Determination Number: CA 118A/06
File Number: CEA 401/05

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE

BETWEEN	Murray Taylor (Applicant)
AND	Steel & Tube Holdings Limited (Respondent)
REPRESENTATIVES	Jenny Guthrie, Counsel for Applicant Barry Dorking, Counsel for Respondent
MEMBER OF AUTHORITY	Philip Cheyne
SUBMISSIONS RECEIVED	21 August 2006 2 October 2006
DATE OF DETERMINATION	17 October 2006

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 10 August 2006, I upheld in part Mr Taylor's claims about personal grievances. Costs were reserved. I have now received memoranda from both parties. This determination resolves the disputed question of costs.

[2] Counsel for Mr Taylor advises that costs since a mediation stand at a little over $8,000.00 but I am not given any more detail than that. A contribution to those costs set at 66% of actual costs is sought. I am referred to *PBO Ltd (formerly Rush Security Ltd) v Da Cruz*, 9/12/2005, Colgan CJ, Travis & Shaw JJ, AC2A/05. I am also advised about some settlement offers made prior to the investigation meeting.

[3] Counsel for Steel & Tube submits that *PBO Limited* does not support the proposition that the Authority should use 66% of reasonable costs as a starting point when assessing costs. In that case, a full bench of the Employment Court set out a number of principles including statements about awards being modest and set by reference to a daily tariff. In particular that case confirms that 66% of reasonable costs is not the standard approach to be taken by the Authority when assessing costs. Counsel also submits that consideration of a *Calderbank* offer made by the respondent and a *without prejudice* offer made by the applicant should result in a reduction of any cost award.

[4] Both counsel implicitly accept that costs should follow the event. I agree. The matter was dealt with in a meeting that went from 9.30 am until about 2.30 pm without a lunch adjournment. Both counsel also provided prepared written submissions at the conclusion of the meeting and left the Authority to review that material. There were two witnesses for the applicant although Mrs Taylor's evidence was quite brief. There were three witnesses for Steel & Tube. The documentary material was not substantial. The factual situation was somewhat complicated because it was necessary to traverse events over a period of time. The applicant was not completely

successful. In respect of the claims about a failure to provide an individual employment agreement I upheld Steel & Tube's position that it had complied with its statutory obligations. Prior to the investigation meeting, there was one phone conference and counsel were required to lodge and serve statements of evidence.

[5] In these circumstances, I consider that an award for costs towards the bottom end of the range of awards generally made for an investigation meeting of one day's duration would be appropriate.

[6] I discount the information about the *Calderbank* and *without prejudice* offers. The first is irrelevant because the applicant was awarded more compensation than was offered. The second is irrelevant because it was not expressed to be a *Calderbank* offer and should properly be regarded as *without prejudice* and neither admissible nor probative for present purposes. There is a second *Calderbank* letter in respect of costs sent after the applicant's cost's memorandum was lodged and served. Its only relevance could be to any additional costs incurred after that date. I have no information on the point but it is a safe inference that almost all Mr Taylor's legal costs would have been incurred before this second *Calderbank* offer.

[7] In summary, I order Steel & Tube Holdings Limited to pay costs of $2,000.00 to Mr Taylor.

Philip Cheyne
Member of Employment Relations Authority