

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 147/10
5279740

BETWEEN	ELECTRICAL UNION INC First Applicant
AND	PAUL CROFT & ORS Second Applicants
AND	TRANSFIELD SERVICES LIMITED Respondent

Member of Authority: K J Anderson

Representatives: L J Yukich, Advocate for Applicants
G Service, Counsel for Respondent

Submissions received: 17 November from Respondent
26 November from Applicants

Determination: 26 March 2010

COSTS DETERMINATION OF THE AUTHORITY

[1] The substantive matter was determined on 20th October 2009 (AA 369/09). The applicants were unsuccessful with their claims. The parties were invited to resolve the matters of costs but have not been able to do so. Submissions have been received from both parties.

Submissions for the Respondent

[2] The respondent says that it has incurred costs in excess of \$25,000 and acknowledges that this is a high amount for a one day hearing. The cost is qualified by referring to three lawyers (including a partner) having to work on the preparation of the case due to its urgent nature. The Authority is referred to *PBO Limited v De Cruz* [2005] 1 ERNZ 808 and the practice of the Authority applying a daily tariff which is

increased or decreased, depending on the circumstances of respective cases, with general awards of \$2,500 to \$3,000 for each day of a hearing.

[3] It is submitted that this case warrants the Authority departing from the usual tariff based approach due to the high level of preparation and detail of statements of evidence and supporting documents; as well as further evidence having to be produced subsequent to the investigation meeting. The respondent seeks an order for costs of \$10,000 plus disbursements of \$412.59.

The Submissions of the Applicants

[4] The applicants acknowledge the tariff based approach of the Authority and that on the basis of a Department of Labour analysis of costs from 1 January to 30 June 2009, a normal award would be “*in the order of \$2,900.*”

[5] However, the applicants say that due to the nature of the dispute and because both parties “*are likely to benefit from an authoritative interpretation,*” the outcome of this case was more about assisting the parties; “*rather than to declare winners and losers.*” Furthermore, the applicants submit that they were simply observing “*certain dispute and or grievance procedures*” and that if costs awards are to be imposed in the event that parties, such as the applicants, are unsuccessful, “*workers are likely to resort to [sic] more draconian historical approach to addressing differences with their employer.*”

[6] The applicants submit that there should be a “*nil*” contribution towards the costs of the respondent.

Conclusions

[7] Having considered closely all the submissions of both parties, I conclude that no good reason has been advanced by either party, why the tariff based approach of the Authority, with the discretion to increase or decrease awards depending on the circumstances of the case, should be departed from here.

[8] In regard to the submissions of the respondent, it seems to me that the fees incurred for a one day hearing, albeit an urgent response was required, were indeed very high. But that is a matter between the provider of the legal services and the

respondent. The Authority is not able give redress for such expenses, given the overall nature of the proceedings, which were not particularly unusual.

[9] The proposition advanced by the applicants that costs should not follow the event in such cases as this is erroneous. This is particularly so given that the applicants chose to pursue litigation at first instance rather than engage in constructive discussions with the respondent. Indeed, the applicants completely withdrew from the consultation process which was available to them and the legal arguments for doing so were without merit, as reflected in the determination of the substantive matters.

Determination

[10] As is well established, costs follow the event and the successful party is entitled to a reasonable contribution to the costs incurred. Taking into account the circumstances of this case, including further costs being incurred by the respondent subsequent to the investigation meeting, due to further evidence being introduced by the applicants, I conclude that a fair and reasonable contribution by the applicants to the respondent's costs is \$4,000 plus disbursements of \$412.59.

[11] The applicants are ordered to pay to the respondent the total sum of \$4,412.59.

K J Anderson
Member of the Employment Relations Authority