

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 282A/09
5079174

BETWEEN ROBERT WALTER ADAMS
 Applicant

AND THE WAREHOUSE LIMITED
 Respondent

Member of Authority: Dzintra King

Submissions received: No submissions from Applicant
 11 September from Respondent

Determination: 9 October 2009

COSTS DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Robert Adams, was unsuccessful in his personal grievance claim. The parties have been unable to agree costs. The respondent now seeks costs.

[2] The respondent asks for costs of \$7,500. This is based on a daily tariff of \$3,000 per day for 2.5 days. The 2.5 days is made up of one full day in the Authority, one day for the completion of written submissions and several telephone conferences and pre-hearing matters which the respondent was required to attend to.

[3] The respondent's legal costs are in excess of \$12,000 excluding GST, disbursements and executive time and were all incurred in the conduct of the litigation. I accept that the amount charged is reasonable.

[4] It was unfortunate that the applicant raised numerous issues that were not relevant to the personal grievance claim but were required to be addressed by the respondent. There were repeated amendments to the timetable set (which were not met by the applicant) and several adjournments of the hearing date.

[5] This was not a complex case per se but was compounded by the applicant's failure to categorise his claim and the remedies clearly.

[6] The criteria for awards of costs in the Authority are set out in *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

[7] The Court considered a tariff approach and accepted that there was discretion to depart from that approach.

[8] The costs of the litigation were increased by the applicant's failure to raise a grievance within the 90 day period, the filing of material which was not relevant and failure to provide particulars of the claim and the remedies sought.

[9] The applicant is to pay the respondent the sum of \$5,000.

Dzintra King

Member of the Employment Relations Authority