

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA29A/10
5147850

BETWEEN

JAMES CAVANAGH
Applicant

AND

FONTERRA CO-OPERATIVE
GROUP LIMITED
Respondent

Member of Authority: Helen Doyle

Representatives: Craig Smith, Counsel for Applicant
John Rooney, Counsel for Respondent

Submissions Received: 3 March 2010 from Applicant
18 March 2010 from Respondent

Determination: 3 May 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 10 February 2010 I found that Mr Cavanagh had a personal grievance that he had been unjustifiably dismissed and I made awards in his favour for reimbursement of lost wages and compensation. I did not make an order that he be reinstated to his previous employment.

[2] I reserved the issue of costs and have now received submissions as to costs.

The applicant's costs

[3] Mr Smith submits that actual costs incurred with respect to this matter were \$24,210.00 inclusive of GST and disbursements of \$338.06. I did note that some of the costs, on my calculations approximately \$2684.00 were incurred in relation to mediation matters and I am not of the view that there were the sorts of issues involving the Authority that would justify an award in relation to those costs incurred for mediation purposes.

[4] The disbursements claimed are as follows:

• Tolls	139.20
• Photocopying	69.00
• Courier fee	14.86
• Filing fee	70.00
• Sound recording	<u>45.00</u>
	<u>\$338.06</u>

[5] Mr Smith submits that there is no reason why costs should not follow the event in this matter and that the applicant should be awarded a substantial contribution to his costs.

The respondent's submissions

[6] Mr Rooney on behalf of the respondent submits that the awards made to the applicant by the Authority were less than those sought by him and in terms of the most significant element of the claim, reinstatement, the applicant was unsuccessful.

[7] Mr Rooney relied on the full Court case in *PBO Ltd v. Da Cruz* [2005] ERNZ 80 and the principles in that case relating to the award of costs in the Authority. Mr Rooney submits that the amounts sought by the applicant are excessive and there is no basis for a solicitor/client award of costs. Mr Rooney recognised in his submissions that the Employment Court has confirmed in and following *Da Cruz* that the usual daily rate for costs in the Authority is between \$2,000 - \$3,000 but he submits that because the applicant was only partially successful and there has been significant contribution towards his dismissal, a daily rate of \$1,000 is appropriate.

[8] In a situation where the investigation meeting ran for two days he submits an award should not exceed a total of \$2,000.

Determination

[9] It would be unusual to deprive a successful party of costs. In this case I find there is no good reason to depart from the usual rule that the successful party is entitled to costs. The successful party in this case is the applicant.

[10] In the exercise of my discretion I have had regard to the following matters. This was a very important case for both parties. This was not a case where the

respondent simply challenged the remedies but rather maintained that the dismissal was justifiable. It was not an altogether straightforward personal grievance.

[11] Mr Cavanagh may not have achieved the remedies, for reasons of contribution, that he initially sought but I do not consider that that matter should be taken into account in determining the issue of costs. The Court of Appeal in *White v. Auckland District Health Board* [2008] ERNZ 635 (CA) held that the Employment Court had erred in failing to deal separately with the discrete issues of remedies and costs. It held that where contributory conduct is taken into account to reduce or decline remedies, the same behaviour cannot also be taken into account in determining the issue of costs.

[12] I do not consider that this is a case for indemnity costs. I have regard in assessing costs to the daily rate which has now been approved by the Court in a range up to \$3,000 - *Teresa Sefo v Sealord Shellfish Limited* (unreported) CC 4B/08 Chief Judge Colgan.

[13] I am of the view that the nature of the case and the time taken to investigate the matter would attract an appropriate starting daily rate of \$3,000. The conduct of the parties did not increase the time taken to investigate the matter and there is no other reason to increase or decrease the daily rate.

[14] In this case there was one very full day of investigation starting at 9.30am and finishing shortly after 6pm. The second day concluded at 12.45pm but I also take into account that written submissions were then supplied. In those circumstances I have taken the time required to investigate to be two days and have applied the daily rate on that basis.

[15] I am of the view that an appropriate award for the applicant in this case is the sum of \$6,000 together with disbursements as claimed in the sum of \$338.06 which I consider reasonable.

[16] I order Fonterra Co-operative Group Ltd to pay to James Cavanagh the sum of \$6,338.06 being costs and disbursements.