

[3] Costs were reserved. Counsel have filed memoranda. Both have approached the matter with reference to the principles in **PBO Limited (formerly Rush Security Limited) v da Cruz**¹, and on the basis of a notional daily tariff.

[4] Mr Menzies relied on a notional daily tariff of \$3,000.² He proposed a contribution from the respondents jointly and severally to the applicant's costs in the sum of \$10,000 calculated as:

- (a) allowance for four meeting days at \$3,000 per day, reflecting the part day for the hearing of an interim application³, two days for the investigation of the substantive matter, and for time spent in responding to additional requirements concerning evidence, memoranda and submissions; less
- (b) a sum of \$2,000 recognising variables including that not all of the meeting days were full days.

[5] Mr Hope said that in practice the notional daily tariff tends to be no higher than \$2,500, and proposed a costs calculation as follows:

- (a) \$1,500 to the respondents in respect of the interim matter, on the basis that the respondents were successful and less than a full meeting day was required;
- (b) \$5,000 to the applicant for the two days of the substantive investigation;
- (c) \$1,000 to the applicant for additional memoranda; and
- (d) a reduction of \$1,000 in favour of Mr Davidson, reflecting his success in obtaining the wages he had claimed.

[6] Mr Hope further suggested that the balance of \$3,500 be apportioned as follows:

- (a) Mr Davidson contribute to PFL's costs in the sum of \$500; and

¹ [2005] ERNZ 808

² Reflecting comments of the Employment Court in **Cliff v Air New Zealand Limited** 17 November 2006, Judge Shaw, AC 47A/06.

³ **Provida Foods Limited v Davidson & Anor**, 15 July 2008, AA 249/08

(b) Creans contribute to PFL's costs in the sum of \$3,000.

[7] The first of the differences between counsel concerned the amount of the notional daily tariff. Such statistics as exist on the matter usually record the number of awards made within amounts stated as a range. Many awards cluster at the lower end of a \$2,500 - \$3,000 range. Here I will apply a tariff of \$2,500.

[8] Secondly, counsel have a different view of the outcome of the interim matter. Further to Mr Hope's suggestion I would not say the respondents were successful in defending the matter. It was resolved by the giving and acceptance of undertakings. Moreover the application for interim relief was prompted by what I have found were breaches of the employment agreement. PFL is entitled to a contribution to the costs incurred in making it.

[9] Taking into account the time spent on the matter, I find PFL is entitled to a contribution to its costs in the sum of \$1,000.

[10] Thirdly, the most time-consuming and complex of the claims concerned the application for penalties. In that respect PFL was successful against Mr Davidson and Creans. The matter required a little under two full days of meeting, and additional matters were addressed by way of memoranda. Taking those matters into account I find PFL is entitled to a contribution to its costs in the sum of \$6,000.

[11] Fourthly, I accept that Mr Davidson incurred costs in respect of his counterclaim. However the counterclaim took up relatively little time in the investigation meeting and was resolved by the making of the payments in question. Mr Davidson is entitled to a contribution to his costs in that matter in the sum of \$500.

[12] Finally, counsel differed in their approach to the allocation of costs between Mr Davidson and Creans. There were a number of issues common to both respondents, as well as some issues and arguments unique to each. Overall in terms of costs, the unique issues and arguments were in balance. That, together with the number of common issues, means I find Mr Davidson and Creans should share costs equally.

[13] I therefore order as follows:

- (a) Mr Davidson is to contribute to the applicant's costs in the sum of \$3,500;
- (b) Creans is to contribute to the applicant's costs in the sum of \$3,500;
and
- (c) PFL is to contribute to Mr Davidson's costs in the sum of \$500.

R A Monaghan

Member of the Employment Relations Authority