

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2011] NZERA Christchurch 72
5327173

BETWEEN

KEVIN ENOSA
Applicant

AND

BLACK & WHITE FIRE
SYSTEMS LIMITED
Respondent

Member of Authority: Philip Cheyne

Representatives: David Beck, Counsel for Applicant
Sam Vaisevuraki, Advocate for Respondent

Submissions Received: 20 May and 24 May 2011 from the Applicant
23 May 2011 from the Respondent

Determination: 26 May 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In a determination dated 2 May 2011 I upheld Mr Enosa's personal grievance and arrears claims against his former employer. Costs were reserved for both parties to provide submissions in the event that they could not reach agreement about costs.

[2] I now have submissions from both parties. This determination resolves the disputed question of costs.

[3] Mr Enosa was wholly successful and I can see no reason why costs should not follow the event.

[4] I am asked to award *full costs* apparently in the amount of \$3,418.50 and \$71.56 for the Authority lodgement fee but the note of costs annexed to the submissions records costs as \$3,088.56 including the lodgement fee. There is never any reason to award more in costs than were actually incurred. This matter was a routine personal grievance claim which also included recovery of holiday pay which

had been unlawfully deducted by the employer at the termination of the employment relationship. There is no reason apparent to me to justify departing from an assessment of costs on a contribution basis.

[5] As an alternative it seems, I am asked to award costs of \$2651.56. There is no explanation for this amount but it is the total of the GST exclusive legal costs plus the GST inclusive lodgement fee. Mr Enosa is not GST registered so the relevant figure is the GST inclusive amounts which are the legal fees he must actually pay.

[6] I have been made aware that the parties had agreed on the payment of \$2,000.00 (plus GST) as a contribution to costs but they could not agree on when the payment would be made. That figure is certainly high but within the range that would result from a normal assessment of costs in a case such as this one. The proper course now is to confirm that the respondent should pay costs to the applicant in the sum of \$2,300.00. I can see no basis at this stage for the Authority to become involved in the apparent dispute about when the payments (including the earlier orders) are to be made. As orders of the Authority the sums are due immediately and parties may legally enforce non-payment in the usual ways but it is also open to them to reach an accommodation with one another. They should do so in this case.

Orders

[7] The respondent is to pay the applicant \$2,300.00 in costs.

Philip Cheyne
Member of the Employment Relations Authority