

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

5047766
CA 18/08

BETWEEN JOEL BERNARD THOMSON
 Applicant

AND NEW ZEALAND RUBY
 ROCK LIMITED
 Respondent

Member of Authority: Helen Doyle

Representatives: Peter Wetherall, Counsel for Applicant
 Gerry Commandeur, Advocate for Respondent

Submissions received: 10 December 2007 from Applicant
 No submissions from Respondent

Determination: 27 February 2008

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 26 November 2007, I found that the applicant had a personal grievance that he had been unjustifiably dismissed and was owed unpaid wages and holiday pay. I made various awards in favour of the applicant. I did not find that the respondent had a valid counterclaim.

[2] I reserved the issue of costs and set a timetable for the exchange of submissions. The applicant had 21 days from 26 November 2007 to lodge and serve his submissions as to costs and the respondent had until 21 January 2008 to lodge and serve its submissions as to costs.

[3] The applicant's submissions dated 6 December 2007 were received by the Authority on 10 December 2007.

[4] The amount of holiday pay owing to the applicant was the subject of a separate determination dated 18 December 2007. In that determination, I reserved costs and confirmed they would be the subject of a further determination after the

respondent had made its submissions as to costs by 21 January 2008 in terms of the timetable set out in the determination of 26 November 2007.

[5] The respondent did not comply with the timetable set out and no costs submissions have been received on its behalf. The applicant wants a determination as to costs. In the circumstances where the respondent has taken no steps and has provided no good reason why the timetable has not been complied with, the Authority intends to proceed to determine costs.

The applicant's submission

[6] The applicant seeks an award of costs in the sum of \$2,900.87 which sum includes GST and disbursements.

[7] Mr Wetherall has set out the basis of the costs incurred in terms of preparation and appearance at the investigation meeting, including travel time from Greymouth where Mr Wetherall's firm is, to Hokitika where the investigation meeting took place. The investigation meeting took almost three hours from 9.30am to 12.15pm.

[8] The disbursements claimed are mileage @ 0.62 cents for a 75km return trip in the sum of \$46.50 and the filing fee for the statement of problem of \$70. The GST amount is \$309.37.

Determination

[9] The Authority has a discretion as to whether costs are awarded and, if they are, the amount awarded. That discretion is to be exercised in accordance with principle and not arbitrarily. Costs are not to be used as a punishment or to express disapproval of the unsuccessful party's conduct, although if that conduct has unnecessarily increased costs, then that can be taken into account when making an award. Costs generally follow the event and awards in the Authority are usually modest.

[10] I find there is no good reason in this case not to make an award of costs in favour of the applicant.

[11] This was an important case to both parties. It was able to be investigated in half a day.

[12] I find a suitable starting point for costs on this matter is \$2,200. This figure should then be adjusted upward with respect to the preparation for the submission as

to holiday pay in circumstances where there had been no holidays taken for the duration of the employment. There was no dispute that holiday pay was owing but the respondent did not provide a calculation as to the amount owing to the applicant. This required additional preparation and submission by Mr Wetherall on behalf of his client. That work, including the costs submission, has been charged out to Mr Thomson at \$180.

[13] The disbursements claimed are reasonable for mileage and the filing fee in the total sum of \$116.50.

[14] I am of the view that a fair and reasonable award for costs and disbursements in all the circumstances is \$2,496.50.

[15] I order New Zealand Ruby Rock Limited to pay to Joel Thomson the sum of \$2,496.50 being costs and disbursements.

Helen Doyle
Member of the Employment Relations Authority