

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 128A/08
5095470

BETWEEN STEPHEN READING
 Applicant

AND CIVIL ENGINEERING
 SOLUTIONS LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: John Peebles for Applicant
 Rose Alchin for Respondent

Submissions Received: No submissions from Applicant
 29 April 2008 from Respondent

Determination: 8 July 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 3 April 2008 I found that Mr Reading was not an employee and therefore the Authority had no jurisdiction with regard to his claims.

[2] In my determination I reserved the question of costs and invited the parties to resolve the matter between them. They have been unable to do so and I am now in receipt of memorandum from the Respondent. I am satisfied Mr Peebles has had adequate opportunity to lodge submissions on the matter of costs, but has not done so.

[3] I have considered the submissions made by the Respondent and I am satisfied that the discretion under clause 15 of Schedule 2 of the Act ought to be exercised in favour of Civil Engineering Solutions Limited.

[4] The following principles are appropriate where the Authority is exercising its discretion in relation to costs (*PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, [2005] 1 ERNZ 808):

- There is a discretion as to whether costs should be awarded and what amount;
- The discretion is to be exercised in accordance with principle;
- The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority;

- Equity and good conscience is to be considered on a case by case basis;
- Costs are not to be used as a punishment or as an expression of disapproval of an unsuccessful party's conduct although conduct which increases costs unnecessarily can be taken into account in inflating or reducing an award;
- It is open to the Authority to consider whether all or any of the parties costs were unnecessary or unreasonable;
- That costs generally follow the event;
- That without prejudice offers can be taken into account;
- That awards will be modest;
- That frequently costs are judged against a notional daily rate;
- The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.

[5] The respondent has incurred legal costs of \$7,351.88 including disbursements for a hearing which lasted one day. The Respondent seeks full costs.

[6] On behalf of the Respondent it was submitted that the claim from the Applicant was an unscrupulous and opportunistic attempt to pervert the true nature of the relationship and extort money from the Respondent. It was submitted that the actions of the applicant were vexatious and extremely dishonest and has resulted in unnecessary and unreasonable cost to the Respondent.

[7] Mr Reading's credibility and that of his partner Ms Dudek, at the investigation meeting certainly came under close scrutiny. I recorded in my determination that I treated Ms Dudek's evidence, in particular, very cautiously as it was not consistent with the facts as I found them to be.

[8] However, costs are not punitive in nature and are not available to be used as a punishment. I have, however, taken the Respondent's submissions into account when making my determination in this matter.

[9] The matter was not complex and I find the costs incurred by the respondent are very reasonable given the preparation required and the length of the hearing. Mr Reading is required to pay to Civil Engineering Solutions Limited the sum of \$3,000.00.

[10] An order is made accordingly.

Vicki Campbell
Member of Employment Relations Authority