

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 329
5306154

BETWEEN TONY BEATTY
 Applicant

AND SKF NEW ZEALAND
 LIMITED
 Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
 Rima Newman for Respondent

Submissions: 3 June 2011 from Respondent. None from Applicant.

Determination: 25 July 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] SKF New Zealand Limited (SKFNZL) successfully defended an application by Tony Beatty for a compliance order, a penalty and compensation for damages arising from alleged breaches of a settlement agreement made between the parties in 2005.¹

[2] In accordance with a timetable set in the Authority's determination SKFNZL sought an order for costs. Its cost memorandum stated SKFNZL spent more than \$58,000 in legal fees, \$5845 in disbursements and a further \$1000 for preparing its memorandum. SKFNZL sought \$15,000 as a contribution to its total costs.

[3] Mr Beatty was sent a copy of SKFNZL's memorandum. He provided no reply. Mr Beatty spoke by telephone with a senior support officer of the Authority and confirmed he would not respond to the costs application.

[4] Costs in this matter may be determined from the starting point of a notional

¹ [2011] NZERA Auckland 186.

daily rate, with that rate then adjusted upwards or downwards to take account of particular circumstances and the application of relevant principles.²

[5] The applicable daily rate is \$3000. The nature of the case brought by Mr Beatty warrants a considerable increase on that amount – he made wide ranging allegations involving present and former employees and managers of SKFNZL and its Australian affiliate. SKFNZL was required to respond to an amended statement of problem and a witness statement from Mr Beatty which I accept its costs memorandum fairly described as “*based on conjecture, assumption, speculation and opinion*”. SKFNZL provided witness statements in reply from ten former or present personnel of SKFNZL, its Australian affiliate or its Swedish parent company, SKF AB. Each contained relevant and necessary information. While not all of those witnesses were then required to appear at the Authority’s investigation meeting, SKFNZL’s former managing director did attend in person and four other witnesses were heard by telephone from Auckland, Melbourne, Philadelphia and Geneva.

[6] Mr Beatty was not successful to any degree on any part of his wide-ranging claim. The reasons are detailed in the earlier determination.

[7] While SKFNZL did not provide invoices confirming its total expenditure on legal fees of more than \$58,000, I accept it would certainly have reasonably incurred expenses of at least the \$15,000 now sought. That would be a reasonable amount for attendances at a number of case management conferences, responding to amended proceedings, and then making arrangements for both the preparation of ten witness statements and for attendance in person or by telephone of five far-flung witnesses at the Authority investigation meeting. The total level of legal expenses said to have been incurred by SKFNZL most likely results from its decision to engage Melbourne-based counsel but I need not explore that point further because the level of costs order actually sought is closer to the ordinary range for a two-day hearing with Auckland-based counsel undertaking the more-complex-than-usual preparations required by the nature of the case brought by Mr Beatty.

[8] SKFNZL is entitled to a modest but reasonable contribution to those reasonably incurred costs. The nature of Mr Beatty’s claims and work required from

² *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808.

SKFNZL in preparing detailed responses, warrants, I hold, a doubling of the usual daily tariff. The investigation meeting took one full day and most of a second day. On that basis I order Mr Beatty to pay SKFNZL \$10,000 as a reasonable contribution to its reasonably incurred costs in successfully responding to his claim.

Robin Arthur
Member of the Employment Relations Authority