

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 17
5351882

BETWEEN ANTHONY ROSS DAY
 Applicant

A N D AGMECH LIMITED
 Respondent

Member of Authority: M B Loftus

Representatives: Philippa Tucker, Counsel for Applicant
 Gary Baker, representative of Respondent

Submissions Received: 7 October 2012 from the Applicant
 Nil from the Respondent

Date of Determination: 22 January 2013

DETERMINATION OF THE AUTHORITY

[1] On 2 November 2012 I issued a determination concluding Mr Day had a personal grievance in that he was unjustifiably dismissed. Costs were reserved.

[2] Mr Day was in receipt of legal aid and his costs totalled \$3,105.26. He seeks that amount in its entirety and supports the claim by observing he was successful in all aspects of the claim.

[3] There is no response. Upon receipt of the costs application Agmech was advised a response was required by 26 November. That led to some correspondence between Agmech and the Authority. It concluded with a request Agmech be granted an extension to 7 December so as to allow it to access legal advice about both the costs application and the possibility of a challenge. The extension was granted.

[4] Despite that no submission has been forthcoming despite further approaches from the Authority.

[5] Normally the Authority will use a daily tariff approach when addressing such a claim (refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808). The normal starting point is \$3,500 per day and from there adjustment may be made depending on the circumstances.

[6] The hearing took approximately half a day which would, applying the above formula, mean an award in the order of \$1750. An award is normally for a contribution toward costs incurred. Indemnity costs, which is what is being sought here, are extremely rare and require a persuasive argument. The brief rationale tendered in support of the request falls a long way short of what is necessary to convince me to depart from the normal tariff approach. I shall therefore apply it.

[7] For the above reasons I order the respondent, Agmech Limited, to pay the applicant, Mr Anthony Day, the sum of \$1,750 (one thousand, seven hundred and fifty dollars) as a contribution toward the costs Mr Day incurred.

M B Loftus
Member of the Employment Relations Authority