

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2016] NZERA Christchurch 106
5549261

BETWEEN MOHAMMAD MAHBUBUR
 RAHMAN
 Applicant

A N D INITIATIVE! UN LIMITED
 Respondent

Member of Authority: Helen Doyle

Representatives: Robert Thompson, Advocate for Applicant
 Peter Moore, Advocate for Respondent

Submissions Received: 10 June 2016 for Applicant
 24 June 2016 for Respondent

Date of Determination: 11 July 2016

COSTS DETERMINATION OF THE AUTHORITY

A I order Initiative! Un Limited to pay to Mohammad Mahbubur Rahman costs in the sum of \$3,500 and reimbursement of the filing fee in the sum of \$71.56.

The substantive determination

[1] In my determination dated 25 May 2016, I found that the trial period in the applicant's employment agreement was not valid and that the applicant was unjustifiably dismissed. Awards were made for reimbursement of lost wages, compensation and for overtime worked.

[2] The issue of costs was reserved and failing agreement a timetable was set for submissions to be provided to the Authority. The Authority has now been provided with submissions from both parties.

The applicant's submissions

[3] Mr Thompson on behalf of the applicant refers to the principles set out in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*.¹ He submits that the usual daily tariff of \$3,500 should be increased for the following reasons:

- (a) That the respondent failed to produce relevant records relating to the applicant's wage and time records;
- (b) Additional time was spent determining the nature of the claim for lost wages and arrears;
- (c) The respondent failed to produce documents that would support the evidence regarding when the agreement was signed and hours worked;
- (d) The applicant's grievance took a full day to hear and closing submissions followed the hearing whilst the Authority directed further information by way of the properties document and when the agreement was prepared;
- (e) Submissions were provided after the investigation meeting date.

[4] Mr Thompson submits that the actual costs to the applicant were \$8,362.50 GST exclusive and the applicant seeks the daily tariff of \$3,500 with an increase of an additional \$1,000 and a contribution of \$250 towards preparation of the costs application.

The respondent's submissions

[5] The respondent submits that this was a one day hearing of a straightforward nature and does not accept that there should be enhanced costs.

¹ [2005] 1 ERNZ 808

[6] Mr Moore submits that it is unclear how information about the wage and time records could have caused additional time and effort and says there is no ground for enhanced costs with respect to that issue.

[7] Mr Moore submits that there were no further documents that the respondent withheld and that the parties were prepared to give their submissions on the day but the primary reason for not doing so was to see if the further evidence of properties of the employment agreements could be found.

[8] He submits that the Authority does not normally award additional costs for a costs application and that there is nothing in this matter that would justify an increase to the usual daily tariff. If anything Mr Moore submits that a reduction in costs should be considered on the basis that Mr Thompson was aware of the case and the law upon which the matter was ultimately determined but did not raise the argument until after the investigation meeting.

[9] Mr Moore submits that if the respondent had been aware that Mr Thompson intended to rely on new case law, it would have been willing to settle the case in advance of the hearing which would have saved considerable legal expense and that the parties should have simply agreed on the sum of \$3,500.

Determination

[10] The general principle is that costs follow the event. There is no good reason to depart from that principle in this matter. Mr Rahman is entitled to costs.

[11] In the exercise of my discretion as to costs I have considered the matters that Mr Thompson advances in submissions as reasons why the daily tariff should be increased. Costs in the Authority are usually modest.

[12] This was a relatively straightforward matter. It took a full day to investigate although submissions could have been accommodated within that day. Mr Moore correctly submits the basis on which it was concluded the trial period was non-compliant was not apparent until submissions from Mr Thompson.

[13] I am not satisfied that the issues about the wage and time records for a period of employment of limited duration were such that there should be an increase to the usual daily rate.

[14] Submissions were delayed so that the respondent could ascertain if further information was available but I am not satisfied this justifies an increase to the daily tariff.

[15] I am not persuaded to increase the daily tariff for the cost submission itself. I agree with Mr Moore that would be unusual and costs could have been agreed on a daily tariff.

[16] Looking at this matter in the round and in all the circumstances a fair award for costs is the sum of \$3,500 for the one day investigation of a relatively straightforward matter. The applicant is also entitled to reimbursement of his filing fee in the sum of \$71.56.

[17] I order Initiative! Un Limited to pay to Mohammad Mahbubur Rahman costs in the sum of \$3,500 and reimbursement of the filing fee in the sum of \$71.56.

Helen Doyle
Member of the Employment Relations Authority