

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2014] NZERA Wellington 35
5428316

BETWEEN KEN SMITH
 Applicant

AND DAVIES WASTE SOLUTIONS
 LIMITED
 Respondent

Member of Authority: P R Stapp

Representatives: Piers Hunt, Advocate for the Applicant
 Gary Tayler, Advocate for the Respondent

Submissions Received: 17 February 2014 application from the Respondent
 3 March 2014 submission from the Applicant in reply
 12 March 2014 respondent's final reply

Determination: 16 April 2014

COSTS DETERMINATION OF THE AUTHORITY

[1] Costs were reserved by the Authority in [2014] NZERA Wellington 14 (5 February 2014). The matter of costs has not been settled between the parties.

[2] The respondent, Davies Waste Solutions Limited (Davies) has requested \$4,500 costs since it successfully defended the matter. It has requested that the starting point of \$3,500 daily tariff be increased taking into account a *Calderbank* letter of offer to settle prior to the investigation meeting in the sum of \$250 (date 10 December 2013 open for consideration until 20 December 2013).

[3] Mr Smith (3 March 2014 full submissions) accepts that having lost the case he has a liability for the other party's costs, but that the liability should be limited to \$1,750 for a half day, based on the standard rate for a full day hearing (\$3,500). Mr

Hunt says this is because the respondent was responsible for the extended time the investigation meeting took.

[4] It is my decision that the costs should remain at \$3,500 based on the daily tariff.

[5] The factors I have taken into account are:

- (a) That the hearing on 22 January 2014 in Napier started at 9am and finished at approximately 2.45pm.
- (b) That the investigation meeting was scheduled for one day and both parties could reasonably have expected that the investigation meeting could take any time during the day that they had been committed to. There was no foreseeable reason that the hearing would have been expected to have reasonably finished before lunchtime to accord with half a day.
- (c) That the investigation meeting was of a standard nature without any unforeseen circumstances and that all the evidence called was reasonably foreseeable, even where one of the respondent's witnesses turned up and was prepared to give evidence without a written statement of evidence. This did not cause any undue delay outside the time set down for the investigation meeting.
- (d) That the *Calderbank* offer to attempt to settle was made in the period of the Authority's timetable where the applicant would be incurring costs. Only the final statements of evidence in reply were outside the time for consideration of the offer (from 10 December 2013 until 20 December 2013).
- (e) That there is nothing unusual about the running of the case that would warrant the daily fee being increased given the length of time of the hearing, and the evidence and that was completed was well within the one day allocated.

Authority's order on costs

[6] I order Ken Smith to pay Davies Waste Solutions Limited \$3,500 costs.

P R Stapp
Member of the Employment Relations Authority