

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 62A/07
5047694

BETWEEN MALCOLM WOOD
 Applicant

AND CARDINAL FREIGHT
 DISTRIBUTION LIMITED
 Respondent

Member of Authority: James Crichton

Representatives: David Caldwell and Amy Shakespeare, Counsel for
 Applicant
 Anthony Gorton, Advocate for Respondent

Submissions received: 16 August 2007 from Applicant
 No submissions from Respondent

Determination: 23 August 2007

COSTS DETERMINATION OF THE AUTHORITY

The application for costs

[1] By determination dated 14 June 2007, the Authority resolved the employment relationship problem between these parties by determining that Mr Wood had a personal grievance by reason of an unjustified dismissal.

[2] Costs were reserved.

The claim for costs

[3] Mr Wood, through counsel, seeks a costs award of \$7,000. Mr Wood's actual costs amount to \$12,100 (exclusive of GST) together with disbursements including the filing fee of \$70 and air fares of \$1,050.94.

[4] On this basis then, the claim represents over 50% of a larger than usual fee for a matter of this kind. It is suggested that difficulties occasioned by the attitude of the respondent caused this and there may be some element of truth in that submission.

The legal principles

[5] The full Court in *PDO Limited v. Da Cruz* AC 2A/05 identifies the salient principles and confirms that the principles traditionally used by the Authority in determining costs awards are appropriate and also approves the "tariff based approach" often adopted by the Authority as long as the particular circumstances of the individual case is taken into account as well.

Discussion

[6] The applicant seeks a significant award of costs and contends, inter alia, that the extent of the legal fees expended is in part explained by difficulties in dealing with the respondent employer. However, this particular matter was not overly complex and was able to be dealt with by the Authority in not much more than a full days sitting time, albeit that the investigation meeting was actually spread over two dates approximately six weeks apart.

[7] Further, because of the informal and inquisitorial nature of the Authority's proceedings, awards of costs have generally been more modest than has been the case in the more formal setting of a court of record and the Authority has frequently awarded costs against the notional daily rate. However, it is important that the Authority continues to review its consideration of such notional daily rates to reflect actual practice and any movement in costs reasonably incurred by successful parties.

[8] In that regard, it is interesting to note that in an early decision of the Court frequently relied on by the Authority in its early years, *Harwood v. Next Homes Limited* [2003] 2ERNZ 433 average awards of costs for a one day investigation in the Authority was held to be between \$1,000 and \$1,500 whereas in the *PDO Limited*

decision which I referred to earlier and which was issued at the end of 2005 Judge Shaw noted that the majority of costs awards for one day investigation meeting in the six months to 30 June 2005, were in the range between \$2,000 and \$2,500.

[9] I fancy that there has been further movement since in the average costs incurred by successful parties.

Conclusions

[10] The usual rule is that costs should follow the event and there is no reason to depart from that principle in this case. Mr Wood was completely successful in his claim and he is entitled to a contribution to his costs in so far as those costs have been reasonably incurred. I have already remarked that the costs incurred by Mr Wood seem to me to be rather on the high side having regard to the Authority's experience of not dissimilar cases being successfully prosecuted but I accept that some of the extra cost Mr Wood appears to have incurred may be a function of the difficulties in dealing with the employer Cardinal.

[11] Applying the notional daily rate principle to a matter such as this would result in a contribution to costs of perhaps \$3,500 given the elapsed time for the investigation meeting. Having accepted the contention advanced on Mr Wood's behalf that some of the cost is a function of difficulties in engaging with the employer, I propose to increase that amount such that the total contribution to be made by Cardinal in respect to the costs proper is in the sum of \$4,000.

[12] I also persuaded that Cardinal ought to meet the actual costs of Mr Wood's filing fee which of course amounts to \$70.00 and the air fare which is the sum of \$1,050.94. The claim for the air fare is unusual; it is based on the contention that, but for the default of the employer which was clearly found in the substantive determination, Mr Wood would have been able to find alternative employment in this country but as a consequence of the bad faith of the employer, he was forced to look overseas. In those circumstances, I think it is appropriate that Cardinal meet Mr Wood's and his wife's air fare which amount to a total sum of \$1,050.94.

Determination

[13] Cardinal is to pay to Mr Wood as a contribution to his costs a total sum of \$5,120.94 made up as follows:

(a)	Contribution to costs proper	\$4,000.00
(b)	Reimbursement of air fares	\$1,050.94
(c)	Reimbursement of filing fee	\$ 70.00

James Crichton
Member of Employment Relations Authority