

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 84/10
5146914

BETWEEN CHRISTOPHER JOSEPH
TAYLOR
Applicant

AND MILBURN LIME LIMITED
Respondent

Member of Authority: Helen Doyle

Representatives: Jon Beck, Counsel for Applicant
Michael Nidd, Counsel for Respondent

Submissions Received: 15 February 2010 for Applicant
29 January 2010 from Respondent

Determination: 9 April 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 22 December 2009 I found for the respondent that the applicant did not have a personal grievance. I reserved the issue of costs and have now received costs submissions from Mr Nidd and Mr Beck.

[2] The applicant has challenged the determination and Mr Beck urges me to defer the issue of costs until after the Employment Court has dealt with the challenge. Mr Nidd submits that it is appropriate that costs be dealt with and that they should be dealt with at this time.

[3] It is not unusual for the Authority to be asked to determine costs where there is a challenge lodged. I consider that it is appropriate that I proceed to determine the issue of costs for the Authority investigation process. In doing so I have considered Mr Beck's submission that the Court process would be needlessly complicated if costs are determined by the Authority but I do not agree that will in fact be the case.

Respondent's submission

[4] The respondent relies on the leading Full Court judgment of *PBO Ltd v. Da Cruz* [2005] 1 ERNZ 808 and the principles in that case with respect to the Authority's approach to costs.

[5] Mr Nidd submits that:

- The respondent had incurred actual legal costs and disbursements in excess of \$8,500.
- The respondent called seven witnesses at the case which was a fully adjudicated meeting with cross examination.
- There were significant matters as to credibility in issue which the Authority found in favour of the respondent and its witnesses.
- There were significant matters of law requiring detailed submissions.
- The applicant had the benefit of legal advice.
- The respondent had to compensate considerable witness expenses for time off work and travel expenses.
- The applicant was put on notice at a very early stage that the respondent would be seeking full indemnity costs because the claim was seen as without merit, which was vindicated by the decision of the Authority.

[6] The respondent submits that the applicant's claim has been shown to be without merit and that the respondent had been put to significant cost to defend its position.

Applicant's submission

[7] Mr Beck submits that if the Authority gets to the point of awarding costs then the award should be modest and in line with the standard tariff adopted by the Authority. Mr Beck also responded to the matters raised by Mr Nidd as follows:

- That there was nothing other than standard about the conduct of the investigation meeting which went for less than one day.
- A number of the witnesses that the respondent introduced and material provided by those witnesses had no bearing on the Authority's determination and that there was an excessive number of witnesses called.
- The credibility issues were centred around words spoken in an angry conversation between the applicant and other employees and other evidence had no impact on the ultimate finding that the applicant did not actually intend to resign.
- The fact the applicant had legal advice in the matter does not affect costs.
- It is not reasonable for the respondent to state a figure in relation to costs without providing a breakdown in terms of those costs.
- Putting another party on notice that solicitor/client costs would be sought had no significance and it would be unreasonable in the circumstances.

[8] Mr Beck submits that it is a case where it is appropriate for costs to lie where they fall on the basis that the case did not turn on all the evidence produced by the respondent but on the Authority's finding that the applicant stood by instead of disabusing the respondent of its belief that the applicant had resigned.

Determination

[9] I do not accept that there is good reason in this case to depart from the usual principle that costs follow the event and that the successful party is entitled to a contribution towards its costs. I do not consider, however, that this is an appropriate case for indemnity costs.

[10] Costs in the Authority are usually modest. That needs to be taken into account when decisions are made about the conduct of cases.

[11] The fact that the Authority does not refer directly to evidence in its determination does not mean it is irrelevant or that it has not been considered. The

respondent did produce a number of witnesses but their evidence was not long and they were able to be dealt with in short order.

[12] The case was not factually complex although there were some legal issues that required some careful consideration and I have taken that matter into account.

[13] I do accept Mr Beck's submission that the fact a party has been put on notice that there is a possibility of a claim for full solicitor/client costs does not mean that it is a certainty that the same will be ordered.

[14] In all the circumstances I am of the view that costs should be on the basis of a daily tariff. This is a matter that occupied less than a full day and I am of the view that the sum of \$2,700 is a fair and reasonable contribution towards costs.

[15] I order Christopher Taylor to pay to Milburn Lime Limited the sum of \$2,700 being costs.

Helen Doyle
Member of the Employment Relations Authority