

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2012] NZERA Wellington 24  
5330228

BETWEEN

KAYDEN CACHEMAILLE  
Applicant

A N D

HERBERT CONSTRUCTION  
COMPANY LIMITED  
Respondent

Member of Authority: G J Wood  
Submissions Due By: 24 February 2012  
Date of Determination: 2 March 2012

---

**COSTS DETERMINATION OF THE AUTHORITY**

---

[1] In my substantive determination I found that the applicant, Mr Cachemaille, who did not attend the investigation meeting, was justifiably dismissed and reserved costs. On behalf of the respondent (“Herbert”) Ms Lyn Porter, an executive of Herbert, now seeks costs for executive time of \$3,680, plus disbursements of \$70. No submissions were received from Mr Cachemaille.

[2] The level of each item of disbursements was not specified, and no receipts were provided. In these circumstances I consider that the printing, photocopying and travel costs should be met by Herbert itself, as part of its normal business expenses.

[3] Executive time may be considered as an expense in determining costs, but it is not standard practice to allow such claims, particularly as parties and their in house representatives’ costs are normally seen as part of the cost of participating in the investigative process. In this case, Herbert claims for case preparation costs involving \$2,430 for Ms Porter and \$1,250 for directors of Herbert. No director of Herbert attended the investigation meeting, and I am satisfied that the bulk of the work was done by Ms Porter. In any event, a director did provide a written statement, and if he

had attended the investigation meeting, which he did not, it would have been in his capacity as a witness. By contrast, Ms Porter was representing Herbert, and only gave evidence because Mr Cachemaille did not attend and she wanted, quite properly, to spare other officers of Herbert the time and expense involved in attending the investigation meeting.

[4] I consider that this is one of those few cases where it is appropriate for the awarding of a contribution towards costs or expenses incurred by way of executive time. This is principally because of the failure of Mr Cachemaille to attend the investigation meeting, or provide any witness statements or documents, unlike the respondent. It was thus put to entirely unnecessary time and cost in preparing for the investigation meeting. However, 9½ hours of Ms Porter's time involved mediation or preparation therefore, and this is not an appropriate expense to claim in the Authority. Rather, executive time should be limited to preparing for and attending the investigation meeting. I accept that the remaining 18½ hours were involved in preparation, such as providing relevant documentation, preparing statements for the investigation meeting and attending the investigation meeting. However I have reduced the number of hours reasonably spent in preparation, because Ms Porter is not an expert and therefore it would have taken her longer to prepare material than a normal representative. Considering the nature of the case, an appropriate amount of time for preparation and attendance would be 9 hours.

[5] I have no details to confirm the hourly rate of reimbursement sought, which seems to involve some form of profit component for Herbert. It seems less than likely that Ms Porter is paid an annual salary at the level being sought, and there is no room for any recompense for executive time other than as a proportion of Ms Porter's ordinary salary. Not having that detail, I consider that I need to make an assessment of what is reasonable and adopt the figure of \$50 per hour in this regard.

[6] Such reasonable expenses for executive time should not be reduced at all, because Mr Cachemaille did not facilitate the Authority's investigation, even although he was the applicant. I therefore consider that a contribution to costs or expenses for executive time would be reasonably assessed at \$450.

[7] I therefore order the applicant, Mr Kayden Cachemaille, to pay to the respondent, Herbert Construction Company Limited, the sum of \$450.

**G J Wood**  
**Member of the Employment Relations Authority**