

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 81/08  
5036572

BETWEEN                      PHILLIP LEIGH ARMON  
   Applicant  
  
AND                              BRIDGESTONE              NEW  
   ZEALAND LIMITED  
   Respondent

Member of Authority:      Paul Montgomery  
  
Representatives:            David Beck, Counsel for Applicant  
   Glenn Jones, Counsel for Respondent  
  
Submissions received:      4 February 2008  
   13 February 2008  
  
Determination:              11 June 2008

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]      Having declined the applicant's claim, the Authority invited counsel to attempt to resolve the issue of costs between themselves. As they have been unable to agree, each has lodged a memorandum to assist the Authority in determining this matter.

**General principles**

[2]      Mr Jones sets out the summary of the principles from the Employment Court in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808. His submission is that this present case was outside the *run of the mill* in that counsel for the applicant sought an adjournment prior to submissions being heard at the close of the investigation meeting. Further, Mr Jones submits that the legal issues and the submissions bearing on those issues were relatively complex, and thus engaged more time of the respondent's counsel than was usual.

[3] Mr Jones encourages the Authority to adopt the approach taken in *Hjorth v. One Source Ltd* (unreported, ERA Auckland, AA292/04) and to assess costs based on a reasonable hourly rate and allowing a multiplier of two for the preparation time and assuming an input of eight hours for each relevant day.

[4] Thus, says Mr Jones, the combined time for the two split hearing days was approximately eight hours in total. To that he adds the two days' preparation time and arrives at a figure of \$7,200 based on a reasonable hourly rate of \$300 per hour plus GST. Counsel then submits that two-thirds of \$7,200, that is \$4,825, would be an appropriate contribution to the respondent's reasonably incurred costs in successfully defending the applicant's claims. Such a claim in the face of the respondent's actual costs of \$12,400 inclusive of GST and disbursements, it is submitted, is *very modest*.

[5] For the applicant, Mr Beck does not contest the respondent's reliance on the *PBO* precedent. He does, however, challenge the contention that the issues were legally complex and further submits that his client's claim was neither vexatious nor frivolous. As the Authority understands the applicant's claims, the allegations were neither vexatious nor frivolous.

[6] Mr Beck has put before the Authority a summary of the applicant's financial situation supporting, as he does, three children and the household with the assistance of his partner. The family lives in rental accommodation and counsel submits that, considering the matter in the round, the Authority ought to allow costs to lie where they fall given the respective financial positions of the parties. Counsel provided no indication as to the costs borne by the applicant in pursuing his grievance.

### **The determination**

[7] Having considered the issues before the Authority on costs, I find that the respondent was put to additional cost by the applicant's counsel requesting an adjournment before reconvening to present his submissions. While raising the matter, counsel for the respondent appears not to have placed undue emphasis on this in the costs setting. It is also important to indicate that while the Authority accepts the applicant's case was neither vexatious nor frivolous, it was far from robust.

[8] In such circumstances, an applicant and his advisers would need to be realistic in evaluating the exposure to costs in the event of a failed claim. Such a claim will inevitably lead to a respondent seeking significant costs in defending itself. For an

applicant to claim, in the wake of an unsuccessful action, that he/she ought to be excused from meeting any costs apart from those incurred by engaging counsel in his or her own cause, is fanciful as costs will usually follow the event.

[9] Having considered the submissions on behalf of each party, I order the applicant to pay the respondent the sum of \$4,825 as a contribution to its reasonably incurred costs.

[10] As provided under Schedule 2.15(2) of the Employment Relations Act 2000 and its amendments, I direct that this sum be paid by instalments. While not wishing to impose further costs on counsel for either party, the Authority requires them to attempt an agreement on the terms of such instalments.

[11] In the event agreement is not possible, the Authority reserves leave for either party to approach it to set the instalment payments.

Paul Montgomery  
Member of the Employment Relations Authority