



New Zealand Employment Relations Authority Decisions

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Fisher v Express Couriers Limited (Christchurch) [2011] NZERA 558; [2011] NZERA Christchurch 120 (8 August 2011)

Last Updated: 24 August 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2011] NZERA Christchurch 120
5308711

BETWEEN STANLEY TUTAHI FISHER

Applicant

A N D EXPRESS COURIERS LIMITED

Respondent

Member of Authority: M B Loftus

Representatives: Rex Hancock, Advocate for Applicant

Mike Foster for the Respondent

Submissions Received: Nil from the Applicant

16 June from the Respondent

Date of Determination: 8 August 2011

COSTS DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In a determination dated 18 May 2011 I rejected Mr Fisher's claim that he had a personal grievance.

[2] The issue of costs was reserved with the successful respondent, Express Couriers Limited, being advised that if it wished to seek a contribution toward its costs, it should do so via a written application. It does.

[3] Express Couriers seeks a contribution toward their costs of \$6,000. In support of the claim it is argued that:

- a. The contribution sought is somewhat less than the total actually incurred;
- b. That it is improbable that the matter would have proceeded had Mr Fisher not engaged a 'no win no fee' advocate; and
- c. Mr Fisher kept other staff briefed about the disciplinary process and the fact he was taking proceedings.

[4] Mr Fisher has not responded to the application.

[5] Express Couriers initially advised Mr Fisher's representative, Mr Hancock, that it sought costs. Mr Hancock's response advised:

I have not been able to track Stan Fisher and you will have to lodge your claim with the Authority for costs.

As for getting \$6,000 from him, given his likely employment status and the chances of tracking him down and extracting the costs are very remote.

Regards

[6] Express Couriers then sent copies of their application to two further addresses. The first is that recorded as Mr Fisher's residence in the electoral role and the other was gleaned from the records of Express Courier's Timaru office. Timaru is the town in which Mr Fisher is understood to reside. As said earlier, neither approach elicited a response.

[7] The statement of problem advises that Mr Hancock is Mr Fishers' representative and that all documents should be served on his (Hancock's) address. That notice has never been amended or updated. For that reason and given that the application was served upon Mr Hancock, I am satisfied that Express Couriers have met their obligations in respect to advising Mr Fisher of the application. The fact Mr Hancock can no longer contact his client should not be visited on Express Couriers.

[8] Even if that were not the case, I note that Express Couriers have taken additional steps in attempting to advise Mr Fisher of their application. He can not avoid his obligations by either ignoring documents received or attempting to become uncontactable. In the circumstances, and given that a costs order can be amended or revisited (clause 15 of the second schedule to the [Employment Relations Act 2000](#)), I believe it appropriate to determine the matter.

[9] Normally the Authority will assess costs on a daily tariff basis: refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] NZEmpC 144; [2005] ERNZ 808. In assessing that tariff a common starting point is \$3,000 per day: refer *Chief Executive of the Department of Corrections v Tawhiwhirangi (No 2)* [2008] ERNZ 73. From that point adjustment may be made depending on the circumstances.

[10] The hearing took a day. Applying *Da Cruz* and *Tawhiwhirangi (No 2)* the award would be \$3,000.

[11] I see no reason to amend that figure as:

- a. Mr Fisher's failure to respond leaves me bereft of any rationale for reducing the award; and
- b. I do not consider Express Couriers arguments provide a persuasive reason for increasing the award as:
 - i. *Da Cruz* and *Tawhiwhirangi (No 2)* nullify the first point (3(a) above);
 - ii. Mr Fisher is free to pick an agent of his choice; and
 - iii. Mr Fisher's advice to his colleagues may have been relevant to remedies had he succeeded but I fail to see its relevance to the issue of costs. Indeed, wide spread knowledge of the claim and the fact it failed, may well have enhanced the company's credibility.

Conclusion

[12] Mr Fisher is to pay to Express Couriers Ltd the sum of \$3,000 (three thousand dollars) as a contribution toward the company's costs.

M B Loftus

Member of the Employment Relations Authority