

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 119/10
5154777

BETWEEN TROY THICKPENNY
Applicant
AND SUPERIOR SHEETMETALS
LIMITED
Respondent

Member of Authority: Dzintra King
Submissions received: 29 January 2010 from Applicant
19 February 2008 from Respondent
Determination: 12 March 2010

COSTS DETERMINATION OF THE AUTHORITY

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

[2] The criteria for awards of costs are set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

[3] The applicant's actual costs were \$6,367.97 (excluding GST) but including \$390.40 disbursements being photocopying and faxes and the filing fee, of \$70.

[4] Counsel's charge out rate was \$175 and the costs represent around 32 hours' work.

[5] Ms Heinrich noted that costs should be modest and it may be appropriate to apply a notional daily rate. The applicant seeks \$3,000 plus \$390.40 disbursements.

[6] The respondent says the amount sought is unreasonable and unrealistic. It says costs should lie where they fall. The rationale for this is as follows.

[7] There was a finding that the redundancy was genuine but the procedure was flawed. The respondent's submissions suggest that there were offers to settle but I have no evidence that these were Calderbank offers or of the substance of these offers. There is a reference to the first offer being evidenced in the applicant's account marked "B". This is the notice of redundancy and contains a statement regarding payments.

[8] I see no reason to depart from the normal principle that costs follow the event.

[9] The respondent says that the applicant has not provided any specific details of the disbursements claimed. They are identified in the accounts as the "file administration fee" and include the \$70 filing fee.

[10] The respondent is entitled to a reasonable contribution to its reasonably incurred costs. Ms Heinrich's costs were reasonable. The respondent is to pay the applicant the sum of \$3,000 plus the disbursements sought, a total of \$3,390.40.

Dzintra King

Member of the Employment Relations Authority