

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Stephen Clark (Applicant)
AND Northland Hunt Incorporated (Respondent)
REPRESENTATIVES Mark Ryan, for Applicant
Christopher Perry, for Respondent
MEMBER OF AUTHORITY Y S Oldfield
SUBMISSIONS 23 December 2005, 5 April 2006.
DATE OF DETERMINATION 6 April 2006

DETERMINATION OF THE AUTHORITY

In a determination dated 30 November 2005 I concluded that the applicant was not an employee of the respondent. As the successful party, the respondent now seeks an award of costs and disbursements.

The total costs incurred by the respondent in defending the claims (exclusive of the cost of mediation) were \$11,842.36 inclusive of GST. Disbursements were \$133.05. It is submitted for the respondent that an order for costs in the sum of \$7,806.20 including GST (two-thirds of the Respondent's actual costs) should be made in favour of the respondent, plus disbursements of \$133.05 (GST included.)

For the applicant, it was submitted that this was not a complex legal matter and the investigation meeting took less than a day. In such circumstances, it was argued, costs would normally be in the vicinity of \$1,000.00 to \$1,500.00.

Determination

In considering the question of costs I have had regard to the recent decision of a full bench of the Employment Court in *PBO Ltd v Da Cruz, Unreported, 9 December 2005, ARC 87/04*.

At paragraph [44] of that decision the Court noted that:

“The costs principles which the Authority now applies are not necessarily as comprehensive or as prescriptive as those set out in Okeby [Okeby v Computer Associates New Zealand Ltd [1994] 1 ERNZ 613] and similar earlier judgements. The Authority is able to set its own procedure and has, since its inception, held to some basic tenets when considering costs...

[45] We hold that these principles are appropriate to the Authority and consistent with its functions and powers. They do not limit its discretion and proper application of them should ensure that each case is considered in the light of its own circumstances.

One of the principles referred to was that of a notional daily rate, which it had been noted at paragraph [34] of the decision tended to fall between \$2,000.00 and \$2,500.00 during the first half of 2005. The Court went on to observe:

[46] We find that there is nothing wrong in principle with the Authority's tariff based approach so long as it is not applied in a rigid manner without regard to the particular characteristics of the case.

I accept that this matter was neither complex nor required a lengthy investigation. Both parties also had an interest in determining the correct forum for resolution of the dispute between them. This case has no particular characteristics which would justify an award outside the normal range. In such circumstances I consider a modest award of costs to be appropriate.

Mr Clark is ordered to pay to the respondent the sum of \$2,000.00 as contribution to its costs.

Y S Oldfield
Member of Employment Relations Authority