

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 581  
5397852

BETWEEN KEVIN BROWN  
Applicant  
AND MIDDLETON TRANSPORT  
SERVICES LIMITED  
Respondent

Member of Authority: T G Tetitaha  
Representatives: A Chadwick/S C Langton, Counsel for Applicant  
C Rowe, Advocate for Respondent  
Investigation Meeting: On the papers  
Submissions Received: 6 August 2013 for Respondent  
20 August 2013 for Applicant  
Date of Determination: 18 December 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A. Kevin Brown is ordered to pay Middleton Transport Services Limited costs of \$2,333.33 by instalments of \$50 per week starting 16 January 2014.**

[1] Middleton Transport Services Limited (MTSL) was successful in defending a personal grievance alleging unjustified dismissal for redundancy<sup>1</sup> and seeks costs of \$7,000. It submits the Authority's notional daily tariff of \$3,500 should apply being one day hearing time and one day preparation. MTSL's actual costs were \$9,039.00.

[2] Kevin Brown submits costs should lie where they fall. He suffered considerable financial hardship following redundancy. He also refers to the late withdrawal of the respondent's counterclaim and that his claims and conduct did not warrant an increased costs award.

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<sup>1</sup> *Kevin Brown v. Middle Transport Services Limited* [2013] NZERA Auckland 317

## **Issues**

[3] The following issues are to be determined:

- (a) Should an award of costs be made?
- (b) If so, what is the starting point for assessing costs?
- (c) Are there are factors which warrant adjusting costs?

### **Should an award of costs be made?**

[4] The Authority may order any party to pay such costs and expenses it thinks reasonable.<sup>2</sup> MTSL was successful. Costs usually follow this event.<sup>3</sup> MTSL is entitled to an award of costs.

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

[5] The starting point for costs in the Authority is its notional daily tariff of \$3,500. The hearing occupied one day in Whangarei. Accordingly the starting point for assessing costs is \$3,500.

[6] Ordering further costs for preparation is unusual. This matter was not complex. The notional daily rate covers all preparation. No further adjustment is warranted.

### **Are there factors which warrant adjusting costs?**

#### *Factors which warrant a reduction in costs*

[7] Cost awards must take into account the ability to pay.<sup>4</sup> Costs awards have been reduced due to undue hardship.<sup>5</sup> Mr Brown attests to suffering considerable financial hardship as a result of redundancy in October 2012. He had occasional and piecemeal work following redundancy. During the period he was out of work, there was significant financial hardship on him and his family. He submits he was forced to request a mortgage holiday from the bank, suspend payment of insurance, sell shares, incur substantial credit card debt and borrow \$9,000 from family. These debt

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<sup>2</sup> Clause 15, Schedule 2, Employment Relations Act 2000

<sup>3</sup> *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808 (EmpC) at [35]

<sup>4</sup> *Richardson v. Board of Governors of Wesley College* [1999] 2 ERNZ 199, 229

<sup>5</sup> *Burns v. Media Design School Limited* (EmpC 17/11/09); *Koia v. Attorney-General (No.2)* [2004] 2 ERNZ 274 (EmpC)

arrangements were required to meet his daily living expenses and legal fees of \$8,086.26. He recently secured permanent employment, earning \$687.00 per week after tax. It is submitted he is currently struggling to make ends meet. His weekly mortgage repayments total \$385.70.

[8] There is no information about the earning capacity of other adults within his household and details of the household weekly income and expenditure, other than his mortgage repayments.

[9] However, on the limited information before the Authority, there is a sufficient basis to reduce costs by one-third having regard to equity and good conscious. Accordingly, the costs shall be reduced to \$2,333.33.

*Factors which warrant an increase in costs*

[10] There are no factors warranting an increase in the starting point for costs.

[11] This is an appropriate case to consider payment of costs by instalments. Accordingly the costs shall be met by the applicant in instalments of \$50 per week starting 16 January 2014.

[12] Kevin Brown is ordered to pay Middleton Transport Services Limited costs of \$2,333.33 by instalments of \$50 per week starting 16 January 2014.

T G Tetitaha  
Member of the Employment Relations Authority