

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 185
5389538

BETWEEN GLENN EDE
 Applicant

AND WILCO PRECAST LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Ray Rousell, Advocate for Applicant
 Gary Taylor, Advocate for Respondent

Submissions received: 22 April 2013 from Respondent
 07 May 2013 from Applicant
 07 May 2013 from Respondent

Determination: 13 May 2013

COSTS DETERMINATION OF THE AUTHORITY

**A Mr Glenn Ede is ordered to pay Wilco Precast Limited \$2,500
 towards its legal costs.**

[1] In a determination dated 15 April 2013¹ Mr Ede's unjustified dismissal claim was not upheld but his breach of good faith claim was established. The parties were encouraged to resolve costs by agreement but failing that a timetable was set for costs to be dealt with by exchange of memoranda.

[2] The respondent has now applied for costs. It says it incurred costs of \$21,189.30 and it seeks to recover half that amount. It says its costs were increased because Mr Ede made unfounded allegations regarding the hiring of illegal Indian workers and about management conspiring to remove Mr Ede from his employment.

¹ [2013] NZERA Auckland 128.

[3] Mr Ede says costs should lie where they fall. He says Wilco Precast Limited (Wilco) attempted to get him to agree to an arrangement which would have defrauded Inland Revenue Department and the Ministry of Social Development. He says Wilco should not be rewarded for its conduct by having costs awarded in its favour.

[4] Alternatively he says that if costs are awarded they should not exceed the notional daily tariff which is currently \$3,500.

[5] I adopt the Authority's usual notional daily tariff based approach to costs. Costs are discretionary with the discretion being exercised on a principled basis. The principles relating to costs in the Authority are so well established I do not need to repeat them.

[6] I do not accept that the notional daily tariff should be increased for the reasons identified by Wilco. The claim regarding Indian workers was withdrawn at an early stage (during the first telephone conference) and it was not resurrected in the evidence or submissions so it was not an issue Wilco had to respond to.

[7] Wilco successfully defended the conspiracy claim but costs should not be increased to reflect that because it formed part of Mr Ede's unsuccessful dismissal grievance which the notional daily tariff already covers.

[8] In terms of factors which warrant a reduction to the notional daily tariff, I consider it should be reduced to reflect that Mr Ede had some measure of success because he succeeded on his breach of good faith claim. I note this adjustment is not to reflect disapproval of Wilco's conduct, as Mr Ede submitted should occur, because costs may not be used to punish a party.

[9] I consider the notional daily tariff should be reduced to \$2,500 for the one day investigation. Mr Ede is ordered to pay Wilco \$2,500 towards its legal costs.

Rachel Larmer
Member of the Employment Relations Authority