

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

AA 74A/09
5113704

BETWEEN

RONALD PEEL
Applicant

AND

AUCKLAND
CONSTRUCTION
EQUIPMENT LIMITED
Respondent

Member of Authority: Dzintra King

Representatives: Simon Scott, Counsel for Applicant
Paul Pa'u, Advocate for Respondent

Memoranda Received: 8 April 2009 from Respondent
5 May 2009 from Applicant

Determination: 17 August 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Ronald Peel, was unsuccessful in his claim. The respondent seeks costs.

[2] The respondent has incurred legal fees of \$7,587.50 including GST. This amount includes \$275 of unspecified disbursements.

[3] The hearing occupied one day. The matter had to be rescheduled as the respondent was not fully prepared on the day originally set down for hearing the matter.

[4] The principles applicable to an award of costs in the Authority have been set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808. The Full Court set out a number of principles including that costs generally follow the

event, are frequently judged against a notional daily rate and that awards will be modest. An award of costs is discretionary but the discretion is to be exercised accordance with principle and not arbitrarily. Costs are not to be punitive and will generally be modest. The conduct of the parties can also be taken into account.

[5] The respondent seeks \$4,000 in costs plus disbursements.

[6] The respondent made what is said to be a Calderbank offer on 17 December. The offer was for \$5,000. The offer was only open until 9am the following morning. This was an inadequate time period for the applicant to give proper consideration to the offer. Therefore I will not be taking this offer into account.

[7] Mr Scott has provided an affidavit from the applicant deposing that he does not have the means to make a payment of costs. Mr Scott asks that costs lie where they fall or alternatively that if costs are payable the applicant should be permitted to make payments by instalment.

[8] Given the fact that the applicant and his counsel drove from Hamilton to Auckland and then the meeting had to be adjourned; and given the applicant's impecuniosity, costs should lie where they fall.

Dzintra King

Member of the Employment Relations Authority