

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2012] NZERA Auckland 187
5352840**

BETWEEN

MICHAEL CROUCH
Applicant

AND

ARIA PARK SENIOR LIVING
LIMITED
Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
Jeff Goldstein, Counsel for Respondent

Investigation Meeting: On the papers

Submissions received: 15 May 2012 from Respondent
31 May 2012 from Applicant

Determination: 01 June 2012

COSTS DETERMINATION OF THE AUTHORITY

A. Mr Michael Crouch is ordered to contribute \$3,500 towards Aria Park Senior Living Limited's legal costs.

[1] Mr Michael Crouch pursued a personal grievance claim for unjustified dismissal against his former employer, Aria Park Senior Living Limited (Aria Park). The Authority's investigation meeting into his dismissal grievance was held on 02 and 03 May 2012.

[2] Mr Crouch was his only witness and he gave evidence in support of his claim on 02 May 2012. Aria Park's witnesses were due to give evidence on 03 May 2012, the second day of the investigation meeting, but did not actually do so. Before any evidence could be heard, Mr Swan (who was Mr Crouch's lawyer at that time) advised the Authority he had instructions:

- (a) to withdraw Mr Crouch's personal grievance claim;
- (b) that Mr Crouch did not wish to be heard on the issue of costs;
- (c) to withdraw as counsel.

[3] After conveying this information both Mr Crouch and Mr Swan left the investigation meeting.

[4] Aria Park seeks costs on the grounds it was the successful party because Mr Crouch withdrew his grievance claim. Its costs submissions were filed on 15 May 2012 and these were copied to Mr Crouch, who was given the opportunity to respond, notwithstanding his previous advice at the investigation meeting that he did not wish to be heard on costs.

[5] Mr Crouch says Aria Park should not be awarded any costs. Mr Crouch's costs submissions made factually incorrect statements about the investigation meeting, which do not reflect what actually occurred. The matters he raised are not relevant to an assessment of costs.

[6] Costs in the Authority are to be assessed in light of the well established principles identified by the full Court of the Employment Court in *PBO Ltd v Da Cruz*.¹

[7] In accordance with the Authority's usual practice, a notional daily tariff of \$3,500 is adopted as a starting point for assessing costs in this matter. Consideration is then given to whether the notional daily tariff should be adjusted in light of the particular factors of this case.

[8] I find that there are no factors which warrant a decrease to the notional daily tariff.

[9] Aria Park seeks indemnity costs of \$12,000 plus GST together with disbursements of \$434.70 on the grounds that Mr Crouch should never have brought his personal grievance claim. Mr Goldstein submits it was obvious from the evidence

¹ [2005] ERNZ 808

Mr Crouch gave to the Authority that his allegations against Aria Park should never have been made.

[10] Mr Goldstein submits any costs awarded should reflect that Aria Park's legal costs were *thrown away* because Mr Crouch withdrew his claim after the first day of evidence; the dismissal grievance claim lacked substance; and Mr Crouch increased Aria Park's costs by *unsatisfactory disclosure and documentation*, and the unsatisfactory way he responded to questioning during the investigation meeting.

[11] I find this is not an appropriate case for indemnity costs.

[12] I do not accept that any of the factors relied on by Mr Goldstein should result in an increase to the notional daily tariff. Aria Park was put to the cost of a one day investigation meeting so it is entitled to one day of costs. I am not satisfied Mr Crouch's conduct unnecessarily or unreasonably increased Aria Park's costs.

[13] I recognise that two hours was spent at the beginning of the investigation meeting:

- (a) clarifying Mr Crouch's claims;
- (b) dealing with new documents produced at the meeting for the first time;
- (c) giving Mr Swan the opportunity to lead new evidence from Mr Crouch which should have been, but was not, covered in the witness statement he filed in advance of the investigation meeting.

[14] However, this additional time is reflected in the fact that Aria Park's costs will be based on a full day meeting, rather than part of a day. I therefore consider that it will be compensated at the normal daily rate for the additional time spent hearing Mr Crouch's evidence on day one of the investigation meeting.

[15] I do not accept Aria Park's claim that Mr Crouch should contribute \$434.70 towards disbursements. Specific details of the disbursements incurred were not provided to the Authority, although Mr Goldstein submits they covered half of the return flights between Christchurch² and Auckland, accommodation, and reasonable travel costs to and from Auckland airport.

² Where Mr Goldstein is based.

[16] It was Aria Park's choice to engage counsel based in Christchurch, when counsel in Auckland would have been available. I consider Mr Crouch should not bear any disbursements associated with Aria Park's choice of counsel.

[17] I consider that an award of costs based on the Authority's usual notional daily tariff is appropriate to do justice between the parties in light of all the circumstances of this case.

[18] Mr Crouch is ordered to pay Aria Park \$3,500 towards its actual legal costs.

Rachel Larmer
Member of the Employment Relations Authority