



[4] The respondent also relies on the principles in **PBO Limited v da Cruz**,<sup>1</sup> noting further that the need for a resumed investigation meeting was substantially due to the conduct of the applicant in failing to disclose accurately his earnings since dismissal, and of the advocate in being unable to provide accurate information in support of her assertion that she had approached the respondent about Mr Argue's dismissal on 31 May 2008. Indeed the approach was on a later date.

[5] Ms Harris-Scoble responded by saying the second day of the meeting was for the purpose of obtaining evidence from Shane Hapeta and Philippa Kinsey.

[6] Regarding the need for a resumed investigation meeting, the matters identified by both parties contributed to the need to resume the meeting. Accordingly I do not hold one party more responsible than the other for costs purposes.

[7] Ms Harris-Scoble also pointed out that the substantive determination has been challenged in the Employment Court. However, having been asked to do so the Authority is obliged to determine costs. In doing so it proceeds, in effect, as if the determination had not been challenged. Any determination of costs may itself be challenged in the Court, or otherwise addressed as appropriate during the course of the challenge.

### **Offer made without prejudice save as to costs**

[8] Ms Harris-Scoble did not address the offer to settle. However, in general, the existence of a pre-meeting settlement offer made without prejudice save as to costs is relevant to whether the conduct of the parties tended to increase or decrease costs. The offer was made well in advance of the investigation meeting and in that sense it was timely. The offer was reasonable, and was for more than Mr Argue ultimately obtained. Its rejection caused the respondent to incur the majority of its costs in this matter.

### **Determination**

[9] The respondent was successful and is entitled to a contribution to its costs.

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<sup>1</sup> [2005] ERNZ 808

[10] The time taken for the investigation meeting was in total under 1 ½ days. There is no reason to depart from the broad approach set out in the **da Cruz** decision, and this is an appropriate case in which to apply a notional daily rate in setting a figure for costs.

[11] I also take into account that a reasonable offer to settle was made prior to the investigation meeting.

[12] In these circumstances Mr Argue is ordered to contribute to the respondent's costs in the sum of \$ 3,000.

R A Monaghan

Member of the Employment Relations Authority