

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2013] NZERA Wellington 66  
5363578

BETWEEN

RICHARD FLOYD  
Applicant

AND

HAUHUNGAROA 2C BLOCK  
INCORPORATED  
Respondent

Member of Authority: P R Stapp

Representatives: Geoff O'Sullivan and Nikkii Flint for Applicant  
Penny Swarbrick for Respondent

Investigation Meeting: On the papers

Submissions received by: 22 May 2013

Determination: 31 May 2013

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**DETERMINATION OF THE AUTHORITY INCLUDING COSTS**

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**Employment Relationship Problem**

[1] The correct and accurate figure on lost salary and the matter of costs were reserved by the Authority in a determination [2013] NZERA Wellington 16. Since that determination the parties have been able to settle the matter of holiday pay on lost wages, but not on the costs, and it falls to the Authority to make a determination.

[2] By consent the respondent has agreed to pay the sum of \$1,292.38 holiday pay from 20 January 2012 to 1 May 2012.

[3] The applicant claims full indemnity costs in the sum of \$22,320.50 supported by invoices. The reasoning is based on the applicant being put to unnecessary costs by the respondent. The respondent has asked for \$6,000-\$7,000, or costs lie where they fall as the respondent was a substantially successful party.

**Issues**

[4] Which party should pay costs and how much?

**The facts**

[5] The respondent has agreed to pay the holiday pay as outlined in the applicant's memorandum of 10 April 2013.

[6] The applicant was successful in a finding of a personal grievance and to receive monetary remedies. He was not reinstated. He was awarded monetary remedies. There was a finding that the redundancy was genuine, but there were other circumstances that meant Mr Floyd had a personal grievance. Both parties have incurred the costs of representation and attendance. The Authority's investigation meeting involved pre-planning arrangements for documents to be produced and statements of evidence including replies from witnesses. The investigation meeting was scheduled for two days and written submissions followed.

**Determination**

[7] By consent Hauhungaroa 2C Block Incorporated has agreed to pay Richard Floyd the sum of \$1,292.38 holiday pay on the lost wages.

[8] The nature of the case is no different than many that are heard in the Authority, but with some differences. This means that the notional daily tariff should apply as a matter of principle in assessing costs, and it is an issue as to how much the notional daily tariff should be adjusted. I have no hesitation to award costs to the applicant because he was successful. He would not have received any such outcome without bringing the matter before the Authority, given the full denial of all the claims by the respondent before the investigation meeting. I have balanced the respondent's success on the reinstatement issue and the genuine redundancy with that of the applicant's success that he had a personal grievance and received monetary remedies. In such circumstances he should receive a contribution to his costs, I hold.

[9] Therefore, the next assessment is the question of how much the respondent should pay. This was a case that required considerable preparation. There was travel and organisation of witnesses needed. The work involved was reflected in the bundles of documents and statements of evidence and the comprehensive written submissions. Also, the extent of the keenly held views of both parties in regard to the wide issues meant that the time set aside for the Authority's investigation meeting was necessary. The issues were clearly important to both parties.

[10] The invoices provided for the applicant indicate items that are discretionary in regard to costs such as travel and hotel expenses, the costs of instructions on proceedings and mediation. I hold that this is a matter to apply the daily tariff that takes into account all the necessary items associated with the Authority's investigation. Further there are no exceptional circumstances in the matter to apply full indemnity costs. I am not prepared to depart from the principle that both parties meet their own costs for mediation as a matter of public policy to save costs.

[11] My starting point is \$3,500 per day, but I recognise that more than the usual costs have been incurred and would exceed the notional daily tariff. Factors I have considered include:

- i. That the respondent did not make reasonable concessions until the investigation.
- ii. That the applicant reasonably decided to file proceedings given the nature of the respondent's reply on all the issues.
- iii. That the Authority's involvement was required for the applicant to get an outcome, and it is understandable and not unreasonable that he proceeded with the range of claims for different causes of action to resolve the employment relationship problem. The range of claims was not unreasonable.
- iv. That the Authority's investigation meeting was held in Taupo for the convenience of the parties and their witnesses and to help save some of the costs.

- v. That Counsel from Wellington and Auckland were reasonably engaged by both parties.
- vi. That there were a number of witnesses involved that needed to be briefed and arrangements made for their preparation and attendance at the Authority's investigation meeting.

[12] I have increased the notional daily tariff to \$4,750 per day that covers the preparation for the investigation, Counsel's preparation for the hearing, attendance at the investigation meeting and written submissions, GST and recognising that there were expenses involved with travel and accommodation and disbursements on the basis of reasonable costs for the Authority's investigation, but not including mediation. Mr Floyd is entitled to the filing fee. The parties are to bear the costs of all other disbursements.

### **Orders of the Authority**

[13] I order Hauhungaroa 2C Block Incorporated to pay Richard Floyd:

- i. By consent \$1,292.38 holiday pay.
- ii. \$9,500 costs plus \$71.56 filing fee.

P R Stapp  
Member of the Employment Relations Authority