

BETWEEN

SEAN AITKENHEAD
Applicant

A N D

BRUSCHETTERIA LIMITED
Respondent

Member of Authority: James Crichton

Representatives: David Prisk, Advocate for Applicant
Francesco Arini, Advocate for Respondent

Submissions Received: 18 February 2013 from Applicant
No submissions from Respondent

Date of Determination: 6 May 2013

COSTS DETERMINATION OF THE AUTHORITY

The substantive determination

[1] The Authority issued its substantive decision in relation to this employment relationship problem on 1 February 2013 as [2013] NZERA Auckland 38.

[2] In that determination, the Authority found for Mr Aitkenhead and reserved costs.

The claim for costs

[3] The advocate for Mr Aitkenhead has adopted the practical approach of simply seeking reimbursement of his actual costs from Bruschetteria Limited, the unsuccessful party. Apparently, Bruschetteria have not responded.

[4] That being the position, Mr Aitkenhead seeks an award of costs from the Authority so as to clear his indebtedness to his advocate. In other words, Mr Aitkenhead is seeking full indemnity costs.

The response

[5] Bruschetta has not responded to the costs application made by Mr Aitkenhead despite the Authority's efforts to get it to engage in the Authority's process.

Determination

[6] The law on costs fixing in the Authority is well settled. The principles include the fundamental one that costs usually follow the event, that the Authority has a discretion in respect to the fixing of costs, and that the daily tariff approach commonly used by the Authority to fix costs is an appropriate starting point.

[7] This was a straightforward personal grievance which resulted in Mr Aitkenhead being successful in his claim although his claim for unjustified dismissal was not accepted by the Authority on the footing that the Authority was satisfied that the dismissal for redundancy was in fact a genuine case of a restructure by the employer.

[8] However, the matter was dealt with in less than a full day's hearing time. Mr Aitkenhead's legal costs amount to \$2,125 exclusive of GST.

[9] If the Authority were to apply the daily tariff approach, the starting tariff for a full day's hearing is \$3,500. This particular investigation meeting took less than a full day and according Bruschetta Limited are entitled to a discount for that fact. In all the circumstances, the Authority thinks it appropriate Bruschetta pay the total fee rendered to Mr Aitkenhead for legal services, exclusive of GST which is typically not claimed in a costs environment.

[10] On that basis then, Bruschetta is to pay to Mr Aitkenhead the sum of \$2,125 as a contribution to his legal costs.

[11] A certificate of determination is to issue in respect of this determination and to be provided to Mr Aitkenhead.

James Crichton
Member of the Employment Relations Authority