

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 165  
5340342

BETWEEN                      WHAREPAIA JOHN ROBB  
Applicant

AND                              TRANSFIELD SERVICES  
LIMITED  
Respondent

Member of Authority:       Rachel Larmer

Representatives:            Darren Foster, Counsel for Applicant  
Gillian Service/June Hardacre Counsel for Respondent

Submissions received:      03 May 2012 from Applicant  
11 May 2012 from Respondent  
15 May 2012 from Applicant

Determination:              15 May 2012

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A       Both parties' costs applications are declined. Costs are to lie where they fall.**

[1]       In a determination dated 29 March 2012 Mr Robb's dismissal was held to be unjustified and he was awarded \$5,000 distress compensation.<sup>1</sup> Costs were reserved. The parties were encouraged to resolve costs by agreement and failing that a timetable was set for costs to be dealt with by an exchange of memoranda.

[2]       Costs have not been agreed and each party seeks a costs award in their favour.

[3]       Mr Robb seeks costs of either;

a.       \$20,110, being his actual costs; or alternatively

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<sup>1</sup> [2012] NZERA Auckland 112

- b. \$15,750, being the Authority's notional daily tariff of \$3,500 multiplied by *twice the time occupied by the hearing measured in half days* which he said was based on Schedule 3 of the District Court Rules 2009.

[4] Transfield Services (New Zealand) Limited submitted that Mr Robb should not be entitled to any costs. Transfield also claimed it should be awarded \$10,000 costs because;

- a. Mr Robb had unreasonably rejected a Calderbank offer of \$8,000; and
- b. The manner in which Mr Robb conducted his case caused it unnecessary additional expense.

[5] There is no legitimate basis for Mr Robb's claim for full indemnity costs of \$20,110. His claim for costs based on the District Court Rules formula is also misguided.

[6] Costs in the Authority are based on the well established principles identified by the full Employment Court in *PBO Ltd (formerly Rush Security) v Da Cruz*<sup>2</sup>. Those principles apply to this case. I therefore adopt the Authority's usual daily tariff based approach to assessing costs in this case.

[7] Mr Robb's dismissal grievance claim was straightforward and involved one and a half days of investigation meeting time. Written submissions were filed by both parties after the investigation meeting.

[8] Mr Robb as the successful party would normally be entitled to an award of costs. A notional daily tariff of \$3,500 gives a starting point of \$5,250 (\$3,500 x 1.5 days) for assessing Mr Robb's entitlement to costs. However, that notional starting figure must be adjusted to reflect the particular circumstances of this case.

[9] I find that there are no factors which would warrant an increase in the notional starting tariff.

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<sup>2</sup> [2005] ERNZ 808

[10] I find that Mr Robb's conduct of his claim did result in Transfield incurring additional unnecessary costs. It is therefore appropriate to reduce the notional starting tariff to reflect that because;

- a. Mr Robb unreasonably rejected a Calderbank offer which would have save both parties the costs associated with attending an investigation meeting if it had been accepted;
- b. There were multiple breaches of the Authority's timetable directions which resulted in unnecessary additional cost to Transfield;
- c. Without prejudice material was inappropriately included with the statement of problem and I accept Transfield incurred costs in having that removed from the Authority's file.

[11] These factors warrant a \$5,250 reduction in the notional starting tariff, which leaves a zero balance. Accordingly, I find that Mr Robb should not be awarded any costs, notwithstanding that he was the successful party.

[12] Transfield's application for an award of costs is also declined. It has received the benefit of a \$5,250 reduction in costs that would otherwise have been awarded against it and I consider there is no good reason to make any further adjustment to the level of costs to be awarded.

[13] Costs are discretionary. I consider that a nil award of costs does justice between the parties in light of the facts of this particular matter.

[14] Accordingly, the parties' costs applications are declined.

**Rachel Larmer**  
**Member of the Employment Relations Authority**