

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN James Wilson (Applicant)
AND Smith's Painting Contractors Limited (Respondent)
REPRESENTATIVES Brent Climo, Advocate for Applicant
Robin Smith, Advocate for Respondent
MEMBER OF AUTHORITY Philip Cheyne
SUBMISSIONS RECEIVED 14 November 2005
DATE OF DETERMINATION 15 December 2005

COST DETERMINATION OF THE AUTHORITY

[1] In a determination dated 21 October 2005 I upheld Mr Wilson's personal grievance claim and awarded compensation for distress and for lost earnings totalling around \$6800.00. I also reserved costs. Mr Wilson's representative lodged a memorandum regarding costs on 14 November 2005 and the Authority sent that memorandum to Smith's Painting Contractors Limited with a request for any submissions in reply to be provided within 14 days. Nothing has been received in response from Smith's Painting Contractors Limited so I will proceed to determine the question of costs.

[2] In his memorandum, Mr Smith's representative referred to several well known cases containing statements of principle about awards of costs in the Employment Tribunal and the Employment Court. However, there is a very recent decision by the Employment Court which must be considered: see *PBO Limited v Eneida Leonor Christo Da Cruz* 9/12/05, Colgan CJ, Travis and Shaw JJ, AC2A/05. The Full Court there approvingly lists some of the principles applied by the Authority in costs decisions. In the present case, Mr Wilson has apparently incurred fees for professional representation, he was successful in his claim and there is no reason not to order the respondent to pay a reasonable contribution towards the costs reasonably incurred.

[3] As the Court noted in *PBO Limited*, the majority of costs awards in the Authority are now in the range of \$2,000 to \$2,499 for a one day investigation meeting. The Court approved a *tariff based approach* provided it is not applied in a rigid manner without reference to the features of the particular case. There was nothing complex about the present case. The applicant prepared and lodged a statement of problem, had to review the statement in reply, participated in a brief phone conference and attended an investigation meeting. The meeting lasted about 2¼ hours. Those other steps should not have occupied more than ¾ of an hour professional time. There was no requirement to prepare statements of evidence because of the direction that all evidence would be taken orally at the investigation meeting.

[4] Mr Smith's representative sought an award of \$1,000 in costs. A *tariff based approach* might generate an award of between \$500 - \$700. However, the application of a *tariff based approach* should never result in a party being awarded more than the costs actually and reasonably incurred. In the present case, I do not know what costs have been incurred, nor do I know how Mr Wilson's advocate calculates his fee. I am left to assume notional reasonable costs. At an hourly rate of \$150.00 and total time of 3 hours, there would be a total of about \$450.00 in legal fees. This is not a case requiring a full award of costs reasonably incurred nor could it be said that there was anything about the way the respondent conducted its case that caused the applicant to incur unnecessary costs. In those circumstances I assess an appropriate award of costs at \$300.

[5] Accordingly I order Smith's Painting Contractors Limited to pay Mr Wilson \$300.00 costs plus a further \$70.00 to reimburse his lodgement fee.

Philip Cheyne
Member of Employment Relations Authority