

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 397  
5411228

BETWEEN                      KEVIN ANSLEY  
                                         Applicant  
  
A N D                              ELITE INNOVATION  
                                         LIMITED  
                                         Respondent

Member of Authority:      T G Tetitaha  
  
Representatives:              R McNaughton, Advocate for Applicant  
                                         S Menzies, Counsel for Respondent  
  
Investigation Meeting:      On the papers  
  
Submissions Received:      26 June 2013 from Applicant  
                                         25 June 2013 from Respondent  
  
Date of Determination:      4 September 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A.      Kevin Ansley shall pay Elite Innovation Limited costs of \$350.00**

[1]      Elite Innovation Limited (Elite) applies for costs following their successful defence to the applicant's claim for unjustified dismissal. It submits costs should follow the event and the daily tariff of \$3,500 should be awarded.

[2]      Mr Ansley submits the respondent's conduct was less than satisfactory towards the applicant resulting in this proceeding. It also submits the hearing took less than one full day, starting around 10am and finishing at 2pm. It believes costs should lie where they fall or alternatively a reduction in the notional daily tariff to reflect the above matters to \$1,500.

## Issues

[3] The following issues are for determination:

- a. What is the starting point for assessing costs?
- b. Are there factors that warrant reduction or uplift in costs?

### *What is the starting point for assessing costs?*

[4] Both parties concede the starting point for costs in the Authority is its notional daily tariff of \$3,500. This matter occupied slightly over half a day's worth of hearing time (4 hours). It was originally set down for a one day hearing.

[5] The notional daily tariff is a daily rate. The Authority was required to sit and the parties and witnesses to be present, for longer than half a day. There is no basis for a lower starting point. Accordingly, the starting point for assessing costs is \$3,500.

### *Are there any factors that warrant adjusting the notional daily tariff?*

#### *Factors which warrant a reduction in the notional daily tariff*

[6] Conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.<sup>1</sup> Elite's behaviour is not conduct which is a basis for reducing the costs.

[7] Any costs award must take into account the ability to pay.<sup>2</sup> Where an award of \$10,000 costs caused undue hardship, costs of \$1,000 were awarded. This equates to 10% of the costs the Court would have awarded but for the financial position of the applicant.<sup>3</sup>

[8] Mr Ansley is financially impecunious. He is on the dole and suffers depression. He has applied (unsuccessfully) for 20 jobs.<sup>4</sup> It would cause undue hardship for Mr Ansley to meet a costs award of \$3,500. Following the above approach a costs award of 10% of this amount is appropriate.

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<sup>1</sup> *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808 (EmpC) at [35]

<sup>2</sup> *Richardson v Board of Governors of Wesley College* [1999] 2 ERNZ 199, 229 lines 12 ff

<sup>3</sup> *Burns v Media Design School Ltd* (EMC, 17/11/09)

<sup>4</sup> Brief of Evidence K Ansley dated 15 May 2013 paragraphs 18 to 22.

*Factors which warrant an increase to the notional daily tariff*

[9] Neither party has submitted any factors warranting an increase to the notional daily tariff.

[10] Taking into account the undue hardship, Mr Ansley is ordered to pay costs of \$350.00.

**T G Tetitaha**  
**Member of the Employment Relations Authority**