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Swaysland v Hautapu Motors Limited [2011] NZERA 183; [2011] NZERA Wellington 50 (31 March 2011)

New Zealand Employment Relations Authority

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Swaysland v Hautapu Motors Limited [2011] NZERA 183 (31 March 2011); [2011] NZERA Wellington 50

Last Updated: 20 June 2011

**IN THE EMPLOYMENT RELATIONS WELLINGTON
AUTHORITY**

[2011] NZERA Wellington 50 File Number: 5108930

BETWEEN John Swaysland

Applicant

AND Hautapu Motors Limited

Respondent

Member of Authority: Denis Asher

Representatives: Bede Laracy for Mr Swaysland

Stephen Palmer for the Company

Submissions received: 30 March 2011

Determination: 31 March 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 4 March 2011 ([2011] NZERA Wellington 33) I found against Mr Swaysland's alternate claims he filed a grievance in time or that exceptional circumstances applied such that it was just to allow him to bring a grievance out of time.

[2] I did accept the applicant's claim that the respondent had unilaterally varied his employment agreement and that, as a result, he was owed \$2,500.

[3] I also directed the respondent (the Company) to pay a penalty of \$1,000 as a consequence of its action, half of which was to

be paid to Mr Swaysland.

[4] Costs were reserved as requested.

Mr Swaysland's Costs Submissions Summarised

[5] In submissions received on 16 and 30 March 2011 Mr Swaysland sought a contribution to fair and reasonable costs of \$3,000 based on the usual daily tariff, or, in the alternative, \$2,000. Argument for the latter includes the length of the investigation, the applicant succeeding with a significant portion of his claim, Mr Swaysland's costs being more than he is likely to recover and the respondent's refusal to negotiate on costs necessitating this application (and therefore further costs).

[6] Efforts to settle this matter with the Company by way of without prejudice proposals were unsuccessful (copies attached); the amount offered was little more than the total awarded against the respondent.

[7] The Company was at fault for continuing this matter and should therefore be responsible for at least a portion of the applicant's costs.

The Company's Costs Submissions Summarised

[8] In submissions received on 30 March the Company relies on the applicant's failure to succeed with his primary claim, that he was unjustifiably disadvantaged. The Company submits that, from the outset, the applicant did not have an arguable case.

[9] Mr Swaysland's unreasonably insistence on pursuing his personal grievance resulted in the parties being unable to reach a timely agreement on (the matter the applicant succeeded with) and unnecessary costs to the Company.

[10] Costs typically awarded for a half day investigation is \$1,500.

[11] No evidence has been provided in support of the figures claimed by Mr Swaysland.

[12] Costs should lie where they fall. **Discussion and Findings**

[13] The Authority's discretion with which to award costs is now well settled and typically follows the event: *PBO Limited (formerly Rush Security Limited) v Da Cruz* [\[2005\] NZEmpC 144](#); [\[2005\] 1 ERNZ 808](#).

[14] The investigation into Mr Swaysland's claims took half a day.

[15] The applicant succeeded with a significant portion of his claim.

[16] There is no evidence of the Company attempting to settle those parts of Mr Swaysland's claim that succeeded.

[17] Having regard to *PBO Limited* (above) and all the circumstances, I am satisfied that costs of \$2,000 should be awarded in Mr Swaysland's favour.

Determination

[18] The Company is to pay as a contribution to Mr Swaysland's fair and reasonable costs the sum of \$2,000 (two thousand) dollars.

[19] Because this determination can be challenged I decline the applicant's request that the Authority order any costs in his favour be paid within 14 days of determination directly to Mr Swaysland's bank account.

Denis Asher

Member of the Employment Relations Authority

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