

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 379  
5405043

BETWEEN	FRED COX Applicant
AND	DJ THOMPSON BUILDING SERVICES LIMITED Respondent

Member of Authority: R A Monaghan

Representatives: T Grimwood, counsel for applicant  
D Andrews, counsel for respondent

Memoranda received: 1 August 2013 from applicant  
19 August 2013 from respondent

Determination: 23 August 2013

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**COSTS DETERMINATION OF THE AUTHORITY**

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**A. DJ Thompson Building Services Ltd is ordered to contribute to Mr Cox' costs in the sum of \$2,000.**

[1] In a determination dated 12 July 2013 I found DJ Thompson Building Services Ltd (DJT) dismissed Mr Cox unjustifiably, breached good faith in relation to a partnership offer, and owed Mr Cox unpaid wages and holiday pay. I also found Mr Cox owed sums of money to DJT, dismissed some of his claims for reimbursement, and dismissed his claim for underpaid statutory holiday pay.

[2] Costs were reserved, and the parties have filed memoranda on the matter.

[3] Counsel for Mr Cox sought an award of costs in the vicinity of \$10,000. He relied on the principles in *PBO Limited (formerly Rush Security Limited) v da Cruz*<sup>1</sup> and the notional daily rate in the Authority of \$3,500. He calculated the amount sought with reference to: the notional daily rate and the meeting time of 1 day; and the need to address issues ‘indirect to the employment relationship’.

[4] Counsel for DJ Thompson Building Services Ltd (DJT) also referred to *da Cruz*, and sought an award of costs in an unspecified amount. He drew attention to: the limited success achieved by Mr Cox, and what he said was an unnecessary incurring of costs.

### **Success achieved by the parties**

[5] On balance Mr Cox was the successful party overall.

[6] Mr Cox did, however, owe money to DJT. In that respect DJT was successful. Further, although DJT underpaid Mr Cox’ wages, I did not accept Mr Cox’ argument as to the agreed rate. I apply a reduction to the notional daily rate to reflect those matters.

### **Unnecessary incurring of costs**

[7] The actual level of costs incurred by the parties is of concern. I noted in the substantive determination that many of their difficulties could have been avoided if their employment agreement had been reduced to writing. I note in a general way, too, that a more systematic and on occasion more reasonable approach by both to identifying the amounts each owed the other would have had a limiting effect on the costs each has incurred. It would also have enhanced the prospect of settlement. Both parties have responsibility for that.

[8] I was also concerned to see the submission on behalf of Mr Cox that Mr Cox was forced to raise a personal grievance because DJT was withholding money it owed him. Counsel said further that Mr Cox pursued the grievance in order to retrieve outstanding wages and holiday pay. That is not the purpose of the personal grievance

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

procedure. Mr Cox could have applied to the Authority for an order for the payment of unpaid wages and holiday pay without invoking that procedure.

[9] I turn more specifically to whether any unnecessary incurring of costs should be reflected in an adjustment to the notional daily rate. The above observations affect both parties, so I do not visit the observations on either of them by making an adjustment to the notional daily rate.

[10] The remaining submission on behalf of Mr Cox referred to the fact that some of Mr Cox' claims for payment concerned items not associated with the employment relationship, and were not within the Authority's jurisdiction. That may be true, but in the context of this employment relationship problem I do not accept that any additional work required to address that matter had more than a minor impact on costs.

[11] The remaining submission on behalf of DJT was that counsel for Mr Cox lodged a series of memoranda challenging the introduction of evidence relevant to misconduct discovered after the termination of employment, and the obligation to reply meant DJT incurred costs unnecessarily. That may also be true, but again in the context of this employment relationship problem I do not accept that any additional work required to address that matter had more than a minor impact on costs.

### **Order for costs**

[12] Mr Cox was the successful party and is entitled to a contribution to his costs.

[13] I set the amount with reference to the hearing time in the Authority, and with a reduction to reflect the success achieved by DJT.

[14] DJT is ordered to contribute to Mr Cox' costs in the sum of \$2,000.

R A Monaghan

Member of the Employment Relations Authority