

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 66
5329610

BETWEEN Q
 Applicant

AND THE COMMISSIONER OF
 POLICE
 Respondent

Member of Authority: R A Monaghan

Representatives: Q in person (on costs)
 R Gold and R de Groot, counsel for respondent

Memoranda received: 7 March 2013 from applicant
 14 February 2013 from respondent

Determination: 9 April 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 23 January 2013 I found against Q on all three of his personal grievances.

[2] Costs were reserved, and the parties have filed memoranda on the matter.

[3] Counsel for the Commissioner acknowledged the principles in *PBO Limited v da Cruz*¹, and referred to the notional daily tariff of \$3,500 for costs in the Authority. In submitting that an order for a contribution to costs in the sum of \$20,000 plus disbursements would be appropriate, counsel relied on:

- the effect of a series of adjournments; and
- the effect of Q's wish to have his disadvantage grievances heard before the outcome of the investigation into his use of excessive force was known.

[4] Q submitted that he should not be liable for any costs.

¹ [2005] ERNZ 808.

Determination of costs

[5] As the successful party, the Commissioner is entitled to a contribution to his costs. Because the investigation meeting took 5 days, the starting point under the principles in *da Cruz* is \$17,500.

[6] The principles also require a consideration of whether in the circumstances that amount should be increased or decreased.

1. Should the notional daily rate be increased

[7] Q's disadvantage grievances were originally scheduled for an investigation meeting on 31 May and 1-2 June 2011 (the first meeting). It was said in submissions that the preparation time available was 6 weeks, forcing the Commissioner to instruct the Crown Law Office to provide assistance.

[8] The first meeting was adjourned some four weeks before the scheduled meeting because Q's change of solicitor meant a timetable for the lodging of statements of evidence could not be met. While I accept in general such circumstances can cause the other party to incur an unnecessary expenditure of costs, there was no information to suggest that actually occurred here.

[9] The investigation meeting was re-scheduled for 6 – 8 July 2011. The Authority was advised in an emailed message dated 31 May 2011 that crown counsel would attend the investigation meeting as junior or co-counsel.

[10] However that meeting was adjourned 6 days before the scheduled meeting. The reason for the adjournment was Q's inability to effect the service of a number of witness summons. The Commissioner opposed the adjournment. Again I accept in general such circumstances can cause the other party to incur an unnecessary expenditure of costs, but there was no information to suggest that actually occurred here.

[11] The investigation meeting was re-scheduled for 12 – 16 September 2011. This time it was adjourned some 14 days before the meeting, on the application of the Commissioner. The application was made because by then the Commissioner had

advised Q of the preliminary decision to dismiss him, and that development was expected to have an impact on the existing claims. The adjournment was not opposed.

[12] After the decision to dismiss Q was confirmed, Q raised a personal grievance in respect of the decision and the grievance became part of the proceeding in the Authority.

[13] As well as the generalised concern about costs incurred through the first two adjournments, counsel for the Commissioner says it would have been more pragmatic from the start to await the outcome of the employer's investigation into Q's use of excessive force and to have planned for a single investigation in the Authority. There might be some force in that argument if the facts relevant to the disadvantage grievances were also relevant to the dismissal grievance, and the overall timeframe was reasonably compressed. That was not the case here.

[14] For these reasons I do not increase the notional daily rate.

2. Should the notional daily rate be decreased

[15] Q asserted that a matter which caused two people simply to suffer embarrassment precipitated by their own improper behaviour has cost him over \$250,000. He provided no details of what that sum comprised.

[16] Q went on to assert that he had no funds to pay any costs, but did not provide any information in support of the assertion. I am not satisfied that Q's financial position is such that the notional daily rate should be decreased. Q is therefore ordered to contribute to the Commissioner's costs in the sum of \$17,500.

Determination of disbursements

[17] Counsel for the Commissioner cited an overall disbursements figure of \$5,823.23. I understood this figure to comprise disbursements charged by the Crown Law Office, plus travel and accommodation costs for two in-house counsel who attended the investigation meeting. The latter were quantified as airfares of \$997.26 and expenses and accommodation of \$2,093.63, totalling \$3,090.89 (incl GST).

[18] None of these figures was supported by invoices or other documents but I recognise that two in-house counsel travelled to Christchurch and were present throughout the investigation meeting. I allow travel and accommodation for one, in the sum of \$1,500 (incl GST).

[19] Q is further ordered to contribute to disbursements in the sum of \$1,500 (incl GST).

Summary of orders

[20] Q is ordered to contribute to the Commissioner's costs in the sum of:

- (a) \$17,500 in costs; and
- (b) \$1,500 (incl GST) in disbursements.

R A Monaghan
Member of the Employment Relations Authority