

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 168
5324218

BETWEEN PAUL DEERNESS
 Applicant

AND METLIFECARE THE
 POYNTON LIMITED
 Respondent

Member of Authority: R A Monaghan

Representatives: J Moore, counsel for applicant
 A Peskett, counsel for respondent

Memoranda received: 7 April 2011 from respondent
 26 April 2011 from applicant

Determination: 27 April 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 10 March 2011 I found Mr Deerness' dismissal was justified. Costs were reserved.

[2] Both parties have filed memoranda on the matter. The memorandum on behalf of the applicant was received outside the timetable set in the determination, but I accept that the applicant forwarded it well within that timetable and for unknown reasons the Authority did not receive it. Accordingly I have taken the contents into account.

[3] The respondent sought a contribution to costs in the sum of \$2,250 plus GST, based on a meeting time of more than half but less than a full day. In support it cited the principles in *PBO Limited (formerly Rush Security Limited) v da Cruz*.¹ It also attached copies of offers made without prejudice save as to costs, which I understood was for the purpose of showing that Mr Deerness was placed on notice that costs

¹ [2005] ERNZ 808

would be sought against him if he was unsuccessful. Otherwise, and aside from GST, the contribution sought corresponds with a notional daily tariff of \$3,000.

[4] The applicant also cited the principles in *da Cruz*, but submitted that the contribution sought was excessive. The memorandum in support advised that Mr Deerness continues to seek full time employment, and suggested that a contribution of \$1,687.50 plus GST was suitable. There was no explanation of how this figure was identified other than a further suggestion that it adequately represents a time commitment and the complexity of the matter

[5] The respondent's position is reasonable, except that I make no separate provision for GST. Mr Deerness is therefore ordered to contribute to the respondent's costs in the sum of \$2,250 (inclusive of GST if any).

R A Monaghan

Member of the Employment Relations Authority