

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 155
5331579

BETWEEN ROBERT ALAN JAMES
 WILSON and JOANNE MARY
 WILSON
 Applicants

A N D KEITH POW & MARTY POW
 Respondents

Member of Authority: Christine Hickey

Representatives: Kevin Murray, representative for applicants
 Keith Pow & Marty Pow, the respondents in person

Investigation meeting 12 April 2012 at Christchurch

Submissions Received 28 May 2012 from the applicants
 28 June 2012 from the respondents

Date of Determination: 30 July 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] On 1 May 2012 Mr Philip Cheyne, Member of the Authority, issued a determination in which he noted that although the applicants lodged the statement of problem themselves Mr Murray had later been engaged and that *at some point the issue of costs might arise*. Mr Cheyne reserved the question of the applicants' costs. He ordered that the applicants should lodge and serve a memorandum about costs within 28 days and that the respondents would have a further 14 days in which to lodge and serve any reply.

[2] On 28 May 2012 Mr Murray lodged a memorandum seeking costs of \$2817.50, including GST. Mr Murray submitted that the applicants had incurred legal costs and sought an order that the respondents pay *a measure of costs to reimburse the Applicants*.

[3] The respondents responded to the Authority by e-mail dated 28 June 2012. Their comment in relation to costs was:

At the end of the day the amount asked for by Kevin, seemed excessive as he failed to provide the information he promised prior to the hearing. He basically provided nothing ...

Regardless, we need to put this matter to rest, and therefore need an invoice so that whatever payment is required can be made.

[4] I note that in the statement of problem the applicants asked that the Respondents should pay the filing fee of \$71.56.

[5] The Authority's jurisdiction to make costs orders is found in clause 15 of Schedule 2 of the Act. Mr Murray referred me to the Employment Court case of *Reid v New Zealand Fire Service Commission* [1995] 2 ERNZ 38 which discussed principles for the award of costs in the Employment Court.

[6] More recently the principles the Authority must follow in considering costs applications were set out in *PBO Limited v Da Cruz* [2005] ERNZ 808, a judgment of the Employment Court, at page 819. These principles include:

- A discretion on whether to award costs and if so what amount.
- The discretion must be exercised in accordance with principle and not arbitrarily.
- The jurisdiction to award costs is consistent with the Authority's equity and good conscience jurisdiction.
- Equity and good conscience must be considered on a case by case basis.
- Costs should not be used as a punishment or an expression of disapproval of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.
- It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable.
- Without prejudice offers can be taken into account.

- Awards of costs will be modest.
- Frequently costs are judged against a notional daily rate, which is currently \$3,500.00.
- Costs generally follow the event; that is, the successful party's costs are likely to be ordered paid by the unsuccessful party.
- The nature of the case can also influence costs. That means that the Authority orders that costs lie where they fall in certain circumstances.

Order

[7] The applicants were largely successful in the claims. Mr Murray's costs are reasonable. I order that Keith and Marty Pow pay Robert and Joanne Wilson:

- legal costs of \$2,450.00 (exclusive of GST); and
- the filing fee of \$71.56.

Christine Hickey
Member of the Employment Relations Authority
(Pursuant to clause 16 of Schedule 2 of the Employment Relations Act 2000)