

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 215A/10
5149640

BETWEEN

KEN SAMUELS
Applicant

AND

LEWIS EQUIPMENT
COMPANY LIMITED
Respondent

Member of Authority: Dzintra King

Submissions received: 3 June 2010 from Applicant
No submissions from Respondent

Determination: 25 June 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Ken Samuels, was successful in his personal grievance claim. The parties have been unable to agree costs. The respondent now seeks costs.

[2] The respondent has incurred legal costs of \$17,095 plus GST. The costs relate to the period between 22 September 2008 to 7 May 2010. Some of these costs relate to periods and events for which costs cannot be claimed, for example, mediation.

[3] The applicant also claims \$1,546.63 being the cost of an airfare from Perth to Auckland to attend the investigation meeting and the \$70 filing fee.

[4] The investigation took two days.

[5] On 19 August 2009 the applicant's counsel wrote to the respondent with an offer to settle. He sought \$3,000 compensation and a contribution of \$2,500 towards his legal costs. The applicant was awarded \$5,000 plus three months' lost wages. Had the respondent agreed to settle at that stage costs incurred between 19 August 2009 and 7 May 2010 would not have been necessary. The offer was open for two

days only. There were two investigation meetings: 21 September and 18 December 2009.

[6] The applicant seeks \$15,000 plus the filing fee and his airfare.

[7] The criteria for awards of costs are set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808. Costs generally follow the event and may be awarded on the basis of a notional daily rate adjusted for the particular circumstances of the case. Offers to settle may be taken into account.

[8] The Authority may award such costs and expenses at it thinks reasonable. The Authority can take into account any conduct by the parties that increases costs and that would include not accepting a without prejudice except as to costs offer.

[9] I have taken the offer to settle into account and have also considered that it was open just for two days. Nonetheless, had the respondent accepted the proposal there would have been a significant reduction in the applicant's costs.

[10] The respondent is to pay the applicant the sum of \$10,000 plus the costs of the airfare and the filing fee.

Dzintra King

Member of the Employment Relations Authority