

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 54A/10  
5162078

BETWEEN                      ROBERT PITMAN PAEA  
Applicant

AND                              DEPARTMENT OF  
CORRECTIONS  
Respondent

Member of Authority:        Marija Urlich

Representatives:            James Parlane, Counsel for Applicant  
Steve Wragg, Counsel for Respondent

Costs memorandum  
received:                      30 March 2010, from Respondent

Determination:              20 April 2010

---

**COSTS DETERMINATION OF THE AUTHORITY**

---

[1]     In a determination dated 9 February 2010 (AA54/10) I found Mr Paea had not been unjustifiably dismissed. No awards were made in his favour. Costs were reserved. Mr Wragg has filed a memorandum as to costs including advice that the parties have not been able to resolve this issue themselves. No costs submissions have been filed on behalf of Mr Paea.

[2]     In his memorandum to the Authority Mr Wragg advises Corrections' costs in relation to this matter amount to over \$20,000 and that Corrections seeks a contribution towards those costs of \$5000, an additional sum of \$400 towards the preparation of costs memorandum plus \$384 in respect of the cost of flights for Corrections' solicitor to attend the investigation meeting. He relies on the following grounds in support:

- All costs were reasonably incurred by Corrections and necessary to properly defend Mr Paea's claim; and

- An increased award of costs is warranted given the following - Corrections' consistent view of Mr Paea's claim was upheld by the Authority, late amendments to the Statement of Problem and improperly filed evidence resulted in additional unnecessary cost to Corrections and Mr Paea's failure to comply with timetables for the filing of closing submissions caused additional costs to be incurred by Corrections.

### **Determination**

[3] *PBO Ltd v Da Cruz*<sup>1</sup> sets out the appropriate principles to be applied by the Authority in exercising its costs discretion. It is usual that costs follow the event. I find that an award of costs is warranted in this matter. In the circumstances of these proceedings, in particular the nature of the matters before the Authority, the hearing time involved (1 day) and the additional costs incurred by Corrections as a result of the manner in which Mr Paea's application was pursued, and accepting \$3000<sup>2</sup> as the upper limit of a notional daily rate in the Authority, I set the costs award at \$3000.

[4] The claim for reimbursement of travel costs is declined. While I accept the advantage of counsel being familiar with the workplace, and particularly a complex one such as represented in this case, the travel costs incurred are not something for which Mr Paea should bear the burden. Costs incurred in filing for costs are to be met by the parties.

[5] **Robert Paea is ordered to pay \$3000 in costs plus disbursements of \$50 to the Department of Corrections: pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.**

Marija Urlich

Member of the Employment Relations Authority

---

<sup>1</sup> [2005] 1 ERNZ 808

<sup>2</sup> *Chief Executive, Department of Corrections v Tawhiwhirangi (No 2)* [2008] ERNZ 73