicant that he had been unjustifiably constructively dismissed and awarded him compensation. I reserved the issue of costs and have now received submissions from counsel for the applicant and respondent.

[2] Mr Smith on behalf of the applicant says that the applicant's actual solicitor/client costs are \$6,318 including GST plus disbursements in the sum of \$88.41.

[3] Mr Smith submits that a reasonable contribution towards the applicant's costs would be \$4,000.

[4] Mr Chapman submits that costs should lie where they fall for the following reasons:

- The respondent succeeded in part in establishing that the dismissal was substantively justified;
- The respondent was put to significant expense;
- The respondent instructs Mr Chapman that it made an offer at the outset of the dispute of \$1,000 which was the award to the applicant made by the Authority.

Determination

[5] In determining this matter I have had regard to the judgment of the full Court of the Employment Court in *PBO Limited (formerly Rush Security Limited) v. Da Cruz* [2005] 1 ERNZ 808 and the principles that were held in that case to be appropriate to the Authority and consistent with its functions and powers.

[6] I do not find a good reason to depart from the principle that costs should follow the event. I do take into account that the applicant had limited success and was only entitled to a modest award because of the circumstances of his case. I have also taken into account that there was a settlement offer by the respondent. Mr Smith submits that I should take into account the failure by the respondent to provide an employment agreement. The purpose of an award of costs however is not to punish the unsuccessful party.

[7] The investigation meeting took five hours. It was not a particularly complicated matter. It was an important case to the applicant and respondent. I have taken into account that there was a settlement offer by the respondent which, if accepted, would have meant that both parties would not have incurred the costs they have. I am of the view taking these matters into account that the sum of \$1,500 is a fair and reasonable contribution by the respondent to the applicant's costs in the circumstances of this case, together with disbursements in the sum of \$88.41.

[8] I order Tillermans (2003) Limited to pay to Terrance Wayne O'Kelly-Barnes the sum of \$1,588.41 being costs and disbursements.

Helen Doyle
Member of Employment Relations Authority