

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Clinton Brian Farley (Applicant)
AND Nugget Point Resort Limited (Respondent)
REPRESENTATIVES Sonia Vidal and Laurie Murdoch, Counsel for the applicant
Cilinnie Agyepong, Counsel for the respondent
MEMBER OF AUTHORITY Helen Doyle
SUBMISSIONS RECEIVED Applicant, 5 February 2007
Respondent, 21 March 2007
DATE OF DETERMINATION 5 April 2007

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 20 November 2006 I found the applicant had a personal grievance that he was unjustifiably dismissed and awarded him remedies. In terms of the respondent's counterclaim, I found that the applicant breached his obligations of trust and confidence when he accessed the respondent's documents without authorisation and ordered business cards with a different title for his position without discussion and authorisation. I did not find that the applicant removed or used the respondent's data base and made no order for damages in respect to the counterclaim.

[2] I reserved the issue of costs but suggested in my determination that the parties meet their own costs on the counterclaim.

[3] The parties were not able to agree with respect to the matter of costs and submissions were duly lodged with the Authority.

The submissions

[4] Ms Murdoch on behalf of the applicant says that the applicant's actual costs and disbursements are in the sum of \$13,595.29.

[5] Ms Agyepong on behalf of the respondent says that any award of costs would further penalise the respondent unfairly and would be unreasonable given the remedies awarded and paid by the respondent. In terms of the counterclaim Ms Agyepong submits that the parties should meet their own costs. Ms Agyepong says that the respondent wants that extended to costs in relation to the personal grievance as well.

Determination

[6] In determining this matter I have had regard to the judgment of the full Court of the Employment Court in *PBO Limited (formerly Rush Security Limited) v. The DA Cruz*, unreported, 9 December 2005 AC2A/05 and the principles that were held in that case to be appropriate to the Authority and consistent with its functions and powers. The unique nature and role of the Authority was recognised in that judgment.

[7] The investigation was held over two meeting days. Both parties contributed to the investigation meeting in a constructive way, notwithstanding their very different positions and firm views. Of particular assistance to the Authority was the provision by the respondent of a transcript from the recording of the disciplinary meeting.

[8] Approximately three quarters of the investigation time was spent hearing evidence about the personal grievance and the balance of the time evidence about the counterclaim.

[9] I have considered Ms Agyepong's submission that any award of costs would further penalise the respondent, given the remedies already awarded and paid. It is a well established principle that the party who is not successful pays a contribution towards the costs of the successful party. Costs will therefore generally follow the event unless there are particular reasons to the contrary. In this case I do not find that there is any reason to depart from the principle and costs will follow the event.

[10] I consider in the circumstances of this particular case a suitable award of costs would be on the basis of \$3000 per day or total costs of \$6,000. I consider that the parties should meet their own costs on the counterclaim each having had a measure of success. On that basis I have reduced the costs by one quarter, being the sum of \$1,500. The applicant has claimed the following expenses:

Witness expenses (scale) – being four witnesses @ \$50 per day and a further half day \$300
One witness @ \$25 for a half day
Hearing Fee @ \$300
Food allowance @ \$28

[11] Expenses are matters paid for or incurred as the result of an investigation meeting. I consider the expenses claimed to be specific to and necessary for the purpose of the investigation and therefore reasonable with the exception of the food allowance, which I consider will be adequately met in terms of witness expenses.

[12] I am of the view that a fair and reasonable contribution by the respondent towards the applicant's costs in the circumstances of this case is \$4,500 together with expenses in the sum of \$625.

[13] I order Nugget Point Limited to pay to Clinton Farley the sum of \$5125.00 being costs and expenses.

Helen Doyle
Member of Employment Relations Authority