

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2016] NZERA Auckland 44
5572956**

BETWEEN BROUGHTON CHERRINGTON
 Applicant

AND RIXON CONTRACTING
 LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Glenn Finnigan, Counsel for Applicant
 Max McGowan, Advocate for Respondent

Investigation Meeting: On the papers

Submissions received: 11 February 2016 from Applicant
 2 February 2016 from Respondent

Determination: 17 February 2016

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] By determination [2016] NZERA Auckland 6, I found that the Applicant, Mr Broughton Cherrington, did not raise his personal grievance against the Respondent, Rixon Contracting Limited (Rixon) within the 90 day statutory limitation period.

[2] In that determination, costs were reserved. Submissions have been filed by the parties in respect of costs.

[3] Mr Max McGowan, on behalf of Rixon, submits a claim in the sum of \$10,585.00 as actual costs on an indemnity cost basis. This sum includes an amount of \$590.00 in respect of the alleged costs of a NP Certificate which Mr Cherrington obtained in the course of his employment with Rixon.

[4] Mr Finnigan for the Applicant claims that Mr Cherrington's conduct did not increase costs unnecessarily, and that costs should be assessed on the basis of the normal daily tariff applied in the Authority.

[5] Mr Finnigan also submits that the element of the costs application by the Respondent pertaining to the reimbursement of the alleged costs of the NP Certificate are in the nature of a cross claim which has not been the subject of an investigation meeting, a determination or even a formal claim. Further that were it to be pursued, Mr Broughton would be defending it.

Determination

[6] The principles applicable to awards of costs in the Authority are well established. A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending on the circumstances. For a full day Investigation Meeting the normal tariff would equate to an award of \$3,500.00.

[7] The Investigation Meeting in respect of this matter was dealt with “on the papers”. It was a relatively straightforward matter, no hearing was required and the matter was decided on the basis of a telephone conference and on written submissions from the parties. Minimal time would have been required for preparing the legal submissions as the law in this area is well settled.

[8] The claim in respect of the costs of the NP Certificate is in the nature of a counter claim. It was not entered as a formal claim by Rixon, it was not investigated or determined. I accordingly have not taken it into consideration in determining the appropriate award in respect of costs.

[9] Costs normally follow the event and Rixon was the successful party in the matter. I consider it appropriate to base the level of costs on the normal tariff in the Authority and to take a half day investigation meeting as the appropriate amount of time required to be spent on this straightforward matter.

[10] Accordingly Mr Cherrington is ordered to pay Rixon the sum of \$1,750.00 towards its legal costs.

Eleanor Robinson
Member of the Employment Relations Authority