

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
OFFICE**

BETWEEN Mason Collins (applicant)
AND Kaans Catering Supplies Ltd (respondent)
REPRESENTATIVES Michael Guest, advocate for the applicant
Willie Martin, counsel for the respondent
MEMBER OF AUTHORITY Philip Cheyne
INVESTIGATION MEETING Dunedin, 15 November 2006
DATE OF DETERMINATION 22 March 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 20 November 2006 I dismissed the applicant's personal grievance and reserved costs. Each party has lodged a memorandum on costs and there has also been a letter received from each party. This determination resolves the disputed question of costs.

[2] I should start by saying that there are no grounds for an award of indemnity costs nor should costs lie where they fall. Mr Collins was entitled to make his personal grievance claim notwithstanding the difficulties he was always going to face in obtaining a favourable decision. His pursuit of the claim was not reprehensible in any sense that could entitle the respondent to an indemnity award. However, the respondent is entitled to a contribution to its costs, having been successful.

[3] It has become quite common for the Authority to assess costs on the basis of a daily tariff, an approach endorsed by the Employment Court: see *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2006] 1 ERNZ 808. However, it is important to ensure that any decision is just and appropriate to the circumstances of any particular case.

[4] The present matter took about half a day's meeting time. Only the applicant gave evidence in support of his claim while there were four witnesses required for the employer to establish its justification for dismissing Mr Collins. Other witnesses were briefed but not required. With reference to the employer's evidence, Mr Collins had not been a model employee over his 2½ years of employment. Because the justification for the dismissal depended partly on prior warnings, all that history needed to be explained. However, there were few major points of disagreement that needed to be canvassed during the investigation meeting, hence its relatively short duration. Most of the avenues for potential challenge had been covered off by the employer's care with documents, notes and processes. I accept that some effort was required of counsel to put all that together and it did cause Mr Collins to abandon during the meeting some of his original complaints. In the ordinary course, I would order \$1,500.00 to be paid as a contribution to the respondent's costs. However, there are some other factors that need to be considered.

[5] There were significant delays by the applicant prior to the proceedings being lodged when it might have seemed to the respondent that the grievance had been abandoned. That no doubt caused some additional costs before the proceedings were lodged when counsel had to refresh themselves about the file. However, in the ordinary course, costs incurred before the date of proceedings are not relevant for present purposes.

[6] The respondent made a realistic settlement offer by way of a *Calderbank* letter well before the investigation meeting. In light of that, a greater portion of its costs incurred after the offer should be met by the applicant. Although no details have been provided I can safely infer that the applicant does not have any significant financial resources apart from his current employment. That is a factor which must moderate the uplift in a costs award.

[7] Assessing these factors, I order Mr Collins to pay \$2,000.00 to Kaans Catering Supplies Limited as a contribution to its costs.

[8] The applicant's representative made a submission that the respondent's costs as reported by counsel were *excessive* and *stretches ...credulity*. Unsurprisingly, counsel felt the need to respond. It is often helpful for the party claiming costs to provide a copy of their invoice with their memorandum but that was not done here. Nevertheless I accept counsel's assurances that the sum originally mentioned is what the respondent paid for legal services. It is not necessary to comment any further on the point.

Summary

[9] Mr Collins is to pay Kaans Catering Supplies Limited \$2,000.00 as a contribution to its legal costs.

Philip Cheyne
Member of Employment Relations Authority