

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 128A/09  
5154568

BETWEEN                      Wayne Cottle  
   Applicant

AND                              Maintenance Manawatu Limited  
   Respondent

Member of Authority:        Denis Asher

Representatives:             Jenny Murphy for Mr Cottle  
   Astley Paddison for the Company

Submissions received:        By 24 September 2009

Determination:                6 October 2009

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**COSTS DETERMINATION OF THE AUTHORITY**

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[1]     In my determination dated 7 September 2009 (WA 128/09) I found against Mr Cottle's claim of unjustified dismissal but recorded that another portion of his claim, i.e. his claim for unpaid wages, was conceded by the Company during the investigation. In other words, Mr Cottle incurred costs up to the point of the respondent's concession.

[2]     In my determination I also noted that, subject to submissions, there appeared to be no reason why costs should not follow the event (in this case the

respondent's concession) and that costs awards for half-day Authority investigations typically did not exceed \$1,500.

- [3] Costs were reserved at the parties' request. The parties have subsequently been unable to agree costs.

### **Mr Cottle's Costs Claim**

- [4] In submission received on 10 September on Mr Cottle's behalf, detail is provided of the difficulties incurred in obtaining wage, etc records from the Company that resulted in part in Mr Cottle's application to the Authority. It is speculated that had the respondent acted in good faith by paying wages originally agreed (by letter dated 24 February 2009), and which were agreed again by the respondent during the Authority's investigation, Mr Cottle may not have chosen to pursue any further claims.
- [5] Mr Cottle's total costs of representation are \$3,375 (GST inclusive). A contribution of 75%, i.e. \$2,531.00.

### **The Company's Response**

- [6] Much of Mr Paddison's submission is a relitigation of the matters disposed of in my substantive determination and therefore I will not revisit them.
- [7] Mr Paddison claims costs of \$5,000 based on legal advice, stress and opportunity lost to the business. He also says the applicant has not been successful in any matter and no costs should be awarded.

### **Findings**

- [8] The Authority's discretion with which to award costs is now well settled and typically follow the event: *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808.
- [9] A half-day investigation was required.

- [10] My substantive determination repeated comment to the Company that costs typically follow the event and costs awards for half-day investigations are commonly of \$1,500.00.
- [11] The costs submissions on behalf of the applicant are not clear as to whether they include costs of undertaking mediation, but suffice to say they are comparatively modest and are to be commended accordingly. However, no argument is provided in support of a costs contribution of 75% other than to reiterate the reasons why the applicant filed in the Authority in the first place.
- [12] In the event there is dispute as to whether the Company complied with its agreement to pay Mr Cottle outstanding wages including holiday pay then that is best dealt with by way of a compliance application rather than by way of this costs determination.
- [13] I am satisfied there is no reason to depart from the well indicated principle that costs follow the event or the Authority's normal range of costs awards. Having regard to the above I am satisfied a costs award of \$1,500 for the investigation is appropriate in all the circumstances.

### **Determination**

- [14] The Company is to pay Mr Cottle as a contribution to his fair and reasonable costs the sum of \$1,500 (one thousand and five hundred dollars).

**Denis Asher**

**Member of the Employment Relations Authority**