

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 146A/10
5122669

BETWEEN RODERICK YOUNG
 Applicant

AND BAY OF PLENTY DISTRICT
 HEALTH BOARD
 Respondent

Member of Authority: K J Anderson

Representatives: Applicant In Person
 M Beech and A Scott, Counsel for Respondent

Submissions received: 23 April 2010 and 24 May 2010 from Respondent
 21 May 2010 from Applicant

Determination: 22 June 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 26th March 2010, the Authority found that the claims of Mr Young against the respondent (“the Board”) could not be upheld. As the successful party, the Board have filed submissions on costs. Mr Young has filed submissions in response.

[2] The investigation meeting took about two and a half days. The Board has not provided any details of the costs it has incurred but seeks an order that Mr Young make a contribution to the sum of \$25,500. In support of its position the Board’s submissions include that:

(a) There was a substantial delay in regard to Mr Young progressing his claims and that his claim for reinstatement was not raised until well into the process, hence requiring the Board to respond to this particular claim and place evidence before the Authority regarding the impracticability of reinstatement.

- (b) Had Mr Young accepted that his behaviour, during and following his employment, was unacceptable, a hearing with the Authority would not have been necessary.
- (c) The investigation meeting was unnecessarily protracted due the manner in which Mr Young conducted his case.
- (d) Settlement offers were made but rejected by Mr Young.
- (e) The case was important to the Board given that Mr Young sought reinstatement and that various staff had made confidential disclosures to their managers that they would resign if Mr Young was reinstated.

[3] The legal submissions for the Board include reference to the principles set out in *PBO Limited v Da Cruz* [2005] ERNZ 808. An Authority determination, *Hefferman v Estate of Patrick David Hefferman* 23/06/06, P Cheyne, CA 59A/06, is referred to in support of departing from the tariff based approach generally observed by the Authority.

[4] In his very brief submissions, Mr Young disputes the costs sought by the Board and says (paraphrased) that it was necessary for him to pursue proceedings in the Authority due to the actions of the management of the Board. Mr Young submits that the Authority should award him his costs of \$27,000 plus the application fee of \$70.00.

Determination

[5] While I particularly accept the submission of the Board, that the manner in which Mr Young conducted his case, led to the investigation meeting being unduly protracted, I consider that this is provided for in the daily tariff based approach to costs, following *Da Cruz* (ibid). Also, some tolerance must be allowed for parties who chose to conduct their own cases, albeit it is accepted that Mr Young stretched this tolerance to its limits at times. However, given the overall circumstances of this case, I can see no good reason to depart from the usual tariff based approach, applied to the actual hearing time of 2.5 days, at a reasonable rate of \$3,000 per day (including preparation).

[6] Mr Young is ordered to pay to the Bay of Plenty District Health Board the sum of \$7,500.00 as a contribution to its costs.

K J Anderson
Member of the Employment Relations Authority