

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 120
5399568

BETWEEN Ben Williams
Applicant

AND Big Image Print 2009 Limited
Respondent

Member of Authority: Trish MacKinnon

Representatives: Tessie von Dadelszen, for the Applicant
Grant Muir, for the Respondent

Submissions received: 17 July 2013 from the Applicant
8 August 2013 from the Respondent

Determination: 30 September 2013

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination of 27 June 2013 I found that Ben Williams had succeeded in all his claims against his former employer, Big Image Print 2009 Limited (Big Image Print). I directed Big Image Print to pay Mr Williams remedies comprising holiday pay, interest, lost wages, and compensation for hurt and humiliation. Costs were reserved.

[2] The Authority has now received submissions on costs on behalf of Mr Williams, as the parties have been unable to resolve the matter between themselves. He seeks costs in the sum of \$4,500 plus GST, representing the Authority's current notional daily tariff of \$3,500 and an additional \$1,000. The \$1,000 is to reflect the additional costs incurred by Mr Williams that were caused by significant delays throughout the process that were of Big Image Print's making.

[3] Those delays were itemised in submissions for Mr Williams. A number of them were attributable to the ill health of Mr Muir, a director of Big Image Print, who

represented the respondent. That has been taken that into account in the modest increase that has been sought to the notional daily tariff.

[4] Mr Williams' actual total legal costs were \$15,637.52, inclusive of GST and disbursements for which substantial detail was provided. \$12,976.52 of those costs were incurred post-mediation.

[5] Counsel for Mr Williams noted in her submissions, which were not challenged by Big Image Print, that she had sought to agree the matter of costs with the respondent following the Authority's determination of the substantive matter. She had proposed the normal daily tariff for a one day investigation meeting of \$3,500 be paid in full and final settlement of costs in order to prevent the need for further litigation. Big Image Print did not agree to that proposal.

[6] Mr Muir provided two emailed responses to the application for costs. The first, dated 8 August 2013, contained the information that Big Image Print was intending to challenge the Authority's determination. It advised that the awards made against Big Image Print and any subsequent cost award would "*likely place the company into liquidation and force it to close down.*" Mr Muir said he was in Japan at the time and would meet with the company's bankers on his return. He was offered, and accepted, an extension to 16 August 2013 for filing a more detailed response to the application for costs.

[7] On 19 August 2013 Mr Muir advised the Authority that, due to the earthquake felt in Wellington on 16 August, he had been unable to complete his enquiries with bankers or the company's accountant. Mr Muir asked that his email of 8 August be taken as his response to Mr Williams' application for costs.

[8] The relevant principles in relation to costs awards for Authority investigations have been set out by the Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*¹. These include the discretionary nature of costs awards, a discretion which should be exercised in accordance with principle rather than arbitrarily. Costs generally follow the event, which normally results in the successful party being entitled to a reasonable contribution to its actual costs from the unsuccessful party.

¹ [2005] 1 ERNZ 808

[9] Costs for each case are considered in the light of the particular circumstances. They are frequently judged against a notional daily tariff. Where a party's conduct has increased costs unnecessarily that may be taken into account in the award made.

[10] It is appropriate that costs be awarded in this instance as Mr Williams was successful in all his claims. Taking into account the legal costs he incurred post-mediation, and the circumstances referred to above, I consider that a modest increase to the notional daily tariff is justified. I do not consider it reasonable to take account of delays occasioned by Mr Muir's ill health, and I do not do so.

[11] Mr Muir has provided no evidence from Big Image Print's accountant or bankers to support his claim of impending liquidation. My decision on costs therefore places scant weight on his emailed statement regarding the likely outcome on the company of any awards already made against it by the Authority, or impending.

[12] I am satisfied that, in all the circumstances, an award of \$4,000 is appropriate.

Determination

[12] Big Image Print 2009 Limited is ordered to pay Ben Williams \$4,000 in costs pursuant to clause 15, Schedule 2 of the Employment Relations Act 2000. It is also to reimburse Mr Williams the Authority filing fee of \$71.56.

Trish MacKinnon
Member of the Employment Relations Authority