

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2014] NZERA Christchurch 194
5455884

BETWEEN ERROL WALKER
 Applicant

A N D VULCAN STEEL LIMITED
 Respondent

Member of Authority: David Appleton

Representatives: Phil Yarrall, Advocate for Applicant
 Chris Patterson and Anneke Reid, co-Counsel for
 Respondent

Submissions Received: 10 November 2014 from the Applicant;
 18 November 2014 from the Respondent

Date of Determination: 26 November 2014

COSTS DETERMINATION OF THE AUTHORITY

[1] By way of a determination of the Authority dated 15 October 2014¹ the Authority found that Mr Walker had suffered unjustified disadvantage in his employment and discrimination by reason directly of his involvement in the activities of a union. He was also successful in his claim for unpaid wages, deducted by the respondent for attending mediation.

[2] Costs were reserved by the Authority, and the parties invited to seek to agree how they were to be dealt with. The parties have been unable to agree, and so this determination addresses Mr Walker's claim for costs.

[3] Although Mr Yarrall did not charge for his representation of Mr Walker at the substantive investigation, Mr Yarrall was assisted by Mr Yukich of the Manufacturing

¹ [2014] NZERA Christchurch 160

and Construction Workers' Union, whose time was charged at \$100 an hour, totalling \$3,200, excluding GST (\$3,680 including GST).

[4] In addition, a number of disbursements have been claimed as follows:

- a. Mr Yukich's flights and parking - \$238;
- b. Mr Yukich's travel of 425 kilometres @ 77 cents per kilometre - \$327.25;
- c. Expenses for Mr Cassidy, a witness for Mr Walker - \$205;
- d. Expenses for Mr Walker - \$191.10;
- e. Copying and post - \$452.02; and
- f. The Authority's lodgement fee - \$71.56.

[5] The respondent accepts that costs should follow the event, and that a contribution should therefore be made by it towards Mr Walker's costs. However, Ms Reid submits that it is not reasonable to expect the respondent to contribute towards the witness expenses, including those incurred by Mr Walker. She also submits that the usual notional daily tariff should be awarded in this case, as there is no reason to depart from that principle.

Determination

[6] Both parties accept that the general principles governing the award of costs in the Authority set out in the seminal case of *PBO Ltd v Da Cruz*, [2005] 1 ERNZ 808 apply. These principles are well known to both parties, and it is not necessary to repeat them here.

[7] First, I accept that costs should follow the event, and that the respondent should make a contribution towards Mr Walker's costs. The cost of representation in the GST exclusive sum of \$3,200 is reasonable in the circumstances and I do not disallow any part of that sum. I also accept that there is no reason in this case to depart from the usual practice of awarding costs in line with the current daily tariff of \$3,500. The investigation meeting lasted a full day and that should be the amount awarded in terms of the costs of representation.

[8] The next question is what disbursements should be awarded. Mr Yarrall does not detail how the expenses claimed for Mr Walker, Cassidy and Yukich were incurred. It is not clear, for example, how Mr Yukich incurred both the costs of flights and the car travel of 425 kilometres. No receipts have been proffered. In such a case, I cannot be satisfied that these expenses are all justified. I do accept that Mr Yukich flew to Christchurch for the investigation meeting, and so am prepared to award the claimed cost of the flights and parking. I am not prepared to order the reimbursement of unexplained car travel costs.

[9] It is not clear how Mr Walker and Mr Cassidy incurred the expenses of attending the investigation meeting, although it is assumed that this is the cost of one day's pay each, it being understood that neither were paid by their employer, the respondent, for attending the Authority's investigation meeting. However, receipts have been produced for these two individuals, which indicate that they received the respective sums claimed by them from the Manufacturing & Construction Workers' Union, and that it is the Union which is seeking these costs.

[10] The Union was not a party to the Authority's proceedings. Furthermore, the claiming of these costs appears to be a back door way of making a claim against the respondents for non-payment to Messrs Cassidy and Walker of one day's pay. That is not an appropriate subject of a costs application. These disbursements are therefore declined.

[11] There is no indication what the copying and postal costs claimed are. The sum of \$452 appears to be somewhat high given the amount of documentation produced on behalf of Mr Walker, and without any cogent evidence of how these costs have been incurred, I am not prepared to order the respondent to pay them.

[12] Finally, I accept that it is appropriate to order the respondent to reimburse Mr Walker's lodgement fee of \$71.56.

Orders

[13] I order the respondent to make the following payments to Mr Walker in respect of costs and disbursements incurred by him:

- a. \$3,500;

b. \$238; and

c. \$71.56.

David Appleton
Member of the Employment Relations Authority