IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

[2016] NZERA Christchurch 47
5548067

BETWEEN   JOHN EDMINSTIN
                 Applicant

A N D   SANFORD LIMITED
                 Respondent

Member of Authority:	Peter van Keulen
Representatives:	Leola Goffin, Counsel for Applicant Kylie Dunn, Counsel for Respondent
Submissions Received:	12 April 2016 for Applicant 29 March 2016 for Respondent
Date of Determination:	15 April 2016

COSTS DETERMINATION OF THE AUTHORITY

A.   The applicant is to contribute $1,750 towards the respondent's costs.

Authority determinations

[1]   The Authority has issued three determinations in this matter:

(a)   Determination dated 7 October 2015[1] in connection with an application to dismiss the claim against the second respondent, Mr Johnson;

(b)   Determination dated 23 October 2015[2] in relation to an application to remove the matter to the Employment Court; and

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[1] *Edminstin v Sanford Ltd and Anor* [2015] NZERA Christchurch 145
[2] *Edminstin v Sanford Ltd* [2015] NZERA Christchurch 158

(c)   Determination dated 29 February 2016[3] on the substantive matter being the application by Mr Edminstin for compliance orders against Sanford on the basis that Sanford had not complied with the terms of a record of settlement.

[2]   Sanford was successful in all three determinations with the Authority:

(a)   Dismissing the proceedings against Mr Johnson;

(b)   Declining Mr Edminstin's application to remove the matter to the Employment Court; and

(c)   Rejecting Mr Edminstin's application for a compliance order.

Costs submissions

[3]   Ms Dunn, on behalf of Sanford, submits that costs should be awarded in line with clause 15 of the Second Schedule of the Employment Relations Act 2000 and the general principles identified by the full Court of the Employment Court in *PBO Ltd v. Da Cruz*[4].

[4]   Ms Dunn submits that the respondent has been successful in three determinations and should be awarded costs for each. She acknowledges that the first two determinations were matters determined on the papers requiring the filing of a notice of opposition and submissions and the last determination involved a two-day investigation meeting.

[5]   Ms Dunn submits that in the circumstances Sanford should be awarded the daily tariff of $3,500 for two days in the Authority for the investigation meeting and one half day for each of the preliminary matters dealt with on the papers. In total she seeks $10,500 in costs.

[6]   In response, Ms Goffin for Mr Edminstin says that Sanford's application for costs is based on a flawed assumption, namely that it was completely successful in defending the substantive proceeding. She points out that Mr Edminstin's substantive application was for two sets of compliance orders. The first related to the delivery up of records of oyster dredging spots, identified as "marks" in the record of settlement,

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[3] *Edminstin v Sanford Ltd* [2016] NZERA Christchurch 18
[4] [2005] 1 ERNZ 808

in a format capable of being used by Mr Edminstin. The second order sought deletion of any copies of the marks and prohibition against any use of the marks by Sanford.

[7] Ms Goffin submits that in the course of the investigation meeting, after the evidence had been completed, Sanford effectively conceded that it had not complied with the record of settlement as it had not provided the marks in a form capable of being read and used. The parties then agreed a process to try and remedy that failing. On that basis, the Authority was not required to make a determination on the first compliance order sought.

[8] Ms Goffin's submission is that the effective result for the substantive matter was that both parties succeeded in part. Mr Edminstin obtained a concession that he was entitled to copies of the records of the marks in a form that he could use and the parties agreed to attempt to achieve this. Sanford was successful as I determined that it was not required to delete any copies of the marks that it had nor was it prohibited from using the marks.

[9] Ms Goffin also submits in respect of the two preliminary matters that these should be viewed in the context that this is a significant matter and essentially a test case of considerable importance for not just the parties involved but the wider oyster fishing community in Bluff.

[10] Finally, Ms Goffin says that Mr Edminstin sought to remove this matter to the Employment Court at an early stage in order to avoid unnecessary costs. As Mr Edminstin has now filed a challenge to the Employment Court, those costs, which would not have been incurred if the matter was removed, will now be duplicated.

Determination

[11] I am satisfied that in respect of the substantive matter both parties had an element of success. In the circumstances, it is not appropriate that I make an award of costs for either party. I order that costs in respect of the determination of the substantive matter lie where they fall.

[12] On the preliminary matters, I am not persuaded by Ms Goffin's arguments as to the test case nature of the matter. Further, I am not persuaded that because a challenge has now been made to the Employment Court this means in some way that

the application for removal was, in the first instance, justified (at least that is as I understand the submission that she has made).

[13]   I am therefore satisfied that Sanford was successful in respect of both applications and I should award costs in its favour.

[14]   However, I do not accept that one half of the daily tariff is the appropriate amount to be awarded. The two preliminary matters involved applications being lodged, a telephone conference being held and submissions being made in writing. In comparison to a one day investigation meeting for which the daily tariff would be applied the amount of work involved in each of the preliminary matters is much less than half. I consider one quarter of the daily tariff to be an appropriate amount for each preliminary matter, so one half of the daily tariff for both matters.

[15]   I order that Mr Edminstin pay Sanford $1,750 as a contribution to its costs.

Peter van Keulen
Member of the Employment Relations Authority