

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 189
5340495

BETWEEN MICHAEL DUNLOP
 Applicant

AND CPC NEW ZEALAND
 LIMITED
 Respondent

Member of Authority: R A Monaghan

Representatives: J Tannahill, counsel for applicant
 D Parbhu, advocate for respondent

Memoranda received: 21 October 2011 from applicant
 No reply from respondent

Determination: 23 November 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 23 September 2011 I made orders for the payment of wages and holiday pay owed to Mr Dunlop, found his dismissal was unjustified but awarded no remedy, and declined applications for penalties. Costs were reserved.

[2] A memorandum seeking costs has been filed on behalf of the applicant. I accept the applicant is entitled to a contribution to his costs.

[3] Counsel sought a contribution of \$5,000 plus GST, referring in support to a determination of the Authority in *Broughton v Microsoft NZ Limited*.¹ The present matter was not comparable with *Broughton*, and instead I apply the principles set out in *PBO Limited v da Cruz*² .

¹ [2011] NZERA Auckland 359.

² [2005] NZELR 808

[4] Further to whether there is any reason to depart from the notional daily rate approach discussed in *da Cruz*, Mr Tannahill pointed to difficulties in arranging mediation and to Mr Parbhu's eventual failure to participate. In the absence of any response from Mr Parbhu I accept Mr Tannahill's account.

[5] Further, Mr Parbhu demonstrated in the Authority that his focus was on his view that Mr Dunlop has been guilty of a breach of duty to CPC, and he has maintained consistently that he will not pay the monies owed to Mr Dunlop pending the addressing of his concerns. He was advised prior to and during the investigation meeting that he was not entitled to withhold payment in that way, as well as of the procedure to be followed in order to pursue his concerns. He chose not to commence that procedure until after the issue of the determination in the present matter.

[6] The investigation meeting lasted for half a day. On a notional daily rate of \$3,500, Mr Dunlop would be entitled to a contribution of \$1,750. I increase this amount to reflect Mr Parbhu's failure to participate in mediation, but against that I take into account that Mr Dunlop was not successful in all of his claims.

[7] Overall CPC is ordered to contribute to Mr Dunlop's costs in the sum of \$2,500, plus the Authority's filing fee of \$71.56.

R A Monaghan

Member of the Employment Relations Authority