

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 49
File Number: 5323509

BETWEEN Colin Allomes
 Applicant

AND Kevin Freemantle
 Respondent

Member of Authority: Denis Asher

Representatives: The parties represented themselves

Submissions received: 24 March 2011

Determination: 30 March 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 3 February 2011 ([2011] NZERA Wellington 18) I found that Mr Allomes' claims against Mr Freemantle, or a Trust associated with the respondent, did not succeed. Costs were reserved as requested.

Mr Freemantle's Costs Submissions Summarised

[2] In submissions received on 24 February and 24 March 2011 Mr Freemantle seeks costs of \$711.00 based on two days lost income, and for travel expenses incurred in attending the Authority's investigation.

Mr Allomes' Costs Submissions Summarised

[3] By email dated 16 March 2011 Mr Allomes forwarded a farm report that he said he had been trying to find at the time of the substantive investigation but which was mislaid due to him having to shift house. By another email on the same day he advised he was not going to pay any costs to the respondent.

Discussion and Findings

[4] The Authority's involvement in the substantive employment relationship problem has now ended: the doctrine of *res judicata* applied.

[5] The Authority's discretion with which to award costs is now well settled and typically follows the event: *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.

[6] However, as I noted in my substantive determination (and as was explained to the parties at the time) subject to submission, as neither party was represented, no contribution to legal costs appeared to be claimable, and costs were therefore likely to lie where they fell.

[7] Notwithstanding Mr Freemantle's further thoughts as to being put to unnecessary travel costs and loss of income, I see no reason to depart from my earlier view particularly as no evidence has been provided to support his claims of lost income and travel expenses.

Determination

[8] Mr Freemantle's cost claim is declined and costs are to lie where they fall.

Denis Asher

Member of the Employment Relations Authority