

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 72/10
5133173

BETWEEN BRENT ABBOTT
 Applicant

AND FRESH CONNECTION
 LIMITED
 Respondent

Member of Authority: P R Stapp

Submissions received by : 14 April 2010

Determination: 20 April 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] I reserved costs in a determination issued on 16 October 2009 (unreported WA 154/09). The parties are still in dispute over the amount of costs. Fresh Connection Limited (the respondent or Fresh Connection) has requested a contribution of \$1,600. The applicant has requested that the respondent's application be declined, but if the applicant has to pay any costs an appropriate award would be \$750.

The law

[2] The principles that apply to costs in the Authority have been laid out in *PBO Ltd v Da Cruz* [2005] ERNZ 808.

Issues

[3] Should the applicant have to pay a contribution to the respondent's costs, and if so, how much?

The facts

[4] There was an investigation meeting held by the Authority on 8 September 2009 and lasted approximately 3.15 hours. Prior to the investigation meeting the applicant was sent a *Calderbank* letter offering a settlement. The applicant was not successful in the Authority's determination.

[5] Before any submissions on costs were received Mr Abbott offered to pay a contribution to the respondent's costs in the sum of \$1,000 at \$20 per week (23 November 2009 letter), and the respondent has used this to support its contention that that there was no evidence that Mr Abbott will not be able to pay a contribution.

Determination

[6] The respondent has incurred costs. Since the respondent was successful it is reasonable to expect costs to follow the event. On this basis costs can be judged against a notional daily tariff. Any award should be modest. I have taken into account that the employment relationship problem was important to both parties to vindicate their positions.

[7] It is my decision to award costs in favour of the respondent and in doing so apply costs against the daily tariff. The investigation meeting lasted 3.15 hours and involved legal costs for the respondent's preparation for the investigation meeting: including written witness statements and submissions. Fresh Connection had to organise the attendance of a previous employee, and another employee to give evidence. To save costs a lawyer was not used at the investigation meeting and the parties used mediation.

[8] I have considered the *Calderbank* offer of settlement, but it is not necessary to apply any weight to it because the respondent was successful and costs follow the event. In any event the *Calderbank* offer of settlement was questionable because of the timing available for the applicant to consider the offer and whether or not it would have saved the applicant any costs.

[9] It is my decision, that although it appears from information provided in the application for costs that the applicant's financial situation is very tight, there is nothing to suggest that he will not be able to pay in the future because he was prepared to pay \$1,000. However as there were terms placed on that offer and because the employment relationship was relatively straight forward and both parties wanted to get a decision on a matter of principle and get vindication, I have decided that Mr Abbott is to pay \$750 costs to Fresh Connection Limited.

Order of the Authority

[10] Mr Abbot is required to make a contribution to the respondent's reasonable costs claimed.

[11] It is my decision that Mr Abbott is to pay Fresh Connection Limited \$750 contribution towards its costs.

P R Stapp
Member of the Authority