

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 146A/10
5279649

BETWEEN DONALD FRANCIS
ARMSTRONG
Applicant

AND SIGNATURE HOMES
HAWKE'S BAY LIMITED
Respondent

Member of Authority: G J Wood

Representatives: Donald Armstrong on his own behalf
Debra Law for the Respondent

Submissions Received: 13 December 2010

Determination: 14 December 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In my substantive determination I dismissed Mr Armstrong's claims for want of jurisdiction, because I concluded that he was a contractor to, rather than an employee of, the respondent, Signature Homes. Subsequently Ms Law has sought \$6,000 as a contribution to Signature Homes' costs of \$9,561.00, including GST and disbursements.

[2] Because the investigation meeting went after 5.30pm and submissions were made later in writing, Ms Law claims that one and a half days' investigation time should be allowed for. Based on the Authority's tariff approach \$4,500 would thus be appropriate, but a greater contribution should be ordered because Mr Armstrong was on notice from her of the Employment Court judgment in *Singh v. Eric James & Associates Ltd* [2010] NZEMPC1. Ms Law referred Mr Armstrong to that judgment and told him that as a result his prospects were extremely slim, and that at the end of the investigation he would be liable for Signature Homes' costs.

[3] In response Mr Armstrong requested the Authority to leave costs to lie where they fell, as the matter was being appealed to the Employment Court and he had not been informed by the Authority of any liability for costs. He also noted that the Authority had found that a Signature Homes manager had treated him badly, and he believed he was later demoted or otherwise punished, and that this admission of guilt suggested that Signature Homes should bear the burden of costs.

[4] In response Ms Law stated that Mr Armstrong's speculation was inaccurate.

[5] It is standard practice for the Authority to inform parties who do not have legal representation of their potential liability in costs. If Mr Armstrong was not so informed, that does not, however, absolve him of liability to pay costs – *Eden v. Rutherford & Bond Toyota Ltd* [2010] NZCA399. He was certainly on notice from Ms Law of this likelihood if he was unsuccessful.

[6] Having failed in his claim Mr Armstrong must be taken to be liable for a contribution to Signature Homes' costs. The Authority's practice is to issue such a determination before any challenge is heard, so that the Employment Court may address that matter at the same time if necessary.

[7] I accept that a tariff based approach is appropriate for this case, but set the proper period for assessment as being one day's investigation, which is what occurred. The matter was dealt with reasonably efficiently, and thus there are no factors to increase or reduce an award accordingly. There is no evidence of Mr Armstrong being unable to meet a payment of costs to Signature Homes, particularly over time.

[8] I therefore order the applicant, Donald Francis Armstrong, to pay the respondent, Signature Homes Hawke's Bay Limited, the sum of \$3,000 in costs.

G J Wood
Member of the Employment Relations Authority